



AMA Action on Surprise Billing


RUSS KRIDEL MD

CHAIR-ELECT, AMA BOARD OF TRUSTEES

Surprise Billing—The Issue

- ▶ Widespread media reports of patients experiencing “surprise” medical bills has generated much bipartisan interest on both the state and federal levels to insulate patients from sometimes **extraordinary out-of-pocket costs**
- ▶ Surprise medical bills are those that occur when patients unknowingly receive care from physicians (or other health care providers or facilities) who are **out-of-network**, even if they made efforts to seek care in-network. These “gaps in coverage” usually occur in an emergency, or when another physician the patient did not select takes part in their care (e.g., an anesthesiologist for scheduled surgery, or an on-call specialist for emergency care).
- ▶ **Root Mean Cause: a long history of inadequate payments which created narrow networks because the insurance companies would rather decrease patient access to physicians than pay reasonable fees to doctors**

Our Patients Know the cause of the problem!



More than **8 IN 10 AMERICANS** see insurers as the largest contributor to **SURPRISE MEDICAL BILLS**

<https://www.beckershospitalreview.com/finance/81-of-americans-primarily-blame-insurers-for-surprise-medical-bills-poll-finds.html>

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Surprise Billing—The Problem

- ▶ Broadly speaking, there is general consensus among policymakers and stakeholders on how patients can be protected in these situations, by holding them accountable only for in-network copayments and deductibles. **Disagreement centers on how to determine an appropriate payment amount from the insurer to the physician who has not contracted for in-network rates. And once rates are determined what mechanism is developed to allow arbitration?**

Strong AMA Policy on Surprise Billing

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“Unanticipated” Out-of-Network Care

H-285.904

- ▶ **Patients must not be financially penalized for receiving unanticipated care from an out-of-network provider.**
- ▶ **Insurers must meet appropriate network adequacy standards that include adequate patient access** to care, including access to hospital-based physician specialties. State regulators should enforce such standards through active regulation of health insurance company plans.
- ▶ **Insurers must be transparent and proactive** in informing enrollees about all deductibles, copayments and other out-of-pocket costs that enrollees may incur.

Strong AMA Policy on Surprise Billing– Continued -2 Unanticipated Out-of-Network Care H-285.904

- ▶ Prior to scheduled procedures, insurers must provide enrollees with reasonable and timely access to in-network physicians
- ▶ Patients who are seeking emergency care should be protected under the "prudent layperson" legal standard as established in state and federal law, without regard to prior authorization or retrospective denial for services after emergency care is rendered
- ▶ **Out-of-network payments must not be based on a contrived percentage of the Medicare rate or rates determined by the insurance company**
- ▶ **HOD Policy drives BOT and AMA Action**

No Reasonable Rationale for Insurance Companies to Set Rates

- ▶ **Outrageous Profits without this windfall**
- ▶ **The country's biggest health insurers raked in more than \$11 billion in profit in the second quarter of 2019**, particularly as recent mergers and newly-launched business lines began to bear fruit. (Fierce Healthcare)
- ▶ CVS just edged out UHG in the second quarter for revenue, earning \$63.4 billion, a figure that's nearly \$20 billion more than the year before. UnitedHealth posted \$60.6 billion in Q2 earnings, an increase year-over-year of about \$4.4 billion.
- ▶ **This Profit could Substantially reduce insurance costs to Patients and increase payments to Physicians—It won't Happen**

No Reasonable Rationale for Insurance Companies to Set Rates

- ▶ **Outrageous Profits without this windfall**
- ▶ **Will hurt in-network physicians as well as those out-of-network**
 - ▶ Lower rates for all doctors
- ▶ **Reverse incentive to make reasonable and adequate networks**
- ▶ **Why should an insurance company be allowed to set fees for doctors who have no contractual relationship with them?**
- ▶ **Current system only hurts patients not insurance companies;**
 - ▶ **Arbitration and an independent database will only raise what the insurance companies pay out.**
 - ▶ **Insurance companies do not want to pay physicians more; they want to pay less; therefore they are opposed to what would be fair to physicians and patients and they want to set the payment rates!**

