Niskanen Center Tells Lawmakers No Surprises Act's Arbitration System Fuels Waste, Urges Reform

Jul 29, 2025, 6:49 PM EDT

(Inside Health Policy)

Lawmakers who say they want to rein in waste, fraud and abuse in the federal health care system could do so by reforming the arbitration process created under the No Surprises Act (NSA), where rising administrative costs, federal oversight expenses and apparent exploitation by private equity-backed providers have pushed program spending beyond $1 billion, according to health policy analysts at the Niskanen Center, who have been engaging with congressional health committees on the issue.

The experts suggest scrapping the arbitration altogether and setting the pay at a benchmark rate, arguing that such a policy could also help mitigate providers' complaints about insurers' failing to comply with the law. Last week, partisan, bicameral lawmakers introduced No Suprises Act Enforcement Act, which would slap penalties on parties that fail to meet payment deadlines.

Passed by Congress in 2020 and in effect since 2022, the NSA was designed to protect patients from unexpected medical bills, particularly those stemming from emergency care or services performed by out-of-network providers at in-network facilities. To resolve billing disputes between providers and insurers, the law established an Independent Dispute Resolution (IDR) process, in which both parties submit a payment offer and a third-party arbitrator selects one.

But Lawson Mansell, a health policy analyst at the Niskanen Center, told *Inside Health Policy* in an interview Thursday (July 24) that the law's arbitration system is having the opposite effect of what Congress intended and is now driving up costs for both patients and the federal government.

"The No Surprises Act has insulated certain patients from receiving the exorbitantly high bills through no fault of their own," Mansell said during the interview. "But in the

aggregate, patients are going to end up paying more in insurance premiums because of the arbitration results we're now seeing three years into implementation of the program."

New data released by CMS in May and analyzed by the Niskanen Center in a June report show a dramatic spike in billing disputes between providers and insurers under the NSA. In the final two quarters of 2024 alone, providers initiated an unprecedented 1.5 million arbitration cases and won 85% of them, despite provider submissions increasingly exceeding typical market prices. As a result, the median winning offer has soared to more than four times the median in-network rate paid by insurers.

The report also found that, in the final six months of 2024, health care providers and facilities initiated more than 99% of federal IDR disputes, with the vast majority coming from large practice management companies. The top 10 entities were responsible for 71% of all disputes, and the top three alone accounted for 43%.

The data suggest that large provider groups, many of them backed by private equity, are systematically exploiting the arbitration system to inflate reimbursement rates, according to Mansell, lead author of the report.

"The evidence seems to be pointing in that direction, yeah," Mansell said. "Private equity providers see an opportunity here to use this arbitration process to essentially get more than they would have, prior to the No Surprises Act being introduced."

While the IDR process was added late in the NSA negotiations, largely as a concession to bring certain provider groups on board, lawmakers did intend for it to ensure fairness and help control system-wide costs. But it now appears to be incentivizing providers to flood the system with disputes since they're winning the vast majority of them, Mansell said, adding that patients are likely to feel the impact of this through higher insurance premiums and growing taxpayer-funded administrative costs.

Republican lawmakers have leaned heavily on their newfound campaign to root out waste, fraud and abuse across the federal government to justify the nearly $1 trillion in Medicaid cuts recently passed and signed into law by President Donald Trump. But with the reconciliation process now finished and the House preparing to leave for August recess, everyone's waiting to see whether Republicans will soon pursue another partisan reconciliation bill or work with Democrats on a bipartisan end-of-year deal, and

what health care reforms left out of their first reconciliation package could be part of these discussions.

According to Mansell, reforming the NSA could offer lawmakers an easy bipartisan opportunity to cut back on waste and rein in the increasingly scrutinized behavior of private equity firms, which have long been in lawmakers' crosshairs for fueling hospital consolidation by mass-acquiring physician practices. The arbitration process itself is actually accelerating that trend, too, according to Mansell, as large health systems armed with greater resources are more likely to win disputes and secure higher payments, further strengthening their market power.

"This issue fits into the broader discussion of what Republicans are calling fraud, waste and abuse in the health care system," Mansell said. "We view this as, essentially, a version of administrative waste -- to create a bureaucracy that isn't needed, and then to that bureaucracy, to create a perverse incentive to increase costs. It's a pattern that we see throughout health care, and we're seeing here as well."

The Niskanen Center recommends that Congress scrap the arbitration process altogether and instead return to a benchmarked payment system by requiring insurers to pay out-of-network providers the median in-network rate, or Qualifying Payment Amount (QPA).

"Removing the arbitration process is definitely one of the better ways to cut off on the front end what will lead to further abuse and further waste on the back end," Mansell said. "We can do that now, because we have enough information to know that this is only going to get worse."

But if lawmakers want to preserve arbitration, the think tank suggests making the QPA the primary factor in arbitrators' decisions and prohibiting consideration of past negotiated rates, which they say skew outcomes in favor of providers. Still, Mansell cautioned that this would be an imperfect fix.

It remains unclear exactly how much the proposed reforms would shave off the program's $1 billion in costs, but Mansell told *IHP* that his team is actively modeling potential savings for employers, insurers and the federal government.

They've also begun engaging with staff on Capitol Hill, particularly from the House Ways & Means and Senate Finance committees, which would have jurisdiction over such changes.

Bipartisan, bicameral legislation introduced last week -- the No Surprises Enforcement Act -- aims to strengthen the NSA in a different manner by closing enforcement gaps through tougher penalties for missed payment deadlines, ensuring parity in penalties for violations of patient protection provisions and increasing transparency in reporting requirements.

But while concerns have mounted over insurers failing to pay arbitration awards on time or at all, Mansell argues this behavior is largely a response to the excessively high payment awards being issued.

According to him, both issues of excessive provider wins and insurer non-compliance are symptoms of a flawed arbitration model, and the most effective solution would be to abandon arbitration altogether in favor of a benchmarked, market-rate payment system.

"So we think that being able to reform some of the process to ensure that payers' pay goes hand-in-hand with Congress's original intent, which is shifting away from the arbitration process entirely and returning to a market rate," Mansell said. "We think that would do a lot to solve both of those issues." -- *Jalen Brown* (jbrown@iwpnews.com)