The No Surprises Act... FULL of surprises!

A tectonic shift is threatening the stability of our healthcare system.

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The implementation of the No Surprises Act (NSA) has caused a dramatic shift in the country's healthcare ecosystem, driving significant disruption, and threatening its stability. Despite the balanced language in the law passed by Congress, the law's actual implementation is driving a massive, unintended shift in the balance of power between payors and clinicians, causing dangerous disruption and risk. This is not just another chapter in a long narrative of healthcare changes. Combined with the realities of an already stressed industry, this will threaten our healthcare safety net until a permanent fix is implemented.

The No Surprises Act was designed to deliver much-needed protections for patients. Congress intended to protect patients from unanticipated medical expenses after receiving care at hospitals in their insurance network. In addition, Congress wanted to bring clinicians and payors together over payment disputes using an Independent Dispute Resolution (IDR) process. The goals were clear: protect patients, drive more in-network agreements and where necessary, use a fair and balanced dispute resolution system that keeps patients out of the middle. Congress supported these noble goals and codified them into law. If implemented thoughtfully, this law would protect patients and ensure adequate resources for high-quality patient care.

The implementation of the No Surprises Act (NSA) falls substantially short of the law's objectives. It is producing harmful consequences and creating a new crisis, while putting the nation's healthcare safety net at risk. Since 1987, the federal law called Emergency Medical Treatment and Labor Act (EMTALA) has required that patients be afforded access to medical evaluation and stabilization for significant medical conditions. For 35 years, EMTALA has provided a safe haven and universal, non-discriminatory access for patients who may have an emergency medical condition, regardless of their ability to pay. Providing clinical care under EMTALA requires significant resources. As the NSA is currently implemented, healthcare reimbursements have been slashed at a time when hospital subsidies are no longer available, and resources are now being diverted from clinical care required by EMTALA. Clinicians are being asked to do more with less on the heels of the pandemic, with unrelenting clinical demands. A new national crisis has been created, on top of widespread staffing shortages and growing patient needs. Unabated, this is on a pathway for irreparable damage to the healthcare system. The health system as we know it today will change and access will be limited if this path continues.

How did we get into to such a morass? The rulemaking process behind the NSA, driven by unelected government departments, has fundamentally changed the spirit of the law, tipped the scales of fairness, and implemented a law very differently than was envisioned by Congress. Some provisions were so significantly skewed that a federal judge quickly reversed certain egregious provisions. Other lopsided rules remain, creating an imbalance of power and a watershed of economic gain for payors. The rulemaking process has left clinicians with independent dispute resolution as their only last-ditch lever - a slow, costly, and opaque process that is not binding on future payments or in-network negotiations. The IDR process has lengthy delays, with many cases put on hold with no explanation and no timely avenue for appeal.

The healthcare safety net hangs in the balance and is being eviscerated with tremendous long-term risk. We could not be more surprised. And we should all be incredibly concerned.

The regulations that implement the No Surprises Act are shifting enormous dollars to payors. Rather than the reduction in healthcare costs that were anticipated by the Congressional Budget Office over 10 years, payors have abruptly slashed out-of-network payments by as much as 50 percent, effectively ignoring prior payment history for clinically identical services. Letters from Cigna, CVS Health, and Blue Cross Blue Shield North Carolina, among others, cited the No Surprises Act as the impetus for ending contracts unless they received dramatic payment reductions. In addition, payors have stepped away from in-network negotiations, even cancelling existing in-network agreements. The Open Negotiation process provided in the law has been met with a "take it or leave it" approach, leaving clinicians with little recourse other than the expensive and time-consuming IDR process (which is also tilted in favor of the payors). All of this creates a windfall for health plans, an immediate hit to clinicians and their care teams, and impacts access and quality of patient care in the long run. Quite a surprise, compared to what was intended.

Patient access and quality are already impacted and worsening, as evidenced by nationwide clinician shortages and hospital closures. It was not that long ago that the public banged pots and pans in honor of our clinical heroes, battling on the front lines of the COVID-19 pandemic. Now, those pans are beating the sides of clinicians' heads. Clinicians, their teams and companies like SCP Health who are dedicated to delivering quality care are receiving massively reduced reimbursements while they attempt to sustain the healthcare safety net. In fact, the shift in resources – with no parallel reduction in expectations - is causing many clinicians to pursue other means of employment. This, at a time when hospitals are already struggling to continue their mission and keep their doors open, especially in rural and underserved areas. Without clinicians and sufficient resources, some hospitals are closing altogether. The No Surprises Act is putting America's healthcare safety net in deep jeopardy. The isn't an impending crisis- it is already here.

Government created these challenges and is unlikely to fix them. Dispute filings through the government's IDR portal are now numbering in the hundreds of thousands of claims, which significantly surpass the government's prior estimate that there would be 17,000 claims for the entire system in first year of implementation. The process is dangerously stalled, causing indefinite delays in reimbursement and an alarming number of cases are now being put "on hold," with no stated rationale for the decision. We remain hopeful that the governmental agencies that oversee the NSA recognize the unsustainable condition that rule-writing has unleashed. But we cannot wait any longer. We must act now.

Clinicians and the payors must come together to address this issue, now. We are in a crisis. We need to act immediately to ensure the quality of healthcare is upheld in our country. Clinicians have always been there for patients, even in the darkest of times, and even through a devastating pandemic. Clinicians will continue to advocate for patient access and quality. However, in this market chaos, we need to act swiftly and bring together payors and clinicians to fight for fairness and sustainability. Patients hang in the balance.

While clinician groups continue to deliver care to patients every day, payors must step up to deliver fair, balanced, and workable in-network contracts, and prevent future contract terminations. We must come to the table in the spirit of fairness to help create a system that works for patients, payors, and clinicians alike. We must unite to protect our healthcare ecosystem or bear the consequences.

Our health systems – and our patients - are counting on us.

SCAN ME