



## Policy Brief

July 9, 2021



### Biden Administration Releases Surprise Billing Rule

Last week, the Department of Health and Human Services (HHS) released an [interim final rule](#) (IFR) aimed at protecting patients from surprise medical bills. The rule is the first in what will likely be a series of rules implementing key provisions of the No Surprises Act—the law passed to insulate patients from large, unexpected medical bills. This first IFR largely focuses on billing practices for emergency care, out-of-network provider bills and air ambulance services. The rule will have a 60-day comment period and will largely become effective on January 1, 2022. Fact sheets on this interim final rule can be found [here](#) and [here](#). Keep reading for key highlights from the new surprise billing IFR.

#### **What do health systems need to know about the latest surprise billing rule?**

The IFR outlines [several provisions](#) aimed at reducing surprise medical bills, including:

- Banning surprise billing for emergency services, instead directing providers to bill on an in-network basis. Emergency services must be treated this way regardless of where they are provided. Surprise billing is also prohibited for ancillary services, including anesthesiology.
- Requiring that patient cost-sharing, including co-insurance and deductibles, be based on in-network provider rates. High out-of-network cost sharing will not be permitted.
- Mandating the future creation of an independent dispute resolution process, the details of which have not yet been released.
- Requiring that insurers either make an interim payment or issue a notice of denial within 30 days of receiving a “clean claim.”

- Requiring that providers publicly share information on their surprise billing policies.
- Allowing patients to waive their balance billing protections and consent to out-of-network charges, should the patient desire. Patients must be provided with a plain-language explanation of what these charges will be. This waiver may not be used for some services, including emergency care.

### Why is surprise billing a policy priority for HHS?

Surprise medical bills can severely erode the financial health of individuals and families. Roughly [two-thirds](#) of all U.S. bankruptcy filings can be linked to health care expenses. Currently, approximately one of every six emergency room visits result in a surprise medical bill due to an out-of-network provider. HHS Secretary Xavier Becerra hopes to change this, saying, “Health insurance should offer patients peace of mind that they won’t be saddled with unexpected costs. The Biden-Harris Administration remains committed to ensuring transparency and affordable care, and with this rule, Americans will get the assurance of no surprises.”



### Court is in Session: Current Key SCOTUS Cases

The Supreme Court (SCOTUS) is in session and has been ruling (or declining to rule) on several [cases](#) relevant to public health. In our [last issue](#), we reported on SCOTUS’ declining to hear the case of *California v. Texas*, which aimed to invalidate the Affordable Care Act. SCOTUS will now shift its focus to other cases that impact patients and the overall health care workforce. Many more upcoming cases are expected to generate a lot of [interest](#) from both hospitals and the public, including the AHA suit blocking HHS’ 340B Drug Discount [program cuts](#).

### Recent Key SCOTUS Decisions

Case	Synopsis	Implications
<a href="#">Alabama Assoc. of Realtors v. HHS</a>	In a 6-3 decision, SCOTUS denied a request to block a CDC order that prohibits landlords from evicting tenants who can’t pay rent during the COVID-19 pandemic.	Tenants that may not be able to <a href="#">afford</a> their rent due to COVID-19 can stay in their homes until July 31st.
<a href="#">Sanchez v. Mayorkas</a>	SCOTUS ruled unanimously that <a href="#">immigrants</a> allowed to stay in the U.S. for humanitarian purposes may not apply for green cards if they entered the country unlawfully.	Immigrants who entered the U.S. unlawfully but were granted temporary protection in

		the U.S. are still not eligible for permanent residency.
<a href="#">Gloucester County School Board v. Grimm</a>	SCOTUS declined to hear a case over a transgender student that won a lawsuit against his school after the school prohibited him from using the boys' restroom.	While experts consider this a win for transgender students, this case does not <a href="#">establish</a> a national precedent.
<a href="#">Fulton v. Philadelphia</a>	SCOTUS ruled in favor of a Catholic-run foster care agency that does not recognize same-sex marriages as legitimate. Previously, the City of Philadelphia refused to refer cases to the agency, in fear that their beliefs threatened the rights of same-sex couples seeking to raise children.	SCOTUS upheld Catholic Social Service's right to practice their religious freedom. This case was also remanded for further proceedings, which means that this may not be the final outcome.
<a href="#">Alabama v. US Dept. of Commerce</a>	SCOTUS denied hearing an appeals case in which a federal court blocked Alabama from forcing the U.S. Census Bureau to move up the release of the 2020 census redistricting data.	The 2020 Census Data has been delayed to ensure the accuracy of the data and will be released on schedule in mid-August.
<a href="#">National Collegiate Athletic Association v. Alston</a>	SCOTUS unanimously ruled in favor of student athletes seeking compensation from the NCAA.	Many athletes reach a peak in collegiate sports. Now they can receive compensation, which provides financial security for student athletes.