Strong AMA Policy on Surprise Billing– Continued -3 Unanticipated Out-of-Network Care H-285.904

- ▶ Minimum coverage standards for unanticipated out-of-network services should be identified. Minimum coverage standards should pay out-of-network providers at the usual and customary out-of-network charges for services, with the definition of usual and customary based upon a percentile of all out-of-network charges for the particular health care service performed by a provider in the same or similar specialty and provided in the same geographical area as reported by a benchmarking database. **Such a benchmarking database must be independently recognized and verifiable, completely transparent, independent of the control of either payers or providers and maintained by a non-profit organization.** The non-profit organization shall not be affiliated with an insurer, a municipal cooperative health benefit plan or health management organization.

Federal Level Status

- ▶ While some states have taken action to address this issue, their impact is limited because **states are unable to regulate self-funded ERISA plans.**
- ▶ **Four Congressional committees share jurisdiction** on this issue—the Health, Education, Labor and Pensions (HELP) committee in the Senate, and the Energy & Commerce (E&C), Education & Labor, and Ways & Means committees in the House.
- ▶ Of those, two committees have acted—HELP and E&C. The other two House committees have repeatedly postponed their planned action.
- ▶ The President has also stated on several occasions that solving this issue is a priority of the Administration, although its ability to do so directly is limited without a change in law.

Federal Level Status continued

- ▶ The **Senate HELP** committee acted first, and reported a bill that solved patients' immediate problem, but it also **pegs insurer payments for out-of-network physicians to each plan's median in-network contract rate**. There is **no current process for resolving disputes if that payment level is too low**, but hopefully that will change
- ▶ **We believe strongly that this would skew the playing field even more in favor of insurers**. They will no longer have incentive to negotiate network contracts in good faith, and will likely drop their higher-paying contracts, driving the median in-network rate still lower.

Federal Level Status continued

- ▶ The **House E&C Committee** made some improvements by **creating an independent dispute resolution (IDR) process that would give physicians an avenue to pursue** if the insurer's payment amount is inappropriate. **However, the legislation still relies on the median in-network contracted rate for initial payments, and the threshold that must be met in order to take a claim to IDR is too high to help many physicians (\$1,250).**
- ▶ The remaining House committees that share jurisdiction over the issue have postponed their actions—**the Education & Labor Committee seems inclined to take up the E&C bill, while the Ways & Means Committee is looking for a third pathway.**

Outlook

- ▶ **Prospects for passing legislation this year are uncertain.** While we want patients to be protected, we do not want to see other harmful provisions become law.
- ▶ We understand there are at least a dozen Republican “holds” on the bill in the Senate, which means it will not come to the floor any time soon. However, the **Congressional Budget Office has “scored” the committee bills as saving federal money, which may tempt legislators to include it to offset costs of an end-of-year spending package.**

