

A close-up photograph of a Medicare Health Insurance card. The card is white with a blue header that reads "MEDICARE HEALTH INSURANCE". Below the header, the text "Name/Nombre" is visible, followed by the name "JOHN". The card is slightly curved and held by a hand.

MEDICARE HEALTH INSURANCE

Enforcement of the *No Surprises Act* Implementation


Enactment of the No Surprises Act (NSA) was the product of years of bipartisan legislative work, but its implementation has fallen short of what the law's drafters and supporters envisioned. Optimal implementation of the NSA rests on three main tenets. (1) reasonable initial payments; (2) enforcement of the law, and (3) an effective independent dispute resolution (IDR) process. **To deescalate the significant pressure on physicians resulting from payer noncompliance, the Emergency Department Practice Management Association (EDPMA) requests Congress' assistance to ensure meaningful consequences for noncompliance with key NSA provisions.**

Requests

To ensure that the NSA implementation aligns with congressional intent, EDPMA requests that Congress:

Provide continued and impacting oversight of the agency.

Improve enforcement mechanisms that protect patients and ensure smooth implementation:

- Create penalties for payers who fail to meet the statutory payment deadline of 30 days following a determination made by the independent dispute resolution (IDR) entity.
 - Create penalties for statutory violations of patient protections by payers that mirror the penalties for similar violations by providers.
 - Provide additional transparency requirements.
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Background

NSA implementation has been plagued by widespread insurer noncompliance, which continues without repercussions.

Following its enactment in 2020, the NSA has protected from surprise bills for patients, which is a goal all of the law's drafters – and EDPMA – support. However, implementation of the NSA's provisions affecting providers and insurers has been chaotic, and several of the law's key provisions are routinely ignored by health plans. One of the most egregious examples of such noncompliance is nonpayment following a payment determination made via the IDR process. The statute requires the health plan to pay the clinician within thirty days following a payment determination, but data from EDPMA members shows that health plans frequently pay late, or never pay at all. It is difficult to believe that the NSA's authors carefully crafted a balanced IDR process only for health plans to ignore its outcome. However, there is no enforcement mechanism to ensure compliance with the payment deadline, which has emboldened plans to continue this behavior, creating significant cash flow challenges for medical practices.

The agency's problematic implementation of the statute's Qualifying Payment Amount (QPA) concept has compounded pressure on clinicians.

The QPA is defined in statute as the median of a health plan's contracted rates for a particular item or service by the insurance market and in a particular geographic area. However, the regulations implementing the QPA methodology were deeply flawed and, as a result, EDPMA members have found that the plans' QPA calculations in no way reflect market-based, contracted rates. Following a recent court ruling striking down portions of the Administration's QPA methodology, the Administration provided insurers with the discretion to calculate QPAs using their own "good faith" interpretation of the statute and remaining regulations. Furthermore, IDR entities were provided no instruction on how to reevaluate QPAs previously calculated based on the struck-down methodology. Finally, the Administration stated that it will provide only very limited enforcement for health plans on QPA calculation issues until May 1, 2024, at the earliest. It is also important to note that in September 2021, the Federal Register published a proposed rule on enforcement of the No Surprises Act that has yet to be finalized.¹

About EDPMA

EDPMA is the nation's only professional trade association focused on the delivery of high-quality, cost-effective care in the emergency department. EDPMA's membership includes emergency medicine physician groups of all sizes, billing, coding, and other professional support organizations that assist healthcare clinicians in our nation's emergency departments. Together, EDPMA members see or support 60% of all annual emergency department visits in the country. For more info, please visit [EDPMA.org](https://edpma.org).

¹ 86 Fed. Reg. 51,730 (September 16, 2021).

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