### Essential and At Risk:

#### The American Farmworker's Role in Food Security

Last week, a record-setting [heatwave](#) scorched much of the west coast, pushing temperatures to over 115 degrees in what's generally a mild, Mediterranean-esque climate. As people clambered to stay cool, many of America's unsung heroes went to work. The American farmworker plays a vital role in securing the American food supply and making the U.S. the most prominent global exporter of food. Throughout the pandemic, farmworkers have endured dangerous working conditions, inadequate access to public health services, and suffered some of the country's highest COVID-19 infection and fatality rates. Additionally, farmworkers die from [heat-related illness](#) at a rate 20 times that of all civilian workers in the U.S. Without their [dedication](#), food

security in the U.S. would be under threat. To further explore the risks affecting farmworkers, food security in America and community health, keep reading.

### **Essential and At Risk**

Farmworkers face many health risks while on the job, including injuries resulting from long work hours, inadequate breaks, dangerous machinery, animals and animal waste, exposures to pesticides and extreme heat. External risks outside of the on-the-job challenges include discrimination, poor housing conditions, language barriers, age—both advanced age and underage, social isolation, limited access to [health care](#) and [low wages](#). Additionally, farmworkers are [excluded](#) from Social Security and cannot receive benefits for old age or unemployment. The COVID-19 pandemic has left many farmworkers in [dire situations](#) where they often don't qualify for safety nets such as unemployment benefits, eviction moratoriums or stimulus aid. Many of the states that contain an AHPA-affiliated hospital have sizeable farmworker populations.

### **Food Security: The Link Between Production and Procurement**

There are an [estimated](#) 2.4 million hired farmworkers in the U.S. They operate in every region and play a critical role in harvesting crops around the country. Many of the crops farmworkers harvest by hand are delicate and would be damaged or destroyed if picked by machinery. Without their labor, these crops would be left to overripe and rot. The [farmworker](#) workforce is a crucial link between crops' production and said produce reaching grocery store shelves. The U.S. is the world's leader in food exportation, earning the unofficial title of the “breadbasket of the world.” We also are the most significant food-aid donor to underdeveloped nations. [Over 3 billion people](#) in more than [150 countries](#), or 40% of the world's population, have been recipients of U.S. food aid over the past 60 years. Without farmworkers we would be hungrily looking for solutions to skyrocketing food insecurity rates.

### **Hospital Associations Oppose Financial Offsets in Infrastructure Framework**

The [American Hospital Association](#) and other hospital lobbying bodies have written the Biden Administration to express their concerns over the potential financial offsets included in the [Bipartisan Infrastructure Framework](#) released in late June. The framework proposes to use an extension of Medicare sequestration as one of the major funding sources for the \$1.2 trillion package. The framework would also repurpose unspent funds from the Coronavirus Aid Relief and Economic Security Act (CARES Act), using them to offset infrastructure costs.

## Supreme Court Elects to Hear Arguments in 340B Case

The Supreme Court has decided to include [AHA, et al v. Becerra](#), a case regarding cuts to 340B hospitals' Medicare reimbursement, in its fall session. The case centers on rates paid for outpatient drugs and argues that HHS deviated from the intent of the law by allegedly singling out 340B hospitals. The AHA remains hopeful that the Court will reject HHS' interpretation of the law as this interpretation "clearly imperils the important services that the 340B program helps [to provide]." We can [expect a decision](#) by SCOTUS some time early next year.

## Updates to COVID-19 Regulations

AHPA continues to follow new COVID-19 regulations, guidance and other government actions. The updates below are the latest guidance and other developments since July 1<sup>st</sup> to help mitigate the impacts of COVID-19. For earlier COVID-19 regulations and guidance, visit the previous Policy Briefs.

### **FDA Revokes EUA for Certain Respirators and Decontamination Systems**

The FDA has [revoked](#) emergency use authorizations (EUA) for certain respirators and decontamination systems as access to N95 masks has increased. As access to domestic supply of disposable respirators continues to significantly improve, the FDA urges health care organizations to transition away from crisis capacity conservation strategies that were implemented at the onset of the pandemic.

### **CDC Extends the Eviction Moratorium for 30 Days**

CDC Director Dr. Rochelle Walensky has [signed](#) an extension to the eviction moratorium further preventing the eviction of tenants who are unable to make rent. The moratorium is extended through July 31, 2021 and is intended to be the final extension.



## AHPA Resources

### **Missed AHPA's IPPS Webinar? No problem!**

Visit AHPA's [YouTube channel](#), where members can stream webinars on the major proposed rules at their convenience.

- [Webinar: Highlights from the Latest IPPS Proposed Rule \(Video\)](#)
- [Webinar Slides \(.PPT\)](#)
- [IPPS FY 2022 Proposed Rule Summary](#)

**Need an easy way to keep tabs on President Biden's Executive Orders?** AHPA is keeping a running list of the latest Executive Orders coming out of the White House. [click here](#) to download.

## WHAT WE'RE READING...

[How Health Systems Should Be Preparing for the Future of Hospital-at-Home](#) – Healthcare IT

[Fitbits Detect Lasting Changes After COVID-19](#) – The New York Times

[How Health Plans are Reimagining Telehealth Reimbursement Rates](#) – Advisory Board

[Biden Announces Door-to-Door Outreach to Boost Vaccinations](#) – The New York Times