CBO Cost Savings—False Logic

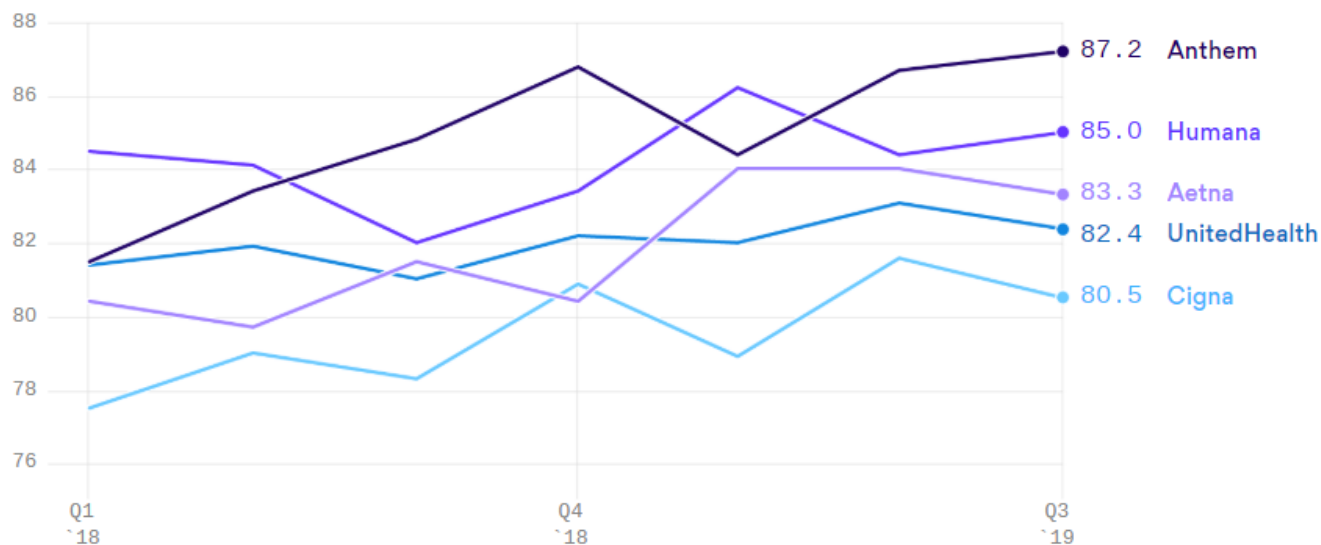
- ▶ CBO savings come mostly due to tax interactions, resulting from their prediction that provider contract rates will be reduced for in-network physicians, who have nothing to do with the problem the legislation is intended to address. False theory: If insurers save more money, rates will go down and employers will pay less for insurance and in turn will raise salaries that will create more taxable income that will translate into more governmental money = False Logic (who thought that out?) and indeed a long shot that will not pan out!

Why Insurance Companies Will Not Lower Rates

Health insurers are eating higher medical costs

Medical loss ratio by company

Q1 2018 to Q3 2019



Driving The News

- ▶ Almost all of the eight major publicly traded insurers have shown their medical loss ratio — the percentage of premium revenues they're spending on medical claims — is rising this year.
- ▶ UnitedHealth Group, the largest insurer in the country, said its loss ratio was 82.4% in the third quarter this year compared with 81% in the same period a year ago.
- ▶ But these companies are handling billions of premium dollars, so any increase in medical claims equates to hundreds of millions of dollars in additional spending, which they don't want.

Reasons there will be no savings

- ▶ Rising prices and more services for some sicker patients are among the many reasons why health insurers costs rising.
- ▶ **Medical loss ratios are often higher for health plans that cover more older adults, the disabled and the poor, because those groups typically need more care or are in the hospital more frequently.**

But, Costs Have Been Climbing In Commercial Markets Also

- ▶ **Anthem** executives admitted on their earnings call that the company is **dumping some employers with workers who had medical needs and costs that were too high.**
- ▶ CVS Health, which now owns Aetna, previously said some middle-market clients had employees that it thought were getting too many services and drugs.
- ▶ CVS "intensified our medical management in those geographies," an executive said on the earnings call.

The Bottom Line

- ▶ Health insurance companies closely track their medical loss ratios and aim to hit those targets most often by charging higher premiums, denying care, forcing people to use lower-priced providers or declining to cover people they deem to be too expensive.
- ▶ So, the CBO is wrong; Insurance rates will not go down; the companies will use the money they save by paying doctors less to make –up for their increasing medical loss ratios!!! And, in fact, doctors would get less income which would mean less tax paid to the government!

AMA ACTIVITY

- ▶ **We are working with Federation groups to improve the legislation.** A set of principles was developed in collaboration with Federation groups earlier this year, and it has served to coordinate medicine's messages to Capitol Hill and the media.
- ▶ **The AMA alone has sent over a dozen well-timed letters and statements to Capitol Hill, including a Federation sign-on letter that went out in October with 110 other organizations.**
- ▶ **Direct Lobbying--constant**
- ▶ **Strong Testimony by BOT member Bobby Mukkamala MD at Ways and Means Subcommittee on Health May 21, 2019**

AMA ACTIVITY

Collaboration with Federation and Members

- ▶ **We also:**
 - ▶ sent eight grassroots alerts to our members over the past few months;
 - ▶ placed op eds in key Congressional districts explaining our preferred solution (Out of the Middle Campaign);
 - ▶ flown in delegations from key states to meet with their legislators;
 - ▶ and we are coordinating our advocacy efforts with Federation groups (in addition to direct lobbying contacts).
- ▶ We do have some champions in Congress who are working closely with us, including, in particular, physician members of the House (Roe and Ruiz (HR 3502), Bera,) and Senate (Cassidy).

