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Updates in Surprise Bill Legislation

Overview

Despite so many things being put on hold during the COVID-19 crisis, legislators continue to work on Surprise Bill legislation that will garner political favor and have a significant impact on the billing practices in the healthcare industry. 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 nonelective 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. APS has continued to monitor developments on this topic and has published white papers on Surprise Bill legislation, both at the state and national levels, in [January](#), [March](#), and [June](#) of 2020. Since our most recent update, President Trump has signed an executive order on the issue, and recent developments have occurred in Georgia and Colorado.

National Developments

As we near the November election, healthcare policies have increasingly taken center stage in political agendas. In late September, President Trump passed two executive orders, seemingly in an attempt to give him something to point to when discussing his ability to effect real change in the healthcare industry. Trump’s first executive order aims to ensure patients with pre-existing conditions remain covered by their insurance even if the Affordable Care Act (ACA) is determined to be unconstitutional and struck down when it comes before the Supreme Court shortly after the election. Trump’s second order issues a directive to the Secretary of the Department of Health and Human Services (HHS), Alex Azar, to pressure congress to pass nationwide legislation on surprise billing. As with many political promises, the details of this order are not entirely clear, particularly regarding what Azar actually has to power to do and what will happen if Congress does not pass surprise bill legislation by the deadline imposed by the order, January 1st, 2021.

What we do know is if Congress does not pass legislation by the January 1st deadline, the executive order empowers Azar to seek alternative pathways by whatever means are at his disposal, and Azar has said to the healthcare industry that “you will get what you get” if such measures are necessary. Azar’s claim sounds ominous considering the immense impact this action, in whatever form, will have on the ability of providers to be fairly compensated for the care they provide, as well as patients to receive the care they need in the future.

When presented with the concept of an outright ban on surprise billing, some providers have argued that this kind of blunt-force action would deter many providers from giving care that is unfairly compensated. Such a ban would also, according to advocates of providers, give too much power to insurance companies in setting prices for services. These kinds of complications, along with pressure from special interest groups on both sides of the political aisle, are likely the reason President Trump’s executive order puts the initial impetus on Congress to pass legislation, rather than immediately taking whatever direct action is available to him (and Secretary Azar). According to Azar, “those special interest groups need to sort it out,” but if they don’t, this order at least suggests that the current administration is willing to take the leap for them if necessary.



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Statewide Developments

APS has published a state-by-state breakdown in the past which assesses the current level of protection states provide from surprise billing. Of the states covered, there have been two with recent developments: Georgia and Colorado. Formerly, we listed Georgia as a “no-protection” state and Colorado as a “full-protection” state.

Georgia has recently passed a new bill, [HB 888](#), which will go into effect January 1st, 2021. This bill stipulates three major changes that affect balance billing in the state:

1. Insurers may not send balance bills (i.e., surprise bills) to members who receive emergency care from out-of-network (OON) providers.
2. When a member receives emergency care from an OON provider, they will not be required to pay more than their deductible, copay, or in-network rates.
3. The state insurance department must create a database for all payer health claims and establish an arbitration process for billing disputes. In such disputes, the provider may request additional payment from the insurance company, but both parties must leave the patient out of these disputes.

When these new regulations go into effect, Georgia will transition from being a “no-protection” state to a “partial-protection” state.

Colorado passed their own surprise bill legislation in 2019 which has been in effect since the beginning of 2020. This law, [HB19-1174](#), takes a number of steps to protect patients from balance billing and has provided some insight into what the law actually looks like in practice. Some major aspects of the law are as follows:

1. It requires insurance carriers, health care providers, and facilities to provide insured patients with information on the provisions and rates of services for OON providers and both in and out-of-networks facilities.
2. It outlines the disclosure requirements for OON services.
3. It determines the reimbursement amount for services provided to covered persons by OON providers at in-network facilities and for OON providers or facilities that provide emergency services to covered individuals.
4. It establishes a penalty for failing to comply with the payment requirements for OON health care services.

Though still early in its inception, there have been mixed, though generally positive, responses to the new law being implemented. According to Forest Wilson of the *Colorado Independent*, the new disclosure forms patients are asked to sign sometimes leave them with more questions than answers, and some patients show disdain for additional government bureaucracy being added to an already form-filled experience of receiving care. Nevertheless, the general impression seems to be that this legislation is a step in the right direction for legislators.

Surprise Bill legislation continues to be a major player in politics and healthcare, both nationally and on the state level. As such, APS will continue to monitor any progress and developments that may 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.