

What's Next for the House Surprise Billing Package?



There has been a surge of congressional activity relating to the various surprise billing proposals. What started out as an issue for a small Senate working group last year has turned into a major health priority for both parties in both chambers. Over the past year, discussion drafts were released, bills were introduced, and lawmakers sought feedback from stakeholders in an effort to produce comprehensive bipartisan legislation. Three major bills have emerged:

- + The No Surprises Act, introduced by the leaders of the House Energy and Commerce Committee
- + The Stopping the Outrageous Practice (STOP) of Surprise Medical Bills Act of 2019 (S 1531), introduced by 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)
- + The Lower Health Care Costs Act (S 1895), introduced by the leaders of the Senate Health, Education, Labor and Pensions (HELP) Committee

Most of the recent activity on surprise billing has focused on the House No Surprises Act. Representatives Frank Pallone and Greg Walden sought feedback on the No Surprises Act discussion draft and held a hearing on the topic on June 12, 2019, entitled “No More Surprises: Protecting Patients from Surprise Medical Bills.” On July 9, 2019, Representatives Pallone and Walden formally introduced a new version of the bill.

On July 11, 2019, the Energy and Commerce Health Subcommittee held a mark-up on a number of bills, including the No Surprises Act. During the mark-up, there was unanimous support to address surprise billing and protect patients. However, some members raised concerns about the way the bill dealt with payment rates: tying payments rates to a benchmark based on in-network rates in certain geographic regions with no ability for the provider to appeal the rate. While no amendments were offered to change this approach, there was dialogue among committee leadership and other members about working together to come to a bipartisan consensus agreement. The No Surprises Act thus advanced from the subcommittee to the full committee.

On July 17, 2019, the [Energy and Commerce Committee held a mark-up of 26 bills](#), which included the No Surprises Act. A last-minute agreement was reached to amend the benchmark rate by adding an arbitration process to address payment disputes for certain surprise billing situations. The arbitration amendment was pushed by Representatives Raul Ruiz (D-CA) and Larry Bucshon (R-IN), and reflected a delicately crafted compromise with the bill sponsors, Pallone and Walden. The addition of an arbitration process accommodates some of the concerns that physicians and hospitals have regarding the median in-network benchmark rate approach. This amendment was added with no opposition.

The committee also voted to combine the surprise billing legislation within a larger health extender bill. The extender package includes the Medicare and Medicaid programs that need reauthorization or additional funding prior to September 30, 2019. These programs include, but are not limited to, the community health centers, special diabetes program, the teaching health centers and the Medicaid DSH allotments. Collectively, the package including the extenders and the No Surprises Act is referred to as HR 2328.

What's Next?

The week of July 22, 2019, is the last week the House is in session before the month-long August recess. While there were discussions about bringing this package to the floor before recess, it is unlikely that this will happen. In fact, the House Education and Labor Committee, which oversees employer-based health insurance plans and has partial jurisdiction over surprise billing, will likely also need to mark-up the legislation after the August recess. Following that mark-up, there could be additional adjustments to reconcile any changes from committee and leadership.

If the surprise billing legislation is maintained as part of the health extenders package, it is likely to see floor action in September. Stakeholders, however, remain divided on benchmark and arbitration, and now will have the month of August to make their case to members. This could influence timing and outcome in September. And, let's not forget that the Senate's surprise billing bill awaits floor consideration as well and does not include arbitration at this time. For now, we have public attention, members wanting to pass health legislation, and time. We will see how these factors come together in September.

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