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Navigating the New Frontier: The No Surprises Act, Reference-Based Pricing, and AI in Self-Funded Health Care



April 9, 2024

Disclaimer: The content in this webinar should not be construed as, and should not be relied upon for, legal or tax advice in any particular circumstance or situation.

Overview

- I. No Surprises Act
 - I. Overview
 - II. Industry Concerns
 - III. On the Horizon
- II. RBP and the NSA
 - I. Application
 - II. RBP Effectiveness
 - III. Maximizing Value
- III. AI in Healthcare
 - I. Overview
 - II. Challenges
 - III. Innovation
 - IV. What the Future Holds?





\circ Overview

- Criteria of Eligibility
 - OON Emergency
 - \circ Air Ambulance
 - \circ $\,$ Receive OON treatment at INN facility
- \circ $\,$ Lifecycle of a Claim
 - Claim paid/Denied
 - Initiate Open Negotiation
 - $\circ \quad \text{IDR selection} \quad$
 - $\circ \quad \text{Offer due} \quad$
 - \circ Determination





Industry Concerns

- Do IDR Outcomes Favor the Provider?
 - $\circ~$ CMS released data on IDR decisions from first half of 2023
 - Median outcome 3.7 x Medicare
 - \circ $\,$ Median decision is 50% higher than mean INN past prices $\,$
 - \circ $\,$ Providers offer selected 75% of the time $\,$
 - Why?
- Case Volume
 - $\circ~$ Almost 300,000 submissions in first 6 months of 2023
 - Increase of ~20% over 2022 (200k total for 2022)
 - \circ $\,$ Fees adding up $\,$
 - \circ $\;$ Expertise needed on each case $\;$





Industry Concerns

- Current Legal Challenges
 - Daniel Haller et al. v. U.S. Department of Health & Human Services et al.
 - o Constitutional challenge
 - Largely against provider, one issue remanded
 - PHI Health, LLC et al. v. U.S. Department of Health and Human Services et al.
 - Constitutional challenge
 - \circ Stayed
 - Neurological Surgery Practice of Long Island, PLLC v. U.S. Department of Health and Human Service et al.
 - Constitutional challenge
 - Dismissed motion filed to amend compliant in progress





Industry Concerns

- \circ Other Challenges
 - QPA Methodology
 - Weight of Factors
 - Arbitration Awards
 - Circuit courts are split on whether arbitrators can be sued, and if judicial review is triggered
 - Chevron Deference?
- Open Negotiations Important for Plans
 - 80% of initiated claims settled in ON
 - Benefits for plans?





RBP and The NSA

• Does it apply?

- \circ CMS FAQ 55
 - $\circ~$ AA and ER Claims
 - \circ $\,$ INN at OON $\,$
- \circ RBP in the Time of NSA
 - \circ Still a viable option ?
 - \circ Effects on negotiations
 - \circ $\,$ How to leverage the NSA in non-NSA situations
 - \circ "The shadow of the NSA"
 - $\circ~$ Full boat RBP v OON RBP only
 - \circ $\,$ Market seems to be asking for this $\,$





\circ $\,$ The Future is Now

- Knowing Our Terms
 - Artificial Intelligence
 - Machine Learning
 - Deep Learning
 - Large Language Models (LLM)
- $\circ~$ LLM's That We Know and Love
 - \circ ChatGPT more to come...
 - \circ Accomplishments
 - \circ $\,$ Bard by Google $\,$
 - \circ $\,$ Copilot by Microsoft





o Healthcare Uses

- Practical Applications
 - \circ Dictation
 - \circ Underwriting
 - \circ $\,$ Reading and Research
 - \circ $\,$ Have you heard the one about the Japanese bread maker?
 - \circ Clinical Trial Optimization
 - Matching Patients with Trials
 - Virtual Health Assistants
 - \circ Uptick in Therapeutic Chatbots
 - **o** Chronic Disease Management





• Challenges and Ethical Concerns

- \circ $\,$ Data and Privacy $\,$
 - HIPAA and Hackers
- \circ Algorithmic Bias
 - Garbage in = Garbage out
 - \circ $\,$ Who is watching the watchers?
- Transparency and Accountability
 - Black Box problem
 - \circ Responsibility
- \circ Regulation
 - \circ Standards?
 - o Regulatory Compliance
- Economics and the Workforce
 - \circ $\,$ Displacement and Skill Gaps $\,$





$\circ~$ The Release of GPTs

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Introducing GPTs

You can now create custom versions of ChatGPT that combine instructions, extra knowledge, and any combination of skills.

