

## Updates in Surprise Billing Legislation

### Overview

Despite a tumultuous 2020, between the presidential election and the COVID-19 crisis, Congress has still managed to make some progress in Surprise Billing legislation. For those who don't know, Surprise bills, or balance billing, occur when a patient receives an unexpected bill for services provided, usually from an out-of-network (OON) provider or facility. This issue has attracted significant attention, both on the state and national levels, over the past few years. Various legislators have worked to pass laws that protect patients from surprise bills while simultaneously trying to avoid adverse impact on healthcare providers and facilities who may experience decreased reimbursement from the billing restrictions being put in place.

Notably, Congress recently passed the No Surprises Act which attempts to make moves on the federal level to protect patients from surprise billing. This act was signed into law by President Trump on December 27<sup>th</sup>, 2020 and will go into effect beginning January 2022. Although it is expected that most states will eventually be held to the same standards by federal legislation, there currently exist some significant differences in how balance billing is handled from state to state. The following outlines the major categories for the varying levels of state protection against balance billing.

### Full Protection States

This is becoming the most common category as many states have moved toward advancing patient protection against surprise bills. These states, generally speaking, take a "comprehensive approach" which involves informing patients of provider and facility network status (i.e., are they in-network or out-of-network), notifying patients of any expected additional expenses beyond what their insurance will cover, and obtaining patient consent if non-elective services are performed by an OON provider or facility. The states with comprehensive protection currently are:

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

There are some minor discrepancies in how these states individually handle balance billing and billing disputes, but, for the most part, they all prohibit the provider from surprising patients with unexpected bills and largely privilege patient protection over payment to the providers. Michigan, in particular, just recently passed its bill package providing comprehensive protection and that has gone into effect as of January 1<sup>st</sup>, 2021.

### Partial Coverage States

There are a number of states that have attempted to strike a balance between better protection for patients without promoting unnecessary difficulties for providers and facilities, which may have far-reaching unintended consequences. These states still attempt to avoid surprise bills for unsuspecting patients, but they do not always outline a specific dispute resolution process and allow exceptions for non-emergency care in some instances. These states are as follows:

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



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The current legislation in these states will likely eventually be superseded by federal legislation, but for the time being, they maintain their own customized solutions to this widespread issue.

### **No Coverage States**

Despite widespread pressure to enact legislation that combats surprise bills, there are a handful of lingering states that have largely remained unchanged in their approach to allowing and dealing with balance billing. Some of these states are undergoing developments that may eventually end up in passing Surprise Bill legislation, and all of them will likely be beholden to federal legislation at some point. However, at the moment, these states still offer no significant balance billing protection:

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

Within this category, there are a number of special cases that are undergoing developments. Ohio is one such example. In May of 2020, the Ohio House passed House Bill (HB) 388 which outright bans balance billing. In December of 2020, HB 388 also passed the Ohio Senate, meaning if Governor Mike DeWine decides to sign this bill into law, it will officially become a law and place Ohio firmly in the category of a full-protection state. This bill enjoys widespread support on both sides of the issue and has been touted as a possible exemplar for other states as well as national legislation that aims to protect patients while also avoiding increased costs through arbitration.

Notable developments are also taking place in South Carolina, with bills being pre-filed in both the House and the Senate (HB 3402 and SB 314). Each of these bills would prohibit charging higher than in-network rates for emergency services provided by an OON provider. The carrier would be required to reimburse the provider for either the in-network rate, the usual and customary rate, or the Medicare reimbursement rate—whichever is greatest. Both bills, however, would also allow a carrier and OON provider to negotiate a greater reimbursement amount.

APS will continue to monitor any developments regarding surprise billing legislation, both on a state and national level. If you have any questions or concerns as to how this may affect your compliance and reimbursement, please contact your Practice Manager.