House Health Subcommittee Approves Surprise Billing Legislation – Full E&C Markup Next Week

July 11, 2019

The Health Subcommittee of the House Energy and Commerce Committee approved the surprise billing legislation introduced by Chairman Pallone and Ranking Member Walden today, without amendments. Click here for the Subcommittee briefing memo and here for H.R. 3630, the No Surprises Act.

We expected the bill to move through the subcommittee without amendment, but several Members expressed concerns about the lack of an arbitration provision or other mechanism to appeal the rate. Legislation introduced by Rep. Raul Ruiz (D-CA) and Rep. Phil Roe (R-TN) – both physicians – includes an arbitration provision modeled after the NY "baseball style" arbitration provision. Click here for the Ruiz/Roe legislation.

Rep. Ruiz asked if Chairman Pallone would continue to discuss including an arbitration provision. Chairman Pallone agreed, however, he explained that while he wants all members to support the bill when it goes to the full Committee next week, he and Ranking Member Walden can not be expected to throw away their work which represents a bicameral, bipartisan solution. He further stated that he needs to be certain the bill provides a solution that won't increase costs.

No date was announced for the markup.

Highlights of Pallone/Walden Bill

- Prohibits balance billing and limits patient cost-sharing to the in-network amount for emergency services, from facility-based providers that patients can't reasonably choose, for services that occur after the provision of emergency care but before a patient is able to travel to an in-network facility without emergency transport, and for all out-of-network services that occur during the course of a medical visit that the patient did not explicitly consent to including:
    - The use of equipment, devices, telemedicine services, imaging services, laboratory services, and other treatment or services, regardless of whether the provider furnishing the services is at the facility
    - Unforeseen medical services that arise during the course of treatment, and

    - When there is no in-network provider available to deliver the service at the in-network facility
- For all other scheduled care at an in-network facility, the bill requires that patients receive notice and give written consent to out-of-network care 72 hours in advance of the service.
- Establishes a payment benchmark - the median in-network rate for the services in the geographic area; uses 2019 as the base year with CPI-U as an annual inflation adjustment.
- Requires HHS to establish a process to audit the accuracy of the median contracted rate.
- Preserves a state's ability to determine its own solution to resolving out-of-network payment for state regulated plans.

Also of special interest, today's mark-up included legislation to delay the DSH cuts for 2020 and 2021 and to reduce the cuts in 2022 from $8 billion to $4 billion and to extend the Patient-Centered Outcomes Research Institute (PCORI) for 3 years.

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