

# Surprise Billing Primer



“Surprise billing” describes unexpected or unexpectedly high charges for medical services arising when an insured individual receives care, sometimes unknowingly, from an out-of-network provider. This situation often arises in an emergency when the patient has no ability to select the emergency room, treating physicians or ambulance suppliers, but can also arise when a patient obtains care from a network facility but is unknowingly treated by out-of-network physicians.

This issue has been widely scrutinized and debated in the 116<sup>th</sup> Congress, particularly as increasing media stories on surprise billing focus attention on the issue. Several bills attempting to address and block surprise billing have been introduced, and some are advancing through legislative processes.

## *Congressional Action on Surprise Billing*

We have reached a point where the question is not if, but how and when, lawmakers will tackle surprise billing. In the 116<sup>th</sup> Congress, four major bills have emerged:

- + On May 14, 2019, the leaders of the House Energy and Commerce Committee, Chairman Frank Pallone (D-NJ) and Ranking Republican Greg Walden (R-OR), [released a discussion draft](#) entitled the No Surprises Act.
- + On May 16, 2019, Senators Bill Cassidy (R-LA), Michael Bennet (D-CO), Todd Young (R-IN), Maggie Hassan (D-NH), Lisa Murkowski (R-AK) and Tom Carper (D-DE) [introduced S 1531](#), Stopping the Outrageous Practice (STOP) of Surprise Bills Act of 2019.
- + On May 23, 2019, leaders of the Senate Health, Education, Labor and Pensions (HELP) Committee, Chairman Lamar Alexander (R-TN) and Ranking Democrat Patty Murray (D-WA), [released the discussion draft](#) Lower Health Care Costs Act (also referred to as the Cost Containment Package), which is a larger package attempting to tackle a number of different issues, but which includes provisions relating to surprise billing. Following that, on June 19, 2019, the HELP Committee [introduced S 1895](#), Lower Health Care Costs Act, which made significant changes compared to the discussions (specifically related to surprise billing dispute payments). Most recently, the HELP Committee released a Manager’s Amendment to the Lower Health Care Costs Act on June 24, 2019, that included additional revisions. This version was marked up and amendments were added to the overall bill during a HELP Committee mark-up on June 26, 2019. This bill was approved by committee and is now awaiting consideration by the full Senate.
- + On June 26, 2019, Representatives Phil Roe (R-TN) and Raul Ruiz (D-CA) [introduced HR 3502](#), the Protecting People from Surprise Medical Bills Act.

## *Distinctions Within the Surprise Billing Proposals*

There is considerable alignment among the four approaches, but also a few notable distinctions that are important for stakeholders to consider:

- + What constitutes surprise billing

- + The process for the provider to challenge the payment rate, if at all
- + Transparency requirements

**What Constitutes Surprise Billing.** The scenarios in which patients are protected are mostly aligned across the four major proposals except when a patient is seeking non-emergency care by an out-of-network provider at an in-network facility. The Cassidy Senate bill simply prohibits surprise billing in this circumstance. The Energy and Commerce discussion draft, however, allows for an exception if the patient is provided with written and oral notice and consent. HR 3502, Protecting People from Surprise Medical Bills Act, prohibits surprise billing for out-of-network after-emergency care when a patient cannot travel without medical transport, as well as for out-of-network imaging or lab services when ordered by an in-network provider. The Senate HELP bill requires that:

- + Patients receiving out-of-network ancillary services would only be required to pay the in-network cost-sharing amount.
- + Patients who receive services following emergency services and are not yet stabilized would be responsible only for the amount they would have paid in-network.
- + Patients who receive services following emergency services and are stabilized, or who receive care from an out-of-network provider at an in-network facility, must be given advance notice of any out-of-network care, an estimate of the patient's costs for out-of-network care and referrals for alternative options for in-network care. If a patient is not given adequate notice, the patient would be protected from surprise bills or out-of-network cost-sharing.

**Process for Providers to Challenge the Payment Rate.** The Cassidy Senate bill and HR 3502, Protecting People from Surprise Medical Bills Act, include an independent dispute resolution process, which allows for providers to seek a different payment rate than the default median in-network rate where there is a ban on surprise billing. The Energy and Commerce discussion draft sets the minimum benchmark rate for insurers to pay providers and does not include any mechanism for appeal. Similar to the Energy and Commerce discussion draft, the Senate HELP bill sets rates for practitioner or facility based on the median in-network contracted rate for services in that geographic area and does not include arbitration style provisions.

**Transparency Requirements.** Both Senate bills and HR 3502, Protecting People from Surprise Medical Bills Act, include a number of transparency requirements for providers, hospitals and health plans/issuers. The Energy and Commerce discussion draft does not include similar requirements.

### *Next Steps on Surprise Billing*

In the House, Representatives Pallone and Walden sought feedback on the No Surprises Act discussion draft (stakeholder comments were due May 28, 2019) and held a hearing on the topic on June 12, 2019, entitled "No More Surprises: Protecting Patients from Surprise Medical Bills." It is expected that the Energy and Commerce Committee will mark up the draft on July 10, 2019.

The Ways and Means Health Subcommittee also held a hearing on this topic on May 21, 2019, entitled "Hearing on Protecting Patients from Surprise Medical Bills." How the House will come together to resolve differences between members and proposals remains to be seen.

As noted above, the Senate HELP bill was marked up on June 26. Additional amendments were added to the bill, one of which was related to surprise billing. That amendment requires plans to include a list of categories of providers of ancillary services for which the plan or coverage has no in-network providers.

Chairman Alexander noted that he would like to see the Senate vote on the bill at the end of July. There will likely be continued discussion about further changes to the bill before it comes to the floor, particularly as some senators have expressed concern with setting a benchmark in-network rate.

Also of note, it has been reported that the Congressional Budget Office (CBO) has developed a preliminary score for the varying payment dispute resolution processes. CBO found that the proposal setting a benchmark payment rate would save the most money at \$25 billion over 10 years, the arbitration model would save \$20 billion over 10 years, and the network matching proposal would save the least at \$9 billion over 10 years. These scores could affect policy decisions and negotiating tactics on issues such as payment methodology, appeals processes and whether this surprise billing legislation will be packaged with other bills to take advantage of the savings.

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