



Don't Be Surprised by the No Surprises Act: Value of Collaboration at All Levels

RLI
Power Hour

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Disclosures

- I affirm that my current COI disclosure has been accurately reported to the ACR
- I have no disclosures relevant to this presentation
- Outside Activities:
 - Council of Medical Specialty Societies – Board member, Secretary
 - Specialty Society CEO Coalition, former Chair

But I Must Disclose

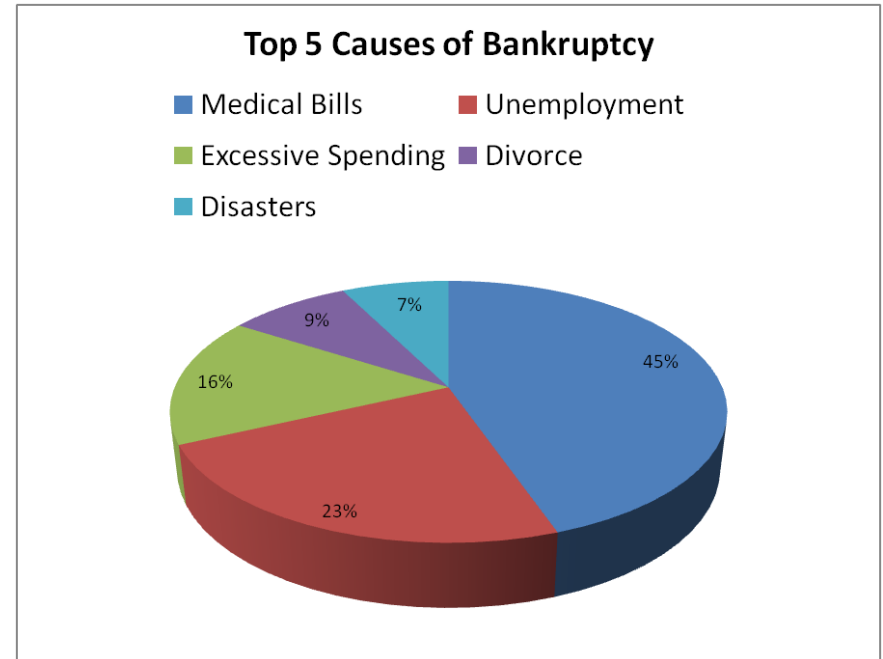
How appreciative I am of our colleagues at the American Society of Anesthesiologists and the American College of Emergency Physicians and our multi-talented ACR staff as we continue to navigate the tortuous path of implementation of the No Surprises Act

Objectives

- Describe necessary ingredients to be perceived as a good collaborator
- Provide some background on the early development of the No Surprises Act (NSA)
- Discuss the various levels of collaboration (both outside and inside the ACR) that have been utilized and remain in play during implementation of the NSA

A Problem in Need of a Solution: Lot of Common Ground From the Start

- This is a real problem
 - Highest cause of personal bankruptcy is healthcare debt
- Patients are usually innocent but bear the brunt of the impact



But Basic Disagreement on the Cause

- Health insurers pointing to “egregious” out of network charges
 - Public campaign using extreme (but real) examples
 - Got ahead with their message
- Providers (and our Societies) describing “inadequate networks”
 - Claims of insurers not negotiating in good faith
 - Battling perception of “greedy doctors”

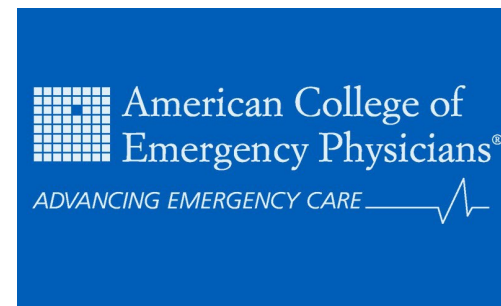
Choosing Good Collaborators

- Common interests and desired outcomes
- Credibility! (Hard to build, easy to lose)
 - Do not want to taint your message
- Long term outlook and commitment



We Have Had a Long History

- Similar history as hospital-based services
- 1965 – Part A vs Part B Medicare
- 1980s – Reagan administration “RAPs” proposal
 - ER also included so ACEP joined in



Round 1: Proposed “Bundling Services”

- 2018 Brookings proposal to “bundle” ER services
- Congressional Briefing 5/16/19:
 - ACR, ASA, ACEP (moderated by ACoS)
- Combatted insurance company message and presented physician side of the issue.



