



People. Trust. Results.
Since 1960

Washington D.C. Surprise Billing Updates

Summary

In January 2020, two committees in the House of Representatives (the House Ways and Means Committee and the Education and Labor Committee) submitted proposals for how to improve Surprise Bill legislation moving forward. These “surprise bills” arise when a patient is unexpectedly charged for emergency services or when services are rendered by an out-of-network provider in an in-network hospital. These unexpected bills can lead to patients incurring substantial out-of-pocket expenses, the avoidance of which is the impetus for Surprise Bill legislation. There have been multiple attempts in recent years at proposing such legislation, but Congress has yet to come to a definitive solution that achieves the myriad goals intended. This is further complicated by the fact that individual states have their own laws regarding surprise billing, some of which are more stringent than the federal proposals and some that are not. Whether or not the federal legislation would defer to individual state laws varies from one proposal to the next and is still up for debate.

Background

In 2019, numerous bills were proposed to advance negotiations on the specifics of Surprise Bill legislation. One prominent example was the No Surprises Act (H.R. 3630) advocated by the House Energy and Commerce Committee (E&C). This bill initially proposed collecting data for services rendered to establish benchmark rates which would limit what providers could charge for applicable services in particular areas. It also allowed for those rates to be adjusted for inflation in subsequent years. The proposal received significant pushback for benchmark pricing based on the belief that it would adversely impact service providers and hospitals rather than encourage arbitration, as was its expressed intention. After receiving feedback on the initial proposal, amendments were made to the bill which allowed for independent dispute resolution (IDR) by a neutral third party for claims in excess of \$1,250. The American Association of Neurological Surgeons (AANS) and Congress of Neurological Surgeons (CNS) both supported this amendment to the proposed legislation, and it has since received tentative but bipartisan support in Congress. The specifics of this bill closely resemble the Lower Healthcare Costs Act (S. 1895) promoted in the Senate, and both were leading bills under consideration at the conclusion of 2019. Despite the substantial effort involved in composing, debating, and revising these bills, new legislation has made its way into the discussion in 2020.

New Bills Proposed

The Ways and Means Committee has recently introduced its own attempt at Surprise Bill legislation that addresses concerns from both sides of the issue. This new, one-page legislative proposal maintains some overlap with, but ultimately undermines, the bipartisan legislation that was formulated in 2019. The plan by the Ways and Means Committee places more emphasis on the need for mediation in situations of billing disputes, which tends to be seen more favorably by hospital and physician groups who are concerned excessive compromise from their end would unreasonably favor health plans. Furthermore, this bill allows for similar claims to be grouped for arbitration, which allows for decreased administrative cost and claim disputes to be addressed en masse. It does not, however, establish a reimbursement rate or a timely billing requirement. That said, the plan also defers to state law when it is more stringent than federal law, meaning the true impact of such legislation would vary state by state. A third bill proposed by the Education and Labor Committee, by contrast, does establish a reimbursement rate while allowing for arbitration and does not mention deferring to state legislation. According to Rep. Lloyd Doggett,



People. Trust. Results.
Since 1960

Chairman of the Ways and Means Health Subcommittee, “this can't be something that is 100 percent for the provider or 100 percent for the insurer. There has to be some middle ground found here.”

Naturally, that middle ground is largely what is under dispute currently. The Ways and Means Committee plan, for example, would allow for arbitration in billing disputes of \$750 or more, as opposed to the \$1,250 cut-off for the Energy and Commerce bill. With that said, all currently proposed bills offer the same basic protections for patients. Ultimately, much of what is at stake resides in the means by which the benchmark rates are determined and the dispute resolution mechanisms available for all parties involved. It is possible these plans will be merged as legislators move toward a solution, but such a move must come relatively quickly since all parties agree the best chance for a “fix” comes in May when Congress must renew funding for community health centers, primary care programs, and more. Because Surprise Bill legislation could be passed as part of a larger package of health care policies, Congress could then use savings from that legislation to offset costs of other provisions. In short, the most profitable option is the likely front-runner for actually being implemented.

For more in-depth commentary on the background of Surprise Bill legislation, please see our earlier white paper on that same topic: <https://apsmedbill.com/whitepapers/overview-surprise-bill-legislation-state-level>. APS will continue to monitor 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.