For Physicians who don't know what the
AMA has been doing and want to be
active:

The Information is all there!

- ▶ **Please subscribe to the AMA Advocacy Update**
- ▶ **Please join the AMA Grassroots Network**
- ▶ **Please Join the Very Influential Physicians (VIP) Group**
- ▶ **Please work with your County and State Societies**
- ▶ **Please personally visit and contact your State and US Congressional and Senate representatives**

AMA Advocacy Update



Updates on the AMA's work in our nation's capital, states and courthouses

Oct. 18, 2019



Issue Spotlight

Surprise medical bills: Physicians want market-based fixes

Patients shouldn't get stuck in the middle of medical billing disputes, but setting pay rates on Capitol Hill will create care access problems across the nation.

[Read more.](#)

PHYSICIANS GRASSROOTS NETWORK

Be Heard | Physicians Grassroots Network - Google Chrome

physiciansgrassrootsnetwork.org/be-heard?vvsrc=%2fcampaigns%2f67405%2frespond%3futm_source%3dAction%2520Alert%26utm_medium%3dPGN%26utm_campaign%3dSurprise%2520Billing%26utm_content%3dS...

PHYSICIANS GRASSROOTS NETWORK

Issues Join VIP

Congress is getting serious about Surprise Billing

Every day thousands of patients across the country receive unanticipated, or surprise, medical bills because they believed the care they received was covered by their health insurer but it was not. These patients suffer due to narrow and inflexible insurance networks.

Currently, Congress is considering multiple pieces of legislation that aim to address the issue of surprise billing. There is broad agreement that any legislation should protect patients from the failure of their health insurer to provide an adequate network of physicians. Patients who experience true "surprise bills" should be responsible only for the cost-sharing amounts that would have applied if their provider had been in-network.

It is critical that there be a fair and balanced mechanism for arriving at the appropriate rate for those providers who do not have a contract with a given insurer. At no point should negotiated, discounted in-network rates be used as a benchmark to determine fair payment to out-of-network physicians, and at every point commercial data from independent sources should inform the payment standard.

When the minimum payment from the payer for out-of-network care is insufficient, an independent dispute resolution (IDR) process should be developed to determine a fair payment by the health insurance company for the care provided. The IDR should be structured with clear factors that an arbiter, familiar with health care billing, must consider when deciding such as the complexity of the case, the experience of the physician, and the rate that physicians charge for that service in the area.

To ensure that patients are completely protected, benefits should be assigned to the physician or other providers so that they may pursue payment for services provided directly with the insurer without further involving the patient. This is to ensure that games that have been played by insurers, such as making periodic payments directly to the patient, are not allowed and that the patient is fully kept out of the middle.

Congress should ensure that patients are reasonably able to access the benefits their health plans promised when they signed up for coverage. Insurers must also ensure that their provider directories are accurate and up-to-date so patients can make informed decisions about their care.

Please contact your members of Congress today and ask them to support surprise billing legislation that protects the patient and holds insurers accountable for failing to provide adequate networks of physicians.

Write Tweet

Compose Your Message

- US Senators
- US Representative

Subject

Hold insurers accountable for surprise medical

Message Body

Please add your own story about this issue to personalize your message

Every day thousands of patients across the country receive surprise medical bills because they believed the care they received was covered by their health insurer but it was not. These patients suffer.

Enter Your Info

Your Information

Prefix * First Name * Last Name *

Email *

Send me text alerts

Mobile Number *

Home Information

Street Address *

ZIP Code * Enter Zip for City and State

Other Information

Member Type

-- Please select --

I want to receive emails from the AMA Physicians Grassroots Network on issues impacting health care.