RELATED TOPICS:

[COSTS AND SPENDING](#) | [CLAIMS DATA](#) | [INSURANCE CLAIMS](#) | [RESEARCHERS](#) | [PUBLIC HEALTH](#)

Out-of-Network Spending: Why Growing Attention Is Focused On A Small Share Of Medical Spending

[William C. Johnson](#), [Kevin Kennedy](#), [Jean Fuglesten Biniek](#), [Zirui Song](#), [Jacob Wallace](#)

JUNE 2, 2020

10.1377/forefront.20200601.723677

Final NSA: Well Negotiated Legislative Language

- Patients out of the middle
- No “threshold” (had been touch and go at end of congressional negotiations)
- **Balanced IDR process with many factors to be considered**



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RESEARCH ARTICLE | FEBRUARY 01 2022


The No Surprises Act: A Bipartisan Achievement to Protect Consumers from Unexpected Medical Bills

Jack Hoadley, Kevin Lucia

J Health Polit Policy Law (2022) 47 (1): 93–109.

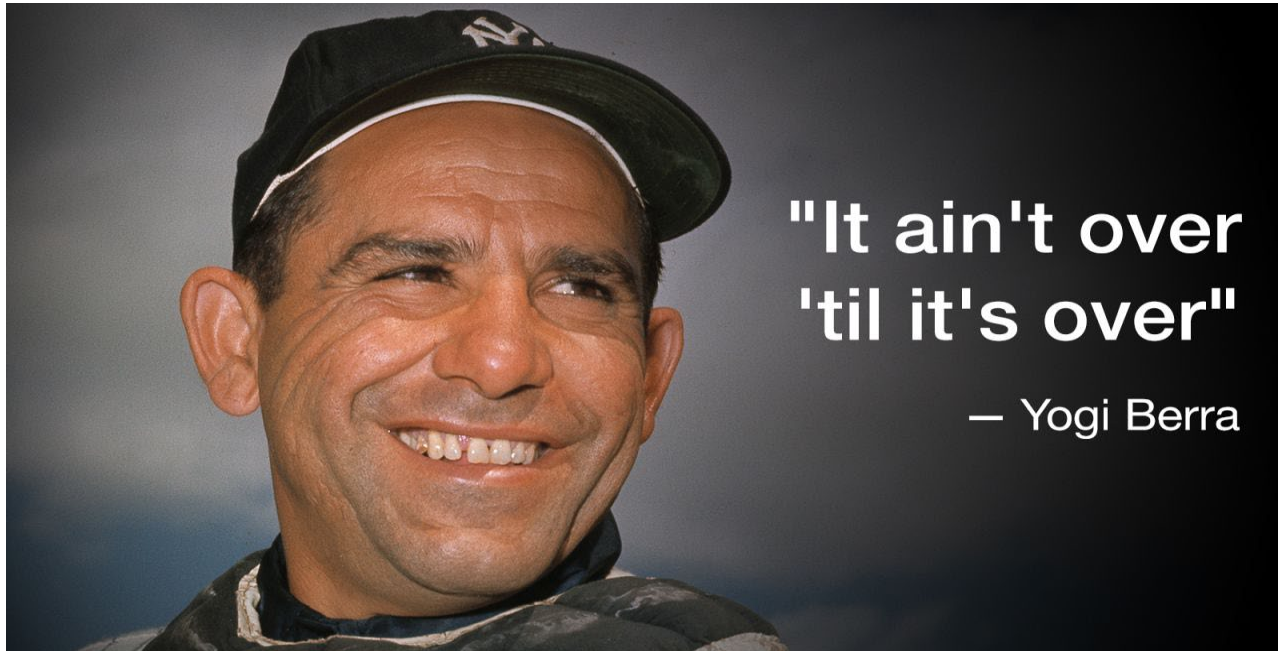
<https://doi.org/10.1215/03616878-9417470>

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Collaborators Stay Connected





New No *Surprises* Act Guidance Builds On Recent Final Rule

[Katie Keith](#), [Jack Hoadley](#), [Kevin Lucia](#)

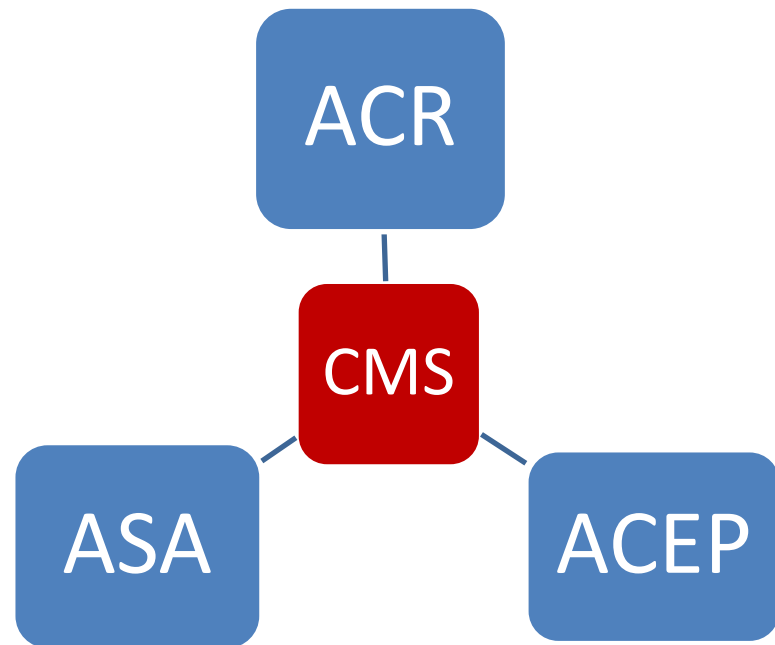
August 22, 2022

[^ Preview Short Description](#)

