



Ways & Means: Surprise Billing IDR Process Is Broken

September 20, 2023

Almost three years after passage of the No Surprises Act (NSA), the House Ways and Means Committee held its first hearing on the law, entitled, “Hearing on Reduced Care for Patients: Fallout from the Flawed Implementation of Surprise Medical Billing Protections.”

Click [here](#) to watch the 4-hour hearing. Here are the witnesses and links to their testimony:

Dr. Seth Bleier, MD

Vice President of Finance, Wake Emergency Physicians Professional Association

[Witness Statement](#)

Mr. James Bobeck

President, Federal Hearings & Appeals Services, Inc.

[Witness Statement](#)

Ms. Diane Spicer

Supervising Attorney, Community Health Advocates, Community Services Society

[Witness Statement](#)

Ms. Jeanette Thornton

Executive Vice President of Policy and Strategy, America’s Health Insurance Plans

[Witness Statement](#)

Mr. Jim Budzinski

Executive Vice President & Chief Financial Officer, Wellstar Health System

[Witness Statement](#)

Key takeaways from witness testimony:

- Insurer networks are more narrow since NSA.
- Long-standing contracts are not being renewed without significant rate reductions.
- When providers refuse the rate reductions and go out of network, the out-of-network rate is significantly less than the in-network rate had been.
- There is no transparency around how the QPA was determined by the payor.
- The batching process does not comport with how providers and payors normally process claims.
- Delay in processing IDR claims impacts cash flow – will eventually jeopardize services.
- Huge backlogs in IDR - health system testified that 7% of roughly 8,000 IDR claims have been processed to date.
- When providers prevail in IDR, payors are not reimbursing within 30 days – no penalty for the payor; no penalty for IDR entities that do not meet statutory deadlines.

Key takeaways from Member comments:

- The Committee believes it passed a balanced law – most blame the Administration for the way it wrote the regulations that tipped the scale toward payors.
- Some Members think there should be a way to automate the IDR process – standardize it and use technology as the arbitrator.
- Many Members seem to understand the cash flow issues.
- There seems to be interest in amending the NSA to impose penalties on payors for failing to reimburse providers on time and increase transparency around the QPA. One member suggested that insurers should be required to pay interest at 1% compounded daily on outstanding payments over 30 days.
- Some Members are concerned that the Administration has yet to publish regulations to implement Good Faith Estimates and Advanced Explanation of Benefits.

In the Senate

Senator Cassidy, MD (R-LA), Ranking Member of the Senate HELP Committee (with jurisdiction over the NSA), sent a 13-page letter (click [here](#)) to HHS asking it to immediately remedy a host of issues relating to determining the QPA, ensuring timely and accurate payments, the IDR process, batching challenges, the administrative fee, and audits and enforcement.

Federal IDR Process Still Largely Suspended

As a result of the latest Court ruling on August 24, the Federal IDR process remains largely suspended for claims filed after August 3. On September 5, IDR entities were directed to resume making eligibility and conflict of interest determinations and encouraged disputing parties to continue negotiating – but not to resume payment determinations. Yesterday’s testimony also addressed the challenges IDR entities will face in managing this backlog.

In this third case brought by the Texas Medical Association (TMA III), the Court held that the regulations and FAQs at issue relating to the QPA illegally advantages payors over providers.

- Click [here](#) for the Opinion and Order, and [here](#) for the final Judgment in TMA III; click [here](#) for the July, 2021 rule, and [here](#) for the FAQs (#14 and #15 are vacated per the order).
- While TMA prevailed on provisions relating to the use of certain components in determining the QPA, the Court upheld the provision that limits the information payors must provide into how they determined the QPA. The Court found that the government acted within its discretion.

This ruling came just after HHS halted and then resumed the processing of most IDR claims, as a result of another TMA case, TMA IV, relating to administrative fees and batching of claims.

- Click [here](#) for the Opinion and Order in TMA IV requiring HHS to vacate the \$350 administrative fee and the provisions related to batching of claims.
 - As August 3, 2023, the administrative fee reverted to the \$50 fee included in the October 2022 guidance document - click [here](#).

More Regulations Coming

Awaiting final review at the Office of Management and Budget (OMB) are two proposed rules on the IDR process and the administrative fees. The Coalition Against Surprise Medical Billing and Families USA have met with OMB on the IDR process. There are no additional meetings posted so these proposed rules could be published any day now.

For additional information, please contact our General Counsel Diane Turpin at diane.turpin@shcare.net or 202-578-5444.