Remember me

Russ Kridel MD


Be An Influential Physician

PHYSICIANS GRASSROOTS NETWORK




Issues Join VIP

Be a very influential physician

Physicians are leaders in advancing patient-centered care. If you have connections with members of Congress, or are interested in developing one, the Very Influential Physician (VIP) program can help grow these relationships. As a VIP, you meet directly with policymakers to help shape vital health care legislation.



VIP Benefits

- Build relationships with members of Congress**

- Access exclusive advocacy webinars & resources**

- Receive tailored VIP newsletters**


Resources

- Congressional Checkup: A Guide to Physician Advocacy
- Congressional Calendar, January-December 2019
- American Medical Association Advocacy Update
- Very Influential Physician Program Grassroots Update, September 2019
- Very Influential Physician Program Grassroots Update, August 2019
- Very Influential Physician Program Grassroots Update, July 2019
- Very Influential Physician Program Grassroots Update, June 2019
- Very Influential Physician Program Grassroots Update, May 2019
- Very Influential Physician Program Grassroots Update, April 2019
- Very Influential Physician Program Grassroots Update, March 2019

Become a VIP

Russ Kridel MD

Senate Committee on Health, Education, Labor and Pensions (HELP)

REPUBLICANS:

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- Johnny Isakson (GA)
- Rand Paul (KY)
- Susan Collins (ME)
- Bill Cassidy (LA)
- Pat Roberts (KS)
- Lisa Murkowski (AK)
- Tim Scott (SC)
- Mitt Romney (UT)
- Mike Braun (IN)

DEMOCRATS:

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- Bernie Sanders (VT)
- Bob Casey (PA)
- Tammy Baldwin (WI)
- Christopher S. Murphy (CT)
- Elizabeth Warren (MA)
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- Maggie Hassan (NH)
- Tina Smith (MN)
- Doug Jones (AL)
- Jacky Rosen (NV)

House Committee on Energy and Commerce

REPUBLICANS:

- Gary Walden (OR, Rnk. Mem.)
- Gus Bilirakis (FL)
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- John Shimkus (IL)
- Adam Kinzinger (IL)
- Larry Bucshon (IN)
- Susan W. Brooks (IN)
- Brett Guthrie (KY)
- Steve Scalise (LA)
- Fred Upton (MI)
- Tim Walberg (MI)
- Billy Long (MO)
- Greg Gianforte (MT)
- Richard Hudson (NC)
- Bill Johnson (OH)
- Bob Latta (OH)
- Markwayne Mullin (OK)
- Jeff Duncan (SC)
- Michael C. Burgess (TX)
- Bill Flores (TX)
- Pete Olson (TX)
- Cathy McMorris Rodgers (WA)
- David B. McKinley (WV)

House Committee on Energy and Commerce

DEMOCRATS:

- Frank Pallone, Jr (NJ, Chair)
- Tom O'Halleran (AZ)
- Nanette Barragan (CA)
- Tony Cardenas (CA)
- Anna Eshoo (CA)
- Doris Matsui (CA)
- Jerry McNerney (CA)
- Scott Peters (CA)
- Raul Ruiz (CA)
- Diana DeGette (CO)
- Lisa Blunt Rochester (At Large, DE)
- Kathy Castor (FL)
- Darren Soto (FL)
- David Loebsack (IA)
- Robin Kelly (IL)
- Bobby Rush (IL)
- Jan Schakowsky (IL)
- Joseph Kennedy III (MA)
- John Sarbanes (MD)
- Debbie Dingell (MI)
- G. K. Butterfield (NC)
- Ann McLane Kuster (NH)
- Ben Ray Lujan (NM)
- Yvette D. Clarke (NY)
- Paul Tonko (NY)
- Kurt Schrader (OR)
- Mike Doyle (PA)
- Marc Vease (TX)
- A. Donald McEachin (VA)
- Peter Welch (At Large, VT)

House Committee on Education and Labor

REPUBLICANS:

