

National Council of Insurance Legislators  
2026 Spring National Meeting  
Louisville, Kentucky  
April 16-19, 2026

Written Statement for Meeting Attendees

**No Surprises Act Under Siege – Emerging State Policy Proposals Threaten to Increase Plan Sponsor Health Care Costs**

The ERISA Industry Committee (ERIC) appreciates the opportunity to share a written statement with attendees of the National Council of Insurance Legislators 2026 Spring National Meeting to underscore the impact that the No Surprises Act (NSA) arbitration process, as well as related state policy proposals, will have on employer plan sponsors and health care costs nationwide.

ERIC is a national advocacy organization exclusively representing the largest employers in the United States in their capacity as sponsors of employee benefit plans for their nationwide workforces. With member companies that are leaders in every economic sector, ERIC is the voice of large employer plan sponsors on federal, state, and local public policies impacting their ability to sponsor benefit plans.

The NSA was enacted over five years ago to prevent surprise medical bills and drive down health care costs. However, the abuse of the Independent Dispute Resolution (IDR) process under the NSA is contributing to ever-rising costs for patients, plans sponsors, health plans, and the health care system at large. Specifically, the IDR process has been turned into a profit engine by a concentrated number of provider organizations seeking to secure substantially larger arbitration awards than would ordinarily be received.

Emerging data from the Centers for Medicare and Medicaid Services (CMS), academic research, and real-world experience show that the NSA IDR process has become a significant driver of medical cost inflation and payment manipulation.<sup>1</sup> Instead of lowering costs, the result has been the mass-filing of claims by interested parties seeking to game the IDR process and maximize profits. This dynamic has transformed the IDR process into a high-cost, high-frequency tactic that further burdens the health care system and has led to billions of dollars in wasteful spending.<sup>2</sup> In an environment where health care costs continue to rise for employers and patients, the impact of such wasteful spending is untenable.

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<sup>1</sup> "[A First Look at Outcomes under the No Surprises Act Arbitration Process](#)", Brookings, March 27, 2024.

<sup>2</sup> "[The Substantial Costs Of The No Surprises Act Arbitration Process](#)", Health Affairs Forefront, August 25, 2025.

To that end, a large number of employer, labor, patient, and consumer organizations have called upon federal regulators to address concerns with the IDR process, and a final rule is expected to come out any day.<sup>3</sup> However, a series of policy proposals have been recently introduced and considered by state lawmakers that, while perhaps well-intentioned, threaten to do far more harm than good. Instead of reining in bad actors or addressing spiraling costs, emerging state proposals all too often loosen arbitration standards for providers or restrict private sector efforts to curb unnecessary arbitration and irresponsible billing practices.

Outlined below are several examples of counterproductive state policies that ERIC has recently opposed in this area. As 2026 state legislative sessions advance and related policies continue to be introduced, ERIC will remain vigilant in our work to defeat similar measures when proposed:

- **Virginia – INS-2025-00072**
  - **Policy:** The Virginia State Bureau of Insurance proposed regulatory amendments at the end of last year to the “Rules Governing Balance Billing for Out-of-Network Health Care Services”. These proposed changes included a specific provision that would require insurance carriers to include outlier payments, made to out-of-network providers as a result of arbitration processes, when determining "commercially reasonable" reimbursement rates.
  - **Issue:** Because the current “baseball style” arbitration process ultimately requires arbitrators to choose between the final offers submitted by the provider and carrier and does not allow them to settle on a payment amount in between those two extremes, resulting arbitration payments where providers prevail are often exponentially higher than median in-network rates. Requiring carriers to then include these outlier awards when calculating their reimbursement rates would have an obvious inflationary impact on health care costs across the state.
  - **Outcome:** Following public opposition from ERIC and other Virginia stakeholders, the Virginia State Bureau of Insurance amended the proposed rule to entirely remove the provision requiring inclusion of arbitration awards in the calculation of reimbursement rates.
  
- **Indiana – SB 189**
  - **Policy:** Indiana lawmakers introduced legislation this year aimed at stripping plan sponsors of their ability to incentivize higher rates of medical center employment of in-network providers. Specifically, a provision of the bill establishes that “a

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<sup>3</sup> ERIC joined more than 60 employer, labor, patient, and consumer advocacy groups this year on a letter urging The U.S. Departments of Labor, Health and Human Services, and Treasury to take immediate action toward stronger guardrails that would prevent ongoing NSA IDR abuse.

health carrier may not assess a facility or a provider an administrative fee or penalty related to the provision of care to an individual that involves an out of network provider.”

- **Issue:** Plan sponsors like employers, unions, and integrated health systems have already begun to respond to high-volume arbitration trends and the resulting rise in health care costs. One approach that payers have implemented is the use of financial incentives to encourage medical facilities to utilize in-network providers when they are available in non-emergency situations. When plan sponsor tools like these incentives are removed, there is no counterweight to medical facilities and provider groups that use out-of-network strategies in order to charge higher reimbursement rates.
  - **Outcome:** Despite testimony in opposition to the legislation from ERIC and a wide array of other organizations, Indiana lawmakers ultimately advanced and enacted SB 189 this year.
- **Florida – SB 1082**
    - **Policy:** Florida lawmakers considered legislation this year intended to expand the arbitration process options available to providers within the state. Specifically, the relatively short provisions that the bill sought to add to state code would allow providers to utilize the federal IDR process instead of the state arbitration process when emergency or out-of-network services have been provided.
    - **Issue:** Granting Florida providers the ability to choose between federal and state arbitration processes in this way is a blatant attempt to allow “process shopping” in search of higher arbitration awards. This is made all the more clear by the explicit reference to emergency and out-of-network medical services, which often provide the most serious opportunity for exorbitant arbitration awards.
    - **Outcome:** Following substantial opposition from state stakeholders, Florida lawmakers decided not to advance SB 1082 during the 2026 legislative session.

As long as employers are forced to grapple with and work through the significant issues stemming from the NSA, uncoordinated state action on surprise medical billing policy will continue to create a patchwork of conflicting and unworkable requirements. ERIC will advocate for Congress to address the underlying shortcomings of this landmark federal law. Meanwhile, state approaches should be heavily scrutinized for their potential to lead to confusion and higher costs for patients, while a select few provider groups may benefit from significant windfall profits.

If you have any questions about ERIC's federal and state advocacy efforts, or would like to discuss the impact of the NSA IDR process and related state policies on nationwide health care costs, please contact us at (202) 789-1400 or [dclair@eric.org](mailto:dclair@eric.org).

Sincerely,

A handwritten signature in black ink that reads "Dillon Clair". The signature is written in a cursive, flowing style.

Dillon Clair  
Director, State Advocacy