

Updates in Surprise Bill Legislation

Overview

Surprise Bill legislation was already experiencing a substantial amount of activity and interest prior to COVID-19, but, as of the past few months, this legislation has only received more attention from legislators. Surprise bills, or “balance billing,” generally occurs when either 1) a patient receives care from an out-of-network (OON) provider or facility, or 2) a patient receives non-elective care at an in-network facility but from an OON provider. In either context, the patient is responsible for the remaining balance between what the bill is for services rendered and how much the patient’s insurance will cover. In March, APS released an update on [Surprise Bill Legislation](#) that covered developments for national legislation, however, there are also numerous forms of such legislative action in the works at the state level as well.

Full Protection States

There are varying levels of patient protection offered by Surprise Bill legislation on the state level. Currently, the states with the most comprehensive protection for patients are:

California, Colorado, Connecticut, Florida, Illinois, Indiana*, Maine, Maryland, New Hampshire, New Jersey, New Mexico, New York, Oregon, Texas, Virginia, and Washington

In general, these full-protection states offer some version of the following:

- 1) Prohibit billing in excess of in-network rates in the case of surprise bills
- 2) Hold consumers harmless
- 3) Outline a dispute resolution process

Naturally, there are variations state by state, but, for the most part, these states all remain highly committed to avoiding patients having to pay out-of-pocket for unexpected expenses. Of the states listed above, three new additions have been made in 2020: Maine, Virginia, and Indiana.

Maine passed new Surprise Bill legislation ([HP 1501](#)) in March 2020 which moved it from a partial-protection state to a full-protection state. The addendum to the original legislation provides higher standards for informing patients of possible bills and practices for payment and dispute resolution; it was passed as emergency legislation largely because of the impact of COVID-19. Virginia also took a drastic step in this direction, as they also passed legislation ([HB 189](#)) in March 2020 which took them from a no-protection state to a full-protection state. This legislation bans balance billing and requires arbitration for any billing dispute that doesn’t reach agreement in 30 days or less.

It should also be noted that Indiana ([HB 1004](#)) is a special case and transitioning to full-protection status. New legislation has recently passed that would situate it solidly in the full-protection category, but it is unclear if Indiana will implement its new measures beginning July 2020 or July 2021. This situation will continue to be monitored by APS; expect a white paper on this specific issue once clarity has been achieved.

Partial Protection States

As states attempt to grapple with surprise billing issues, a number have achieved a sense of balance by offering partial coverage that seeks a compromise between the interests of providers and the patients. The states that currently fit this category are as follows:

Arizona, Delaware, Iowa, Massachusetts, Minnesota, Mississippi, Missouri, Nevada, North Carolina, Pennsylvania, Rhode Island, Vermont, West Virginia

In general, the legislation for these states only applies in special circumstances, does not eliminate the possibility of surprise bills, and maintains a greater concern for the interests of providers. With that said, attempts at enacting federal legislation would supersede these state regulations, and, therefore, the situation should be monitored on both a state-wide and national level.

No Protection States

Currently, there are still a number of states that have no protective legislation preventing surprise billing. Those states are as follows:

Alabama, Alaska, Arkansas, Georgia, Hawaii, Idaho, Kansas, Kentucky, Louisiana, Michigan*, Montana, Nebraska, North Dakota, Ohio*, Oklahoma, South Carolina, South Dakota, Tennessee, Utah, Virginia, Wisconsin, Wyoming

As with partial-protection states, these states would also be affected by Surprise Bill legislation at the federal level. Currently, there is little sign that these states will be enacting new state-level legislation regarding surprise bills in the near future, with the exceptions of Michigan and Ohio.

In Ohio ([SB 198](#)), numerous bills have been developed advocating different approaches to minimizing surprise bills and enacting an efficient arbitration process for billing disputes. As of yet, nothing has been passed, but the situation is ongoing and will continue to be monitored.

As of January, Michigan approved Surprise Billing legislation ([SB 0570-0573](#)) that would limit insurance reimbursement to 150% of the Medicare rate or the average in-network rate for the patient's health plan. If passed, this legislation would move Michigan into the Partial Protection category.

As always, APS will continue to monitor these laws and all legislative actions that affect your practice's compliance and reimbursement. If you have further questions on your state's regulation on balance billing, please contact your Practice Manager.