# State of Surprise Billing - How Pathologists Can Fight Back

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**Julie McDowell:**

Surprise billing continues to be a priority for Congress in Washington DC. Dr. David Gang and Dr. Matthew Foster, who are two leaders with the CAP's Federal and State Affairs Committee, will discuss their recent trips to Capitol Hill to meet with our legislators on surprise billing.

Also participating in this podcast is Michael Hurlbut, CAP's Assistant Director of Legislation and Political Action, who will provide a recap of the legislative process to fix price billing and where it may go in 2020. Doctors Gang and Foster are speaking on behalf of the CAP's Federal and State Affairs Committee. Michael, let's begin with you. Could you explain what surprise billing is, and what the potential consequences could be of the principal legislation in Congress on pathologists and patients?

**Michael Hurlbut:**

Of course. A surprise bill arises when a patient receives care at an in-network facility, but an out-of-network physician provides some services. The patient certainly didn't know that a physician is out-of-network, and they really don't understand why they suddenly have a big bill. The current principal legislation includes policy proposals that are problematic for the CAP. The compromise proposal exists between the Senate Health Education, Labor, and Pensions Committee and the House Energy and Commerce Committee, and it includes language that sends a benchmark rate for out-of-network reimbursement at the median in-network rate in that particular geographic area.

And we're worried about that because this gives leverage to insurers in contract negotiations. And while it includes an independent dispute resolution framework, which the CAP advocated, the trigger to use this mechanism is set at a $750 amount, which is far higher than the typical claim for pathologists, and effectively renders a policy unusable. So we're working hard to amend these policies before they pass either the House or the Senate.

**Julie McDowell:**

So Dr. Foster and Dr. Gang, how could the legislative proposal, such as rate setting or tying reimbursements for out-of-network services to median in-network rates affect your ability to treat patients? Dr. Foster, let's start with you.

**Dr. Matthew Foster:**

Thanks, Julie. I think the challenge with this is trying to understand how it's tied to our daily workflow. The challenge also is because pathologists are typically non-patient facing and hospital based. A lot of the legislative proposals don't take that into account. So tying it to median network rates really allows insurance companies to gain leverage in health plan negotiations, such that it may result in more physicians out of network than in network. This, particularly too in a rural communities like where I practice, that really could have a dangerous downstream effect on the ability to have pathologists practicing and serving those local hospitals.

**Julie McDowell:**

Dr. Gang, how would these proposals impact your ability to treat patients?

**Dr. David Gang:**

Well, I'm in a different sort of practice. I'm in an academic practice where we have 22 pathologists, and we do a lot of out-of-network services, a lot of outreach. And what this means is that we will not be able to keep a 22-man subspecialty practice because we won't be able to afford to keep and replenish our faculty.

If the insurance companies dictate the rates, it incentivizes the insurance company to kick us out of network because they get a better deal by paying us the median in-network. And the median in-network amount is a rush to the bottom. It's kind of a blank check to rewrite the contracts and pay us less. And then we can't afford to do our work and provide the kind of expertise we need for personalized medicine and to be able to have subspecialization, which we see in the rest of medicine.

**Dr. Matthew Foster:**

That's a really good point, Dr. Gang. I was going to add too, that I think the challenge is it gets every incentive for the insurance company to continue to ratchet down what they consider to be an in-network rate. So to your point, that is absolutely a race to the bottom, and I think CAP is really working hard to acknowledge that. I would also add that I think ensuring an adequate network is really important, particularly for hospital-based pathologists that may be overlooked in a lot of the certifications for network adequacy.

**Julie McDowell:**

Now, you both recently went to Capitol Hill to meet with your members of Congress on surprise billing. Can you talk a little bit about your meetings? And what messages did you find that resonated with congressional staff? Dr. Gang, can we start with you?

**Dr. David Gang:**

Yes. I had some very good experiences. And I traveled to Capitol Hill with both Darren Fenwick and Michael Hurlbut who accompanying me to the offices, and we had a good issue brief, similar to the ones that we've had when we do the policy meeting and we go to the Hill. And we emphasize on those issue briefs, first of all, to hold patients harmless. Rather than emphasizing payment, that came at the end. And we really emphasized setting a network adequacy standards.

I saw representatives, four congressmen and one senator from Massachusetts, and they were extremely receptive. And when it was challenging to explain this median in-network and how it was going to favor insurance companies, and they really didn't understand that concept, and it was a great opportunity to explain, with CAP staff, exactly how that was going to impact reimbursement, and to impact, ultimately, the patient care. Also, we really emphasized network adequacy standards. And I have to say we really were able to drive that home with Lizzie O'Hara, who is the health representative for Congressman Richie Neal, of course, who is chair of Ways and Means. So we felt we hit a real home run in that office.

