



Surprise Billing Legislation Approved by House Energy & Commerce – **Arbitration Provision Added**

July 17, 2019

The Energy and Commerce Committee approved the No Surprises Act today (now HR 2328), with a new arbitration provision offered by Rep. Raul Ruiz (D-CA) and Rep. Larry Bucshon (R-IN).

Click [here](#) for the manager's amendment containing the surprise billing provisions; *see Title IV – No Surprises Act, beginning on page 29*. Click [here](#) for the amendment with an arbitration provision.

The arbitration language is different from the previously introduced Ruiz/Bucshon legislation. An independent dispute resolution (IDR) process would be established by regulation. In general, the amendment allows nonparticipating providers or emergency facilities to appeal the payment for an out-of-network claim through the insurer's internal appeal process (after receiving payment). An appeal to the IDR entity may be taken once the insurer's internal appeal process is resolved or within 30-days. Claims eligible for appeal are limited to those where the median contract rate payment exceeded \$1250.

The bill still includes the following provisions:

- 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.

The House bill also contains a two-year delay of the DSH cuts (currently scheduled to begin October 1, 2019); *see Section 301, beginning on page 26.*

We will continue to digest the amendments and the impact on the underlying bill and provide additional information.

The House is scheduled to begin August recess on July 26; The Senate is scheduled to begin recess on August 2.

Senate HELP Committee Chairman Alexander says S. 1895, the Lower Health Care Costs Act (as reported out of the Committee on June 26) is ready to go to the full Senate for a vote. Click [here](#) for the bill. Senators Bill Cassidy (R-LA) and Maggie Hassan (D-NH) continue to seek support for a variation of the arbitration provision included in [S. 1531](#). However, Senate Majority Leader Mitch McConnell (R-KY) is not yet scheduling the bill to go to the full Senate because of the controversy around the surprise billing issue within his own caucus.

Yesterday, the Congressional Budget Office released its score of the Senate bill, projecting a savings of \$24.8 billion over 10 years by instituting a federal benchmark payment rate. Click [here](#) for the CBO report. CBO has not yet released a score on the House bill. The CBO score adds momentum for the Senate bill because it projects substantial government savings.

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