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EDPMA, HBMA, and RBMA Raise Concerns Over Insurer Windfall in *No Surprises Act* Rule

The organizations urge the Departments to reconsider their approach and follow clear Congressional intent

WASHINGTON – The Emergency Department Practice Management Association (EDPMA), an organization representing the business of Emergency Medicine, the Healthcare Business Management Association (HBMA), a national organization representing the healthcare revenue cycle management industry, and the Radiology Business Management Association (RBMA), representing the business of radiology, raised significant concerns with the rule released yesterday by the Tri-Departments related to implementation of the *No Surprises Act.* Yesterday's rule, which provides guidance related to the law's Independent Dispute Resolution process, ignores Congressional intent by making the Qualifying Payment Amount the primary factor during arbitration. The primary beneficiary of this decision is large health insurance companies that will be allowed to set their own benchmark for payment, inflating the already substantial profits they have enjoyed during the pandemic.

"Congress was clear when they passed their landmark No Surprises Act last year: protect patients from unavoidable and unexpected costs without jeopardizing patient access to care," said Don Powell, M.D., Chair of EDPMA. "The Interim Final Rule released yesterday will inevitably allow insurers to manipulate fair payment standards necessary for sufficient emergency physician coverage. This will harm not just commercially insured patients whom the *No Surprises Act* was intended to protect, but the rural, medically vulnerable and indigent populations who rely on our nation's emergency departments as an important safety net. We see yesterday's rule leading to dire effects on the overall viability of our emergency medical care system. We urge the Administration to amend the rule to be consistent with Congressional intent."

HBMA President Emily Osetek, CHBME added, "HBMA disagrees with the Agencies' interpretation of the *No Surprises Act* to emphasize the QPA in the IDR process. If Congress

intended to give the QPA added weight in the IDR process then the *No Surprises Act* would have included language articulating this intent."

RBMA Executive Director, Bob Still, noted, "the Biden Administration and members of Congress need to refocus their efforts on the important balance that is needed to protect access to health care. The IFR tips the scale to large insurance payers which negatively effects all physicians as they provide much needed care to all Americans, especially during a pandemic."

The legislation was passed in December 2020. Throughout this process, stakeholders agreed on one thing above all else: patients should be removed from the billing dispute process and held only to their in-network cost sharing amounts. Another common thread during these negotiations is that, time after time, any legislation that relied on a benchmark to set out-of-network rates was rejected. The Departments' decision to make the QPA the primary factor in arbitration, an amount calculated by the insurers with virtually no oversight, creates a de facto benchmark and runs counter to clear Congressional intent. The insurers themselves, through comments submitted by America's Health Insurance Plans, express a lack of confidence in their ability to accurately calculate the QPA, requesting a safe harbor for the first year of implementation.

The Departments must rectify this mistake by following the intent of Congress and requiring the arbiter to consider each of the statutorily enumerated factors equally, as has been clarified in letters written by Senators Maggie Hassan (D-NH) and Bill Cassidy, MD (R-LA), Representatives Raul Ruiz, MD (D-CA) and Larry Bucshon, MD (R-IN), and 97 bipartisan members of the House.

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