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SENATE PACKAGE TARGETS HEALTHCARE COSTS, SURPRISE MEDICAL BILLS

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June 12, 2019

In This Article

Bipartisan draft legislation from leaders of the Senate Health, Education, Labor and Pensions (HELP) Committee seeks to lower overall healthcare costs and provide patients relief from surprise medical bills. The plan from Chairman Lamar Alexander, R-TN, and ranking member Patty Murray, D-WA, incorporates elements of Mercer's March 1 letter responding to the committee's request for comments. A broad array of proposed reforms aims to lower drug prices, increase transparency, foster greater electronic exchange of health information and improve public health. The provisions targeting surprise medical bills and drug prices join a growing list of similar proposals in Congress.

SURPRISE MEDICAL BILLS TARGETED

Surprise medical bills often happen when a patient receives emergency care at an out-of-network hospital or nonemergency care from an out-of-network doctor who provides services at an in-network facility. The draft Lower Health Care Costs Act of 2019 would amend existing Affordable Care Act (ACA) protections to cover not only out-of-network emergency services but also nonemergency services received from out-of-network providers at in-network facilities. The protections would apply broadly to nongrandfathered group health plans — whether insured or self-funded — and individual policies. States could continue to maintain laws addressing surprise bills, but self-funded ERISA plans would be exempt from those laws.

On the contentious issue of how to resolve payment disputes with providers, the committee hopes to settle on one of three approaches outlined in the draft before sending a bill to the full Senate:

- ***In-network guarantee.*** Under this approach, an in-network facility must guarantee that all of its providers are considered in-network. Providers would have two options to be considered in-network: They could choose to join the network for every health plan that has a network agreement with the facility, or they could decline to join those networks and bill the health plan through the facility, rather than sending separate bills to the patient or the health plan.

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- ***Independent dispute resolution.*** Under the second approach, a baseball-style independent arbitration system would handle disputes over bills exceeding $750 (subject to annual adjustment). Either a health plan or a provider could initiate the independent dispute-resolution process, using a federally certified third-party arbitrator. The plan and the provider would submit final best offers, and the arbitrator would review the offers against relevant information, including the median in-network rate for services in that area. The arbitrator would make a final, binding decision on the best offer, and the loser would pay arbitration costs. For bills up to $750, providers would be paid a median rate based on contracted prices in their area.

- ***Benchmark for payment.*** Under a third approach, a provider would be paid based on the median contracted rate in the area for the same services.

Employer groups strongly oppose the arbitration option favored by providers and are advocating for reimbursement tied to in-network rates.

Other Surprise Medical Bill Measures in Play

Other bipartisan Senate and House proposals target eliminating surprise medical bills. Examples include:

- ***Stopping the Outrageous Practice (STOP) of Surprise Medical Bills Act (S 1531).*** Introduced by Sens. Bill Cassidy, R-LA, and Maggie Hassan, D-NH, this measure would use baseball-style arbitration to resolve payment disputes. Out-of-network providers would automatically be paid the median in-network rate, but they could appeal that amount through an arbitration process. The plan and the provider would submit offers to an independent arbitrator, who would make a final decision based on “commercially reasonable” rates in the area.

- ***No Surprises Act.*** This draft legislation from House Energy and Commerce Committee leaders would require that patients receive notice and give their consent before an out-of-network provider delivers scheduled care. Patients not given advance notice would pay only the amount an in-network provider could charge. The proposal avoids arbitration and would settle billing disputes by tying the minimum payment to the median in-network rate for the same services in that area. For self-funded ERISA plans, the federal law appears to preempt state laws for determining reimbursement amounts. Plan sponsor groups are urging clearer preemption language.

More proposals may be coming. At recent hearings held by the House Ways and Means Committee and the Education and Labor Committee, plan sponsor representatives from the ERISA Industry Committee and the American Benefits Council offered input on ways to tackle surprise medical bills.

President Trump is prodding Congress to pass legislation preventing surprise medical bills and recently released a set of broad principles largely aligned with lawmakers’ ideas. However, the White House reportedly opposes using arbitration to settle payment disputes.

