

During this challenging time, the continuation of the Public Health Emergency (PHE) and the significant reimbursement cuts looming for 2022, we wanted to advise you of the actions we have taken on behalf of our clients and prospects. Our sole focus is to defend the business of healthcare, so that physicians can continue to serve their calling for helping people.

Reimbursement cuts and over-regulation threaten the quality and access to care. Please sign up and join us in our ongoing lobbying efforts – so that your voice can be heard. Becoming an advocate it is easier than ever, simply **text ZOTEC to 52886** or go to [Zotecpac.com](http://Zotecpac.com).

~ Mark Isenberg, EVP, Healthcare Advocacy

## Legislative Update

### False Claims Amendments Act :

The False Claims Amendments Act of 2021 (S. 2428), introduced at the end of July by a bipartisan group of senators led by Sen. Chuck Grassley (R-Iowa). This amendment could make defending False Claims Act (FCA) cases substantially more difficult. It seeks to dramatically change current law, is fundamentally unfair by shifting the burden of persuasion from the plaintiff to the defendant, and ignores the views of a unanimous Supreme Court.

Our advocacy team is following this legislation closely. We will report on any further developments, and we are poised to send out a call to action if this legislation goes to the House.

### Surprise Medical Billing (SMB)/Out of Network Billing (OON)

#### The Federal No Surprises Act (NSA):

On July 1, the Centers for Medicare and Medicaid Services (CMS) along with the Department of Treasury and the Department of Labor published an [interim final rule \(IFR\)](#) implementing key provisions of the NSA. This is the first in a series of rules implementing the NSA and focuses mainly on establishing new protections from surprise billing and the methodology required for plans/issuers to determine the median contracted rates, which will be used in calculating patient cost-sharing. Part II of the IFR regarding the specifics of independent dispute resolution (IDR) process is expected to be released in October 2021. The NSA provisions to protect the guarantor from out of network (OON)/balance billing and the IDR process goes into effect on Jan. 1, 2022.

The IFR "includes the following key aspects" of the No Surprises Act:

- Applicability to Health Plans

- The scope of covered services: emergency, including post-stabilization services, and non-emergency.
- The extent to which state law (rather than the NSA) will apply.
- Determining applicable patient cost share and provider payment amounts
- The notice-and-consent “opt-out” process, which is required for an out-of-network provider to bill a patient covered by the NSA in excess of the patient's applicable in-network cost-share.

### State Update:

The NSA defers to state laws that have a method for reimbursing providers in “surprise billing” scenarios, provided the state law is specific to the services provided, the clinician and health plan (the “Three Part Test”). However, not every state has a surprise billing law; several states have “limited” protections, (e.g., only for emergency services, or apply to certain health plans and not others). Additionally, states do not generally have legal jurisdiction to regulate certain types of health plans such as ERISA plans [large employer self-funded plans] and plans sold on the federal health insurance exchange (healthcare.gov).

The NSA is intended to set a minimum standard for patient and clinician protections under the Three Part Test and to fill gaps where state laws either do not exist or lack legal jurisdiction. Patients covered by ERISA plans, ACA plans, and state-regulated group health plans in states with no surprise billing protection would be protected by the NSA and governed by the NSA-IDR process beginning Jan. 1, 2022.

### Zotec Shares Webinar

If you are interested in finding out more, **Tuesday, September 21 from 3:00 -3:45 pm ET** we will host the first of our monthly webinar series **Zotec Shares**, titled “**Surprise Medical Billing – Why It Matters Right Now**,” featuring speakers Aaron Beckstedt, Ed Gaines, and Marc LeBrun. We encourage each of you to mark your calendars and [register here today!](#) Can’t make it? We’ll share the link to view the webinar directly with you via a follow-up email post-event.

### Looming Reimbursement Cuts – Waive PAYGO

The 2022 Proposed Medicare Physician Fee Schedule (MPFS) contains significant cuts to physician reimbursement. Clinicians also face a -2% sequestration cut; both cuts are effective January 2022.

Due to the passage of the “American Rescue Plan” (\$1.9T stimulus), and under the “Pay as You Go” (PAYGO) rules, a -4% cut in Medicare has been triggered. Currently, there is no deal to fix the PAYGO cuts in the budget reconciliation bill, which is expected to pass before the end of the Fiscal Year 9/30/21. Reps. Bera (D-CA) and Bucshon (R-IN), both physicians, have been circulating a letter to request that Congress prevent the cuts.

On September 8, we sent out a [call to action](#) asking advocates to contact members of Congress to waive the -4% cut associated with PAYGO. To date over 365 advocates sent more than 1,200 emails/tweets to members of Congress.

It is likely that we will be sending out more calls to action regarding these cuts before the end of the year, and we encourage you to take action and share with your colleagues, family, and friends. To make sure you never miss an opportunity to have your voice heard you can simply **text ZOTEC to 52886** or go to [Zotecipac.com](https://zotecipac.com) and sign up in seconds.

## Advocacy Update

### Collaboration to Improve Processes that Impact Your Reimbursement

Zotec has continued to use our relationships to find ways to improve processes that are critical to safeguarding patients’ access to quality care and protecting physicians’ ability to receive fair compensation for delivery of that care. We have been engaged with CMS to lend our expertise to the MFA/PECOS 2.0 process, as well as engaging directly with state governments to address critical reimbursement issues impacting our clients.

### Multi-Factor Authentication

The provider enrollment team has been working directly with CMS since 2019 to address concerns regarding the way that the Multi-Factor Authentication (MFA) and Provider Enrollment, Chain, and Ownership System (PECOS) and processes are laid out.