Among other topics, new FAQs on the implementation of the No *Surprises* Act address the NSA's application to plans without a network or with a closed network, international pickup by air ambulance companies, emergency services provided in a behavioral health crisis facility, and notices. The FAQs also address questions related to the insurer transparency rule.

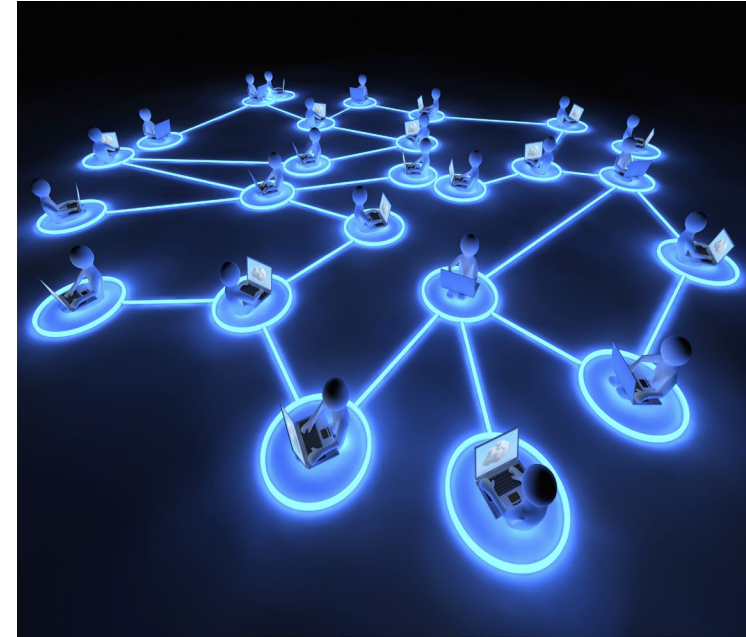
Back Together Again

- All agreed the Interim Final Rule was flawed
- Convened weekly Zoom calls including:
 - Leaders
 - Key Staff
- Joint decision making and funding of lawsuit and research



Collaboration By Staff

- Required Legal, GR/regulatory and Marketing/Communication expertise
- Communication within each and between ACR-ASA-ACEP
- Multiple press releases, both joint and individual, but always coordinated



Collaboration with Members and Chapters

- Success in lawsuit required that we demonstrate “harm” or potential for harm
- All 3 societies called out to members for examples
- NC BC/BS “tipped their hand”
- Other states’ payers acted similarly



Re: Necessity to amend rate agreement, response needed before November 21, 2021.

Dear Provider:

XXXXXXXXXX is likely aware of the passage of the federal "No Surprises Act" in December of 2020, with an impending effective date of January 1, 2021. Under this law, payments from health plans to out-of-network providers in many circumstances will be set at the "Qualifying Payment Amount" (QPA) which is generally calculated at the median in-network contracted rate for the same or similar specialty with n the applicable geographic area. The law applies with respect to out-of-network emergency services, out-of-network professional services at a visit to an in-network facility, and air ambulance services. It applies to our commercial networks (non-Medicare Advantage, non-Medicaid). The QPA paid by health plan to the out-of-network provider constitutes payment in full unless certain limited exceptions apply for a given QPA. These exceptions include express prior patient disclosure and consent, or successful challenge in arbitration.

This new federal law allows a significant change to Blue Cross and Blue Shield of North Carolina's contracting approach with emergency service providers, hospital-based providers, and air ambulance services. Where previous state law could result in an obligation to pay at full charges if no contract is in place, the new law sets reasonable limits on payment at the median in-network rate. Where Blue Cross NC may have previously contracted at what we deemed an inflated rate that is at least somewhat lower than charges in order to avoid paying at full charge, we are now able to seek to contract at a rate more in line with what we consider to be a reasonable, market rate.

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Other Research for Impact or Issues



- Used ACR networks to seek examples of practices impacted and examples of IDR dysfunction
 - Cannot collect actual charges!
- 3 Societies commissioned research to investigate “ghost” in-network fees that would falsely decrease QPA

Collaboration Doesn't Happen without Leadership



Next up:
Howard Fleishon MD, FACR
President, ACR

