



# Testimony

## Texas House Insurance Committee Public Hearing

### Federal No Surprises Act (2021 Consolidated Appropriations Act, Public Law No. 116-620)

by David Balat, Director, Right on Healthcare

Thank you, Mr. Chairman and Members of the committee, for inviting me to speak today. My name is David Balat, and I am the director of Right on Healthcare for the Texas Public Policy Foundation. I am a former healthcare executive and hospital CEO of nearly two decades prior to my current position and look forward to sharing my perspective as someone who spent time in the industry.

The [No Surprises Act](#) establishes new federal protections against surprise medical bills. While it was signed into law in 2020, it did not take effect until this year, 2022. The law enjoyed bipartisan support and accounted for many of the good things that Texas accomplished by passing into law [SB 1264](#).

Unfortunately, the U.S. Department of Health and Human Services (HHS) did not follow congressional intent nor the text of the law in the development of the rules. The interim final rule for the No Surprises Act represent a gift to the insurers while harming medical professionals that take care of patients. HHS was sued by the Texas Medical Association (TMA), and the Texas Eastern District Court ruled in TMA's favor. The ruling vacated the disputed parts of HHS' regulations. As such, HHS revised its regulatory guidance and has promised to issue a new rule in accordance with the court's ruling. However, the Justice Department decided at the 11th hour to appeal the Texas ruling in the Fifth Circuit.

The interim final rule's independent dispute resolution (IDR) process would enable health insurers to limit choice by narrowing medical networks; this would deny patients their choice of physicians and could delay diagnosis and treatment of illness and injury.

Concern among lawmakers resulted in a [letter](#) led by Rep. Suozzi and Rep. Wenstrup and signed by 152 members of Congress in a bipartisan fashion urging the agencies to implement the No Surprises Act in accordance with the law that Congress passed.

Their concern was well founded. Within 90 days of the law going into effect, insurers throughout the country were terminating contracts with providers with whom they negotiated rates and agreed in writing. This shouldn't come as a surprise as we are seeing the same thing in Texas in the wake of the passage of SB 1264. For example, a number of health plans in Texas sharply reduced their networks of physicians, particularly hospital-based physicians, since the law was signed. Contrary to this Legislature's intent, the health plans are using the Texas statute to argue against the need for adequate networks at the expense of patients, particularly in rural areas.

When a particular Texas insurer filed a network configuration waiver request and access plan from the Texas Department of Insurance, the agency approved the access plan claiming, "that when members receive services from ... physicians ... who are not [in-]network healthcare providers, members will not be subject to amounts above the application of in-network cost sharing obligations against the initial usual and customary rate." The remaining language and

reference directly point to statute stemming from SB 1264. SB 1264 was never intended to promote inadequate networks. I've provided a copy of a public document for your review.

Related to the federal rule, it is important to note that the Texas case solely impacts the IDR process to determine provider reimbursement for out-of-network care. Despite health insurers' continued skewed talking points, the Texas ruling does not affect the No Surprises Act patient protections against out-of-network medical bills. The case, moreover, would not raise patient out-of-pocket costs. It is essential that we ensure the HHS final rule complies with the text and spirit of the No Surprises Act but more importantly that our Texas Department of Insurance continue to do the good work they do in promoting network adequacy for the benefit of patients and reversing the behavior exhibited by the insurers. ★



**David Balat** is the director of the Right on Healthcare initiative at the Foundation. He has broad experience across the healthcare spectrum with special expertise in healthcare finance. He is a former congressional candidate in Texas' 2nd Congressional District and a seasoned hospital executive with more than 20 years of healthcare industry leadership and executive management experience.

Balat has earned the privilege of being invited to testify before the U.S. House Committee on Oversight and Reform in Washington, D.C., and before various House committees in the Texas state Legislature. He is a published author and op-ed columnist in *Newsweek*, *U.S. News & World Report*, *Real Clear Politics*, and other news outlets. He is also an active speaker and commentator on matters of health policy.

Balat often volunteers to help families navigate their bills and how to understand their benefits. He serves as a board member for a nonprofit focused on educating legislators and the community about important matters pertaining to healthcare freedom.

Balat is a first generation American and the first in his family to graduate from college. He received his B.S. from the University of Houston and joint master's degrees in business administration and hospital administration from the University of Houston – Clear Lake.

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