

Contract Negotiations and the No Surprises Act

When the No Surprises Act became law on January 1, 2022, it was aimed at discouraging privately owned practices from capitalizing on revenue through non-participation status by balance billing patients for their out-of-network balances. What appears to be happening, though, is that insurers are using the law to leverage re-negotiation of contracts to much lower rates for its in-network providers.

The law requires parties that can't agree on an allowed amount for submitted claims to enter into a mediation process. This was established prior to final guidance being issued on how arbiters should resolve payment disputes. The arbiters were directed by CMS to base final payment on a qualifying amount that is set by the insurance company. As a means to drive down this qualifying amount, insurers are terminating or entering into re-negotiations with participating providers that have what the insurers deem to be high-priced or costly negotiated rates in their already established contracts.

The focus of the insurers is to reduce the median in-network rates that are paid to groups. This is the qualifying rate that is outlined in the No Surprises Act that arbiters are tasked to use to make decisions on payment. By driving down the median rates, insurers can drive down the qualifying payment amounts that arbiters are ultimately using to determine final outcomes in the arbitration process.

The big three insurers – Aetna, Cigna and United Healthcare – have all sent letters of termination or requested re-negotiations with participating groups citing the No Surprises Act. A clinical practice was informed by Cigna that their contracted rate was no longer competitive due to the federal ban on surprise billing and that they would be requesting rate reductions for all providers in the same specialty. Aetna refused to pay more than the rate outlined by the No Surprises Act for air ambulance services in Colorado, and UHC requested a 40% reduction in rate according to a letter from the American College of Emergency Physicians. Even The Blues are hopping on the re-negotiation bandwagon. Blue Cross and Blue Shield of North Carolina referenced the No Surprises Act in letters sent to providers in 2021 stating that it would end contracts with these providers unless they agreed to reductions of up to 30% in their contracted rates.

Groups that are already struggling to remain solvent with increased overhead, rising supply costs and cuts in reimbursement from the Federal government, are now facing another hurdle from the income stream that typically provided that small profitability for their practices. The choice to remain in network with a reduced contracted rate or go out of network also threatens patient access to quality healthcare throughout the industry.

While Congress may not have intended for the No Surprises Act to drive down reimbursement from private insurers, it is clear that this law is having a profound effect on reimbursement by changing the standard for the negotiation process.

Source: *Modern Healthcare, August 2022 "Coming to a contract negotiation near you: the No Surprises Act"*