



Significant Developments: Out-of-Network and Surprise Billing

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Over the past few years, out-of-network, or “surprise,” billing – when patients receive bills with costly medical expenses despite having insurance coverage – has caught the attention of lawmakers and the media. Stakeholders generally agree that this is a huge problem however, disagree on who is to blame. Health insurers, employers, and consumer protection groups banded together and proposed guiding principles calling for federal protections against patients receiving unexpected bills; while hospital groups blamed poor insurance coverage for surprise billing. In September, a group of bi-partisan Senators released a draft bill aimed at protecting patients and increasing transparency of surprise billing.

While Congress is not likely to act during the current Lame Duck session, there is strong bi-partisan support for a solution. Expect action in the first quarter of 2019.

Surprise Billing Legislation

Surprise bills most often occur from emergency care or during elective care involving ancillary physicians (such as radiologists, anesthesiologists, pathologists) whose patients do not actively choose and are not in the insurer’s provider network. Most often, these out-of-network bills are encountered through emergency care when a patient may not have control over which hospital they are taken to, and that hospital may not fall under the patient’s insurance carrier. In fact, multiple studies have found that roughly one in five emergency department visits involved care from an out-of-network physician.

A group of bipartisan Senators unveiled a bill in September to require patients to only pay the cost-sharing amount defined by their health plan and prohibit hospitals from charging beyond that amount for emergency services. The draft, Protecting Patients from Surprise Medical Bills Act – written by Michael Bennet (D-CO), Tom Carper (D-DE), Bill Cassidy (R-LA), Chuck Grassley (R-IA), Claire McCaskill (D-MO), and Todd Young (R-IN) – also would instruct HHS to conduct a study and issue a public report that includes recommendations on surprise out-of-network billing. Click [here](#) for the draft legislation.

Democrat New Hampshire Senators Maggie Hassan and Jeanne Shaheen introduced a separate piece of legislation in October, No More Surprise Medical Bills Act of 2018, that would cap the amount that hospitals and physicians could charge uninsured patients and out-of-network patients who have individual market coverage. S.3592 would specifically add protections for patients with medical emergencies from surprise billing by prohibiting providers from charging more than the in-network amount and notify patients if services will be out-of-network and get their consent. Click [here](#) for the legislation.

Industry Response

A group of organizations that include insurers, beneficiary advocates, retailers, and employers last week released a set of federal guidelines for out-of-network charges. Specifically, the groups call for federal protections against patients receiving unexpected bills from hospitals when they are treated by medical providers who are not covered by their health insurance network. The groups contend that patients should be informed if providers are not a part of their insurance company's network and should be given an opportunity to seek in-network care, as well as an estimate of the costs of out-of-network care. Click [here](#) for a group statement on the guidelines, and [here](#) to view the proposed guidelines.

Hospital groups were swift to respond to the guidelines that laid the blame and requirements on providers saying weak insurance coverage was at fault. The American Hospital Association and Federation of American Hospitals state, "Inadequate health plan provider networks that limit patient access to emergency care is one of the root causes of surprise bills." Click [here](#) for the full statement by the associations.

Media Reports

The media has reported for some time incidences across the country of patients receiving large "surprise" bills. Here is a sampling –

- Urgent care in Massachusetts, click [here](#);
- Allergy testing in California, click [here](#);
- Ambulance services in Texas, click [here](#); and
- Emergency room services in Washington, click [here](#).

A Health Affairs Blog breaks down the issue, discusses states with the biggest problems, and looks at proposed legislation, click [here](#).

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