- Virginia Foxx (NC, Rnk. Mem.)
- Bradley Byrne (AL)
- Francis Rooney (FL)
- Rick W. Allen (GA)
- Russ Fulcher (ID)
- Jim Banks (IN)
- Steve Watkins (KS)
- James Comer (KY)
- Bret Guthrie (KY)
- Van Taylor (TX)
- Ron Wright (TX)
- Ben Cline (VA)
- Glenn Grothman (WI)
- Tim Walberg (MI)
- Mark Walker (NC)
- Elise Stefanik (NY)
- Dan Meuser (PA)
- Lloyd K. Smucker (PA)
- Glenn “GT” Thompson (PA)
- William R. Timmons IV (SC)
- Dusty Johnson (At Large, SD)
- Phil Roe (TN)

House Committee on Education and Labor

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- Mark DeSaulnier (CA)
- Josh Harder (CA)
- Mark Takano (CA)
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- Jahana Hayes (CT)
- Donna E. Shalala (FL)
- Frederica S. Wilson (FL)
- Lucy McBath (GA)
- Lauren Underwood (IL)
- Lori Trahan (MA)
- David Trone (MD)
- Andy Levin (MI)
- Haley Stevens (MI)
- Ilhan Omar (MN)
- Gregorio Kilili Camacho Sablan (At Large, MP)
- Alma Adams (NC)
- Donald Norcross (NJ)
- Susie Lee (NV)
- Joseph D. Morelle (NY)
- Marcia L. Fudge (OH)
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- Susan Wild (PA)
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- Kim Schrier (WA)

House Committee on Ways and Means

REPUBLICANS:

- Kevin Brady (TX, Rnk. Mem.)
- David Schweikert (AZ)
- Devin Nunes (CA)
- Vern Buchanan (FL)
- Drew Ferguson (GA)
- Darin LaHood (IL)
- Jackie Walorski (IN)
- Ron Estes (KS)
- Jason Smith (MO)
- Geroge Holding (NC)
- Adrian Smith (NE)
- Tom Reed (NY)
- Brad Wenstrup (OH)
- Mike Kelly (PA)
- Tom Rice (SC)
- Jodey C. Arrington (TX)
- Kenny Marchant (TX)

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DEMOCRATS:

- Richard E. Neal (MA, Chair)
- Terri A. Sewell (AL)
- G. K. Butterfield (NC)
- Paul M. Grijalva (AZ)
- Judy Chu (CA)
- Jimmy Gomez (CA)
- Jimmy Panetta (CA)
- Linda T. Sanchez (CA)
- Mike Thompson (CA)
- John B. Larson (CT)
- Stephanie Murphy (FL)
- John Lewis (GA)
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- Dan Kildee (MI)
- Bill Pascrell, Jr (NJ)
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- Tom Suozzi (NY)
- Brian Higgins (NY)
- Earl Blumenauer (OR)
- Brendan F. Boyle (PA)
- Dwight Evans (PA)
- Lloyd Doggett (TX)
- Donalld S. Beyer, Jr (VA)
- Susan DelBene (WA)
- Ron Kind (WI)
- Gwen Moore (WI)

Future AMA Action

- ▶ **The AMA has the Correct Policy and Understands the Urgency for Action**
 - ▶ We need fees set by independent databases
 - ▶ We need independent Dispute Arbitration (IDR)
 - ▶ We understand the benefits of NY and Texas Laws
 - ▶ We cannot tolerate a California-like law to be adopted for Erisa plans
- ▶ **We will not let up!**
 - ▶ **The Stakes are too high:**
 - ▶ Physicians will drop out of emergency coverage
 - ▶ Patient access will decline, and networks will become more narrow
 - ▶ Some doctors will close their practices because of decreasing payments
 - ▶ An Untenable Precedent would be set allowing Insurers to set fees for non-contacted physicians!
- ▶ **Constant lobbying with appropriate Congressional and Senate Staff Continues**
 - ▶ For example, Staff of Energy and Commerce seems to recognize need for IDR
- ▶ **Continued collaborative Action with State and Specialty Societies**
- ▶ **Please do your individual part!**

Thank You

RUSS KRIDEL, CHAIR-ELECT, AMA BOARD OF TRUSTEES

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QUESTIONS?