As a direct result of the discussions Zotec had with CMS, they decided to delay the PECOS/MFA rollout for over a year. The new MFA rollout is currently scheduled to take place before October 2021; however, this process was completed for all Zotec clients the week of August 16, making all of our clients compliant well before the upcoming deadline.

Without this initiative to bring us into compliance with CMS, we would have essentially been “locked out” of provider enrollment. Being in compliance with the MFA process, without interruption to our clients, saves our team, and company a tremendous amount of time and resources.

## **PECOS 2.0**

CMS is in the process of re-engineering PECOS. As a result of our communications on the MFA rollout CMS has also offered us an opportunity to collaborate with upcoming design, workflow, and usability of PECOS 2.0. In preparation for the PECOS 2.0 rollout CMS created a number of Provider Expert Panel (PEP) groups.

There are two upcoming round-table discussions scheduled for September. Stephanie Lambert, project analyst, with the credentialing department, is representing Zotec, “So far, I have been very excited to be a part of this process with CMS. They are responsive to our feedback and we look forward to the efficiency and ease-of-use this will provide for our clients.”

## **Solving Claim Denials for Carrier and Credentialing Issues**

Representatives from the Zotec AR team reached out to the Advocacy team to find solutions to some ongoing denial issues, specific to the states of Pennsylvania and New York.

### **PA – Denial Reasons for Carrier Issues**

When our AR team started seeing more claim denials than usual, specific to requiring referring physicians information be including on charges, they realized that this issue would require more investigation. This requirement didn’t appear to be consistent with the guidance from the state, so getting clarification was the first course of action.

Our Advocacy team was asked to reach out to contacts within the state’s Medicaid program. By connecting the state official to our AR team members they were able to identify the issue and create a plan for resolution working directly with the state of Pennsylvania’s Medicaid team.

### **NY – Holding Claims Until Physician Credentialed**

In the state of New York we encountered claims being denied that were filed before the physician was credentialed. This was a challenge due to timely filing requirements and things being held up as a result of the PHE.

Again, our Advocacy team worked with AR to contact the state Medicaid office. We were able to establish an open line of communication with the CIO of NY Medicaid, and that allowed us to address the timely filing issues so that claims were no longer getting held up due to credentialing.

By going to the Medicaid officials of each state to resolve these denials we have saved time and money. We will continue to advocate for our clients by finding the right people and process to

resolve ongoing challenges to their reimbursement so they can focus on caring for their patients.

### Lobbying/Committee Meetings

- Mark Isenberg continues as a member of Sen. Braun's (R – Indiana) Healthcare Committee having monthly meetings to discuss physician pay, patient access to care, Surprise Medical Billing, and many other healthcare issues.
- Mark Isenberg is a member of the RBMA Federal Affairs Committee that meets monthly to discuss current issues impacting Radiology physicians and practices.
- Lonnie Johnson continues to attend monthly virtual meetings for HBMA's Government Relations Committee.
- Ed Gains attended a significant number of virtual meetings to discuss Medicare Physician Fee Schedule (MPFS) cuts and No Surprises Act (NSA) implementation with various healthcare legislative assistants over the course of the summer months, independently and as part of the virtual ACEP Leadership & Advocacy meeting in July:
  - Sen. Braun - Maddie Davidson
  - Sen. Tuberville - Elizabeth Edmunds
  - Rep. Bucshon - Dylan Moore
  - Rep. Todd Young - Beth Nelson
  - Sen. Cassidy - Mary Moody
  - Sen. Lujan - Katie Mertens
  - Rep. Kind - Jill O'Brien
  - Rep. Burgess - Catherine Lenz
  - Sen. Daines - Rachel Green
  - Sen. Tillis - Garrett Daniel (NC ACEP chapter scheduled Zoom)
  - Sen. Burr - Meghan McCully (NC ACEP)
  - Rep. Manning - Ashley Emery (NC ACEP)
  - Rep. Cardenas - Ella Khorov

### Upcoming Presentations

With many conferences moving from virtual to in person we have several industry presentations before the end of 2021:

- **EDPMA Solutions Summit, "Well, How Did I Get Here?\*" The AMA CPT and RUC Changes & Proactive Defenses to Bots and Algos,** Ed Gains is co-presenting with ACEP's

Reimbursement Director, David McKenzie, Sept. 29, 2021, Ft. Worth, TX (\*Talking Heads, *Once in a Lifetime*.) (Live and recorded.)

- **RBMA Paradigm 2021**, *“Out of Network/balance billing (OON/BB) Restrictions: What You Need to Know,”* Ed Gaines is presenting on Oct. 19, 2021, Las Vegas, NV (live and recorded).
- **MI ACEP “Straight Talk” Reimbursement Conference**, *“EM Documentation Myths and Practical Solutions,”* Ed Gaines is co-presenting w/ Dr. Jason Adler and “The NSA Implementation” with Dr. Don Powell, Nov. 16, 2021, Troy, MI (live).
- **RSNA 2021**: *“The Problem with Price: Controversies and Solutions”* Ed Gaines is co-presenting with Drs. Rich Heller and Gelareh Sadigh, Emory University, Dec. 2, 2021, Chicago, IL (includes live discussion of the federal NSA).
- **EDPMA RCM Workshop**, *“Federal No Surprises Act (NSA): What Does Federal IDR Portend for EM?”* Ed Gaines is moderating a panel and speaking on *“EM Documentations Myths and Practical Solutions,”* Dec. 9, 2021, Las Vegas, NV (live).