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Creative Writing Coach

I'm excited to read your work and give you feedback to improve your skills.



Laundry Buddy

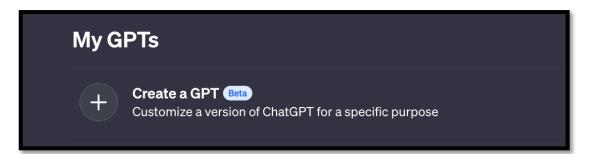
Ask me anything about stains, settings, sorting and everything laundry.



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Create

🚳 GPT Builder

Hi! I'll help you build a new GPT. You can say something like, "make a creative who helps generate visuals for new products" or "make a software engineer who helps format my code."

What would you like to make?

S You

I would like an assistant focused on building summaries and descriptions for a presentation that highlights and summarizes regulatory updates with enthusiasm.

GPT Builder

C Updating GPT...



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s You

that sounds good - please add an avatar of a spark in a business suit as a whimsical cartoon



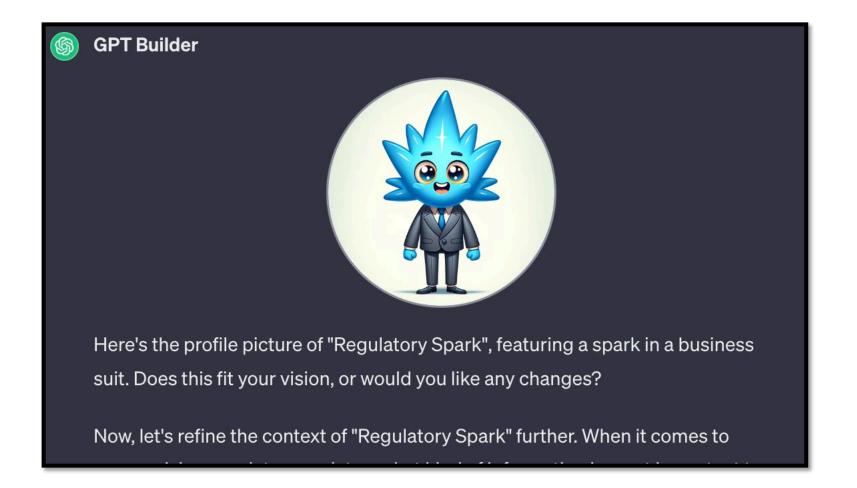
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Generating profile picture...





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Knowledge Upload files			
Knowledge			

Conversations with your GPT may include file contents. Files can be downloaded when code interpeter is enabled.

No Surprises Act Indepen PDF	aca-part-62.pdf PDF	
Upload files		





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😵 Regulatory Spark

The two significant regulatory updates in my knowledge are related to the No Surprises Act, focusing on its implementation and the Independent Dispute Resolution (IDR) process. Let's dive into each:

 Implementation of the No Surprises Act: This update, detailed in the document "FAQs about Consolidated Appropriations Act 2021 Implementation Part 62," addresses several key aspects following a district court decision (TMA III). It clarifies how plans and issuers should calculate the Qualifying Payment Amount (QPA) for patient cost-sharing, the approach towards enforcement of the No Surprises Act, and the continuation of protections against balance billing. Notably, it emphasizes the need for plans and issuers to provide disclosures about the QPA and how they should proceed with initial payments or notices of denial of payment. This update is crucial in ensuring the proper calculation of patient cost-sharing and adherence to the No Surprises Act's provisions, especially in light of recent legal challenges.