DRUG PRICING, TRANSPARENCY, OTHER SENATE HELP PROPOSALS

The HELP Committee's wide-ranging proposal also seeks to rein in healthcare costs through drug-pricing reforms, various healthcare transparency and IT interoperability improvements, and targeted public health initiatives. Here are some provisions highlighted in a committee-prepared section-by-section bill summary.

Drug-Pricing Reforms

Much like a bill already approved by the House, the draft Senate HELP bill focuses on getting generic drugs to market more quickly, such as by cracking down on brand-name drug makers' efforts to delay cheaper generic competition. The measure would also help speed development of biologic and biosimilar products and encourage their use when appropriate.

Committee leaders are also working on two measures that could become part of this legislation. The Prescription Drug Rebates Reform Act (S 1384) would require setting all patients' coinsurance for drugs as a percentage of net price, rather than list price. The Fair Accountability and Innovative Research Drug Pricing Act (S 1391) would require drug manufacturers to report certain price increases to the Department of Health and Human Services.

Improving Transparency

The proposal takes aim at "anti-competitive" practices in the healthcare industry and would ban "anti-tiering" and "anti-steering" clauses in contracts between providers and plans. These clauses restrict plans' ability to create "preferred" in-network tiers that direct or incentivize patients to use providers and facilities with higher quality and lower prices.

The bill would also prohibit a pharmacy benefit manager (PBM) from charging plans and patients more for a drug than it cost the PBM, known as "spread pricing." PBMs would also have to pass on 100% of any rebates or discounts to the plan sponsor.

Health plans would have to maintain up-to-date provider directories. Both plans and providers would have to give estimates of a patient's expected out-of-pocket costs within 48 hours of a request.

More Effective Use of Health IT

Numerous provisions aim to make health data more available to consumers and researchers, including patients' access to their own health claims information. Other reforms would strengthen the security of health-related information.

Public Health Measures

The draft bill would create a national campaign to increase vaccination rates, expand the use of technology to help patients in rural and underserved areas, and authorize funding to improve the quality of maternal care and prevent pregnancy-related deaths.

HELP COMMITTEE VOTE COMING SOON

Alexander says he hopes to move a version of the Lower Health Care Costs Act out of the HELP committee this month and through the Senate by July. The senator, who prefers a bipartisan approach to legislating, is intent on Congress taking action to address healthcare costs before he retires when his term ends in 2020.

RELATED RESOURCES

Non-Mercer Resources

- Discussion Draft of the Lower Health Care Costs Act of 2019 (Senate HELP Committee, May 23, 2019)
- Section-by-Section Summary of the Lower Health Care Costs Act of 2019 (Senate HELP Committee, May 23, 2019)
- Video and Written Testimony for Hearing on Protecting Patients from Surprise Medical Bills (House Ways and Means Committee, May 21, 2019)
- S 1531, Stopping the Outrageous Practice of Surprise Medical Bills Act (Congress, May 16, 2019)
- Discussion Draft of the No Surprises Act (House Energy and Commerce Committee, May 13, 2019)
- S 1384, Prescription Drug Rebate Reform Act of 2019 (Congress, May 9, 2019)
- S 1391, Fair Accountability and Innovative Research Drug Pricing Act (Congress, May 9, 2019)
- Video and Written Testimony for Hearing on Examining Surprise Billing: Protecting Patients from Financial Pain (House Education and Labor Committee, April 2, 2019)
- Mercer's Comments on Controlling Healthcare Costs (Mercer, March 1, 2019)
- HELP Committee Chairman's Request for Comments on Controlling Healthcare Costs (Sen. Alexander, Dec. 11, 2018)

Mercer Law & Policy Resources

Links to any resources in the Mercer Select archive are accessible to Mercer consultants. Clients may contact their consultants for free copies:

- 2019 Compliance and Policy Outlook for Employer-Sponsored Health Benefits (Feb. 6, 2019)
- Mercer Shares Views With Senators on Controlling Healthcare Costs (March 6, 2019)
- Senators Tackle Out-of-Network Medical Bill Surprises (Oct. 5, 2018)

- New Jersey Law Curbs 'Surprise' Uncovered Health Costs, Lets Self-Insurers Opt In (Aug. 8, 2018)

Other Mercer Resources

- Groups Offer Principles for Addressing ‘Surprise’ Medical Bills (Dec. 13, 2018)

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