**Julie McDowell:**

Dr. Foster, can you talk a little bit about your experience?

**Dr. Matthew Foster:**

I had a similar experience to Dr. Gang's. I think what we tried to hit on, again, with Darren Fenwick from the CAP legislative office, was what our distinct value proposition for pathologists. What do we bring to the table? Why is it valuable, and why is it important to ensure that there's adequate network of pathologists? We also discuss network adequacy. And also, I agree. I think it's really is challenging to explain the nuances of the median in network. That really requires space time. And we had some very robust discussions, as well as supportive health legislative aids and other legal counsels from Congressman Bobby Scott's office and others in the Virginia delegation.

**Michael Hurlbut:**

And I'd like to add one more thing, and that's with the independent dispute resolution, because the current energy and commerce bill called for a 750 ceiling on disputing claims. And we explained how our bills are nickel and dimes compared to that, and that this wasn't going to help us at all, so that we really needed them to look at that high ceiling.

**Julie McDowell:**

Michael, can you talk a little bit about the future of the surprise billing legislation?

**Michael Hurlbut:**

Yeah. The CAP and the rest of the physician community, we've really done a great job in advocating that Congress takes its time, considering its final compromise on this. We all want something that rectifies this problem for patients. We just want to make sure that it's done in the right and fair way. The Senate-House compromise bill I mentioned earlier is currently the likeliest option to pass right now, but the House Committee on Ways and Means has inserted itself kind of at the last minute into this process and would like to make recommendations of its own. We're really waiting to see what they have to say and how it could really influence any compromised legislation. We do know that all congressional leadership wants to see something done sooner rather than later, and it really wouldn't surprise me if something happened in the first five to six months of this year. But we're really waiting to see what those final compromise bills look like to try and figure out what advocacy we need to do from there.

**Julie McDowell:**

Finally, back to Dr. Foster and Dr. Gang. Can you talk a little bit about what pathologists can do on this issue? Dr. Foster, can we hear from you first?

**Dr. Matthew Foster:**

Sure. I think in your daily practice, oftentimes the policy can get lost in the shuffle of workload. And you wonder what's going on and who's doing something about it. I think it's really important, first and foremost, to know that the CAP has got your back. You're not alone fighting this. And the advantage of this is we're a small specialty. And because we're a small specialty, your voice can be heard. So I would encourage you to speak up, get involved, know that this is a federal issue, but it's also a state issue. And it's coming up in several states, including my home state of Virginia, and getting involved at the state level is really important to explain the value proposition of pathologists to those in decision-making that can influence our specialty.

**Julie McDowell:**

And Dr. Gang, what are your thoughts on this issue?

**Michael Hurlbut:**

I would agree with everything Dr. Foster said. And one thing is making your colleagues aware of what the CAP is doing. It's amazing how people do their daily work and are completely unaware of the threats and challenges that we face. So going to a staff meeting and actually giving an update on what's going on, I've adapted that into my regular departmental activities so that they're aware of what's going on and aware of the value of the CAP. The other thing we should remember is that it's important to respond to action alerts. And I get everybody locally, and friends I know in the state and the Mass Society of Pathologists to respond to these action alerts because they make a huge difference. They're easy to do. You can edit them, you can make them personal, and they're very important in showing that you care, that we care about what's going on.

And of course, the one thing that we all can do is go to the Pathologist Leadership Summit, and go to the Hill and see our own representatives. This is really key. They really care about us and they care what we have to say, and many of them are confused about the complex issues that we're talking about. I worked with the CAP over Christmas and sent letters to our nine congress folks and our two senators through the help of the CAP, and I got a ton of responses back, I couldn't believe it, thanking me for these emails. So they clearly appreciate our input, and we need to a better job in reaching out to them.

**Julie McDowell:**

Well, thank you all for sharing this important advocacy information. Dr. Gang mentioned the 2020 Pathologist Leadership Summit, which will be held May 2nd through the 5th in Washington DC. For more information and to register, please visit pathologistleadershipsummit.org. And for more advocacy information, please go to cap.org and click on the tab for the advocacy section. From there, you can sign up for upcoming meetings and learn more about how you can participate in our lobbying program. Thank you for listening to this CAPcast. Be sure to listen to our other CAPcasts from the CAP on our SoundCloud channel by downloading the SoundCloud app on your mobile device. And we're also on Apple Podcasts and the Stitcher app. To find this podcast, search for the word CAPcast on these apps. Once you find our podcast, be sure to click the subscribe button so you don't miss new CAPcast episodes.