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2. Proposed Rule for No Surprises Act Independent Dispute Resolution Process: The second update is outlined in the "No Surprises Act Independent Dispute Resolution Process Proposed Rule Fact Sheet." This proposal introduces new requirements for group health plans, health insurance issuers, providers, facilities, and certified IDR entities. It aims to improve the functioning of the Federal IDR process by facilitating better communication between payers and providers, adjusting timelines, establishing new batching provisions for disputes, and changing the administrative fee structure. These proposed changes are intended to streamline the IDR process, making it more efficient and accessible, and addressing the challenges and feedback received from various stakeholders.

Both updates are part of a broader effort to enhance patient protections and the dispute resolution process under the No Surprises Act, ensuring more transparent and fair medical billing and payment practices.

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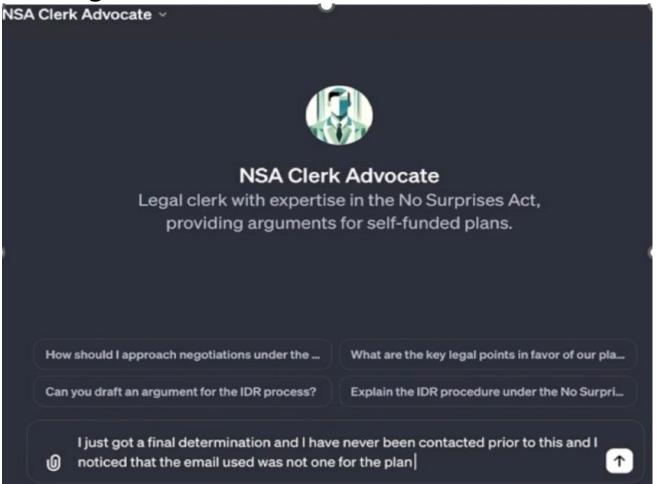
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In the situation where you have received a final determination under the No Surprises Act's Independent Dispute Resolution (IDR) process without prior contact, and the communication was sent to an incorrect email address, there are several steps you can take:

- 1. Review the No Surprises Act Requirements: The Act stipulates a process for open negotiation and communication before proceeding to the IDR. If these steps were not correctly followed, you might have grounds to contest the determination.
- Check the Open Negotiation Notice: Confirm if the notice initiating the open negotiation period, as required by the No Surprises Act, was properly sent to the correct address and in compliance with the Act's requirements. The notice should have been sent to an accessible method of communication, and you should have had the opportunity to respond or negotiate.
- Gather Evidence: Collect all relevant communications (or lack thereof) and document the incorrect email address
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- 3. Gather Evidence: Collect all relevant communications (or lack thereof) and document the incorrect email address usage. This will support your position that you were not properly informed or engaged in the process.
- 4. Contact the IDR Entity and Other Party: Reach out to the IDR entity and the medical provider to inform them of the error in communication. Provide the correct contact details and express your concern that you were not given the opportunity to participate in the process as mandated by the Act.
- Request a Review or Reconsideration: Ask the IDR entity for a review or reconsideration of the final determination, citing the communication error. Under normal dispute resolution protocols, parties are often allowed to request a review if there were procedural errors.
- 6. Legal Consultation: Consider consulting with a legal expert specialized in health care law and the No Surprises Act. They can provide specific guidance and help you navigate the legal aspects of contesting the determination.
- 7. Prepare for Future Communications: Ensure
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ChatGPT can make mistakes. Comider checking important information.



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[Address of Medical Provider] [City, State, Zip Code]

Re: Request to Vacate Final Determination Due to Procedural Error – [Your Plan/Organization Name]

Dear [IDR Entity's Representative's Name] and [Medical Provider's Representative's Name],

I am writing on behalf of [Your Plan/Organization Name] in response to the final determination received on [Date of Determination Receipt], concerning the dispute over the out-of-network rate for [Description of Service]. It has come to our attention that there has been a significant procedural error in the communication process, which necessitates immediate attention and action.

Specifically, we have identified that the open negotiation notice and subsequent communications

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Closing

• What Did I Just Hear?

- \circ NSA
 - \circ $\,$ Various issues and challenges for plans
 - \circ Still evolving
- o RBP
 - Still a viable solution when done properly
- \circ Al
 - The industry is changing
 - Wizard v Dinosaur
 - The technology is ramping at a considerable rate



