# Advocating for Fairness in the No Surprises Act

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**Alec Bose:**

Insufficient health plan networks and surprise medical bills have had a substantial impact on patients through the years. The No Surprises Act of 2020 aimed to address surprise bills by taking patients out of medical billing disputes between physicians and insurance companies.

In part, the law set up an independent dispute resolution or IDR process that was supposed to be fair and impartial. However, the regulations implementing the law now favor insurance companies. The CAP is advocating to make the IDR process truly independent and fair to all participants. We spoke with Dr. Theresa Emory, chair of the CAP's Policy Subcommittee to learn more. Dr. Emory, thank you so much for joining us. We really appreciate it.

**Dr. Teresa Emory:**

Thank you for having me.

**Alec Bose:**

So to start us off, can you tell us what the purpose of the No Surprises Act is and how it was meant to help patients and healthcare professionals?

**Dr. Teresa Emory:**

The purpose of the No Surprises Act is to prevent patients from surprise medical bills, and in particular, to hold patients financially harmless from bills for out-of-network services provided at in-network hospitals or facilities. And as far as the Act itself, I think it'd be good to give a little bit of background about it.

So in December of 2020, congressional leaders struck an agreement and passed this legislation that is the result and culmination of several years of bipartisan support trying to find patients financially harmless from bills for out-of-network services. This was signed into law in 2020, but not to go into effect until 1st January 2022. This also had to do with addressing some Medicare cuts, and that was also helpful for providers. The key provisions in the legislation included an independent dispute resolution or arbitration process. Additionally, it removes the Medicare and Medicaid rates from consideration by the arbiter.

And insurers will make patient payments for out-of-network services that are determined either through negotiation between the physician and the insurer, or the IDR process. So, the prior versions before this was signed into law heavily favored insurance companies, but the DAP lobbied for more than two years to save patients from unexpected medical bills and support network adequacy requirements for health insurance plans.

And then over the course of 2021, the rules were published, and CAP was on the forefront of this. In December of 2020, the bill was signed into law. And then in July, the first set of what are called interim final rules were published. But prior to that, in anticipation of it, CAP wrote to Medicare HHS that they needed to have strong regulations to prevent health plan manipulation along with a balanced system to resolve payment disputes. And these actually dealt with cost sharing responsibilities and methods for calculating the qualified payment amounts.

Following that, another set of rules came out in October and again, CAP responded to the first set of rules in September. The second set of rules were published... interim final rules were published in October, CAP responded to those. And that second set had to do more with the regulations detailing the open negotiations and the independent dispute resolution process. And CAP responded to those in December. And then as of January 1st, the law goes into effect and is implemented. And so that's really the background of the bill and what we did in 2021.

**Alec Bose:**

Can you talk about some of the adverse effects of the law and how some of the impacts of the law were not as it was intended?

**Dr. Teresa Emory:**

At this moment, it's just beginning to be implemented. However, as we reviewed the published interim final rules, we saw some problems with regard to how the QPA was going to be determined or what would be considered by the arbiter in making the decision of what the payment would be. The QPA is one factor that needs to be considered in the payment. However, there are several other factors that are to be considered. And unfortunately, when the rule came out in October, it said that they needed to consider the median rate as the correct rate. We do not believe that was intended for deciding what the payment would be. So the QPA was one win, but the ultimate interim payment determination was not what we think appropriate.

The CAP is strongly urging the departments to revise this decision and instead allow the certified IDR or the arbiter to fully consider all relevant information. And we believe that there's no statutory elements or text or guidance that supports the interpretation in the recent regulations, and we feel that this current methodology would favor the insurance companies over the provider.

**Alec Bose:**

What do you think members can do now to take action and then stay updated on this issue?

**Dr. Teresa Emory:**

So the CAP recognizes that the implementation of the No Surprises Act will impact our membership. Another element that is of concern is the good faith estimate. The good faith estimate is for those patients that are uninsured, who would want to have a price given to them of what a procedure would cost or what their treatment would cost. And this is a very important issue that will impact our membership. And so we are really looking for members to reach out to us and let us know concerns or things that are happening that are impacting them with regard to the No Surprises Act.

The CAP is going to monitor what is happening. The CAP may issue a survey to the membership to get input from memberships. CAP is working with other medical societies, including the AMA with regard to unintended consequences of this law.

And we really recommend that the members keep up to date and informed through the CAP and learn about the latest advocacy news and events, particularly regarding this Surprise Bill Act. Also, we would really encourage members to join Path Net because we can only have impact on how any kind of legislative events happen. If we are active and drive positive change to protect our specialty's future.

It is a complex topic which will likely have impact on the membership that we cannot foresee, and I strongly encourage the membership to reach out to the CAP, whether it's through practice management or through advocacy with regard to issues arising particularly from this new law.

**Alec Bose:**

Well, with that, we'll let you go. Dr. Emory, thank you so much for joining us. We really appreciate your time.

**Dr. Teresa Emory:**

Thank you.

**Alec Bose:**

To stay updated on the No Surprises Act, visit our website at cap.org/advocacy and follow us on Twitter @CAPDCAdvocacy.