PUBLICATION

Congress's Surprise Billing Showdown

Authors: Tiffani Vivienne Williams
February 21, 2020

This year, Congress remains focused on passing legislation to tackle the issue of surprise billing where patients face unexpected and often exorbitantly high bills from out-of-network hospitals or physicians. There is bipartisan and bicameral agreement on the importance of holding patients harmless from this financial burden, which has only become more costly for patients in both inpatient and emergency department settings. However, there are ongoing divisions as to how to resolve billing disputes in circumstances where patients find themselves out-of-network.

Both insurers and providers are diligently advocating for their preferred legislative proposals. With the goal of ensuring a transparent and predictable payment system, insurers support a market-based benchmark payment. Concerned about the potential for narrower networks and the use of in-network payment rates, providers are pushing for independent dispute resolution (IDR) or arbitration to determine payments.

Late last year, the Senate Health, Education, Labor, & Pensions (HELP) Committee and House Energy & Commerce Committee worked closely to reach a compromise solution. Their legislation would require using a median in-network rate as the benchmark to resolve surprise bills and to allow insurers or providers to request an IDR process if a qualifying out-of-network claim exceeds $750 (or $25,000 for air ambulance services). The Congressional Budget Office (CBO) estimates the proposal would save $24 billion over ten years.

Since then, the House Ways & Means and Education & Labor Committees marked up and reported out of committee their long-awaited bills. While the Education & Labor bill essentially mirrors the HELP and Energy & Commerce compromise, the Ways & Means legislation offers no minimum arbitration threshold nor any benchmark amount. The Ways & Means version would allow insurers and providers to resolve payment disputes on their own with the option of initiating a 30-day negotiation process between both parties and then a mediation process administered by third parties, if the dispute remains unresolved (subject to certain guardrails). Within one year of enactment, the committee's version also requires air ambulance providers to report cost data and insurers are required to submit claims related to air ambulance services to the Secretary of the Department of Health and Human Services. This data would be made publicly available within 180 days of receipt. Under the Ways & Means approach, the estimated savings is $17.8 billion over ten years.

What to Watch: Despite the divergent approach of the Ways & Means Committee, the House is expected to reach a consensus package prior to negotiations with the Senate. It will be important to watch whether the HELP, Energy & Commerce, and Education & Labor Committees' versions prevail given the greater savings, which many lawmakers intend to pay for a number of health care policies and extenders as part of a May 22 "must-pass" package.