July 12, 2019: Advocacy spotlight on Congressional efforts to address surprise billing continue

Congressional efforts to address surprise billing continue

The House Energy and Commerce Subcommittee on Health reported legislation on July 11 to protect patients from unanticipated medical bills for services provided by out-of-network physicians and facilities in emergencies and other situations where they had no opportunity to choose an in-network provider. This subcommittee’s action follows similar steps taken by the Senate Health Education, Labor and Pensions Committee last month.

While the majority of health care stakeholder groups support the patient protections included in H.R. 3630, the "No Surprises Act," the AMA expressed its opposition (PDF) to the bill because of provisions that would resolve payment disputes between physicians and insurers by setting out-of-network payments at the median amount each insurer pays for in-network care. Throughout the process of drafting and debating surprise billing legislation, the AMA and other physician organizations have consistently observed that setting payments at in-network rates would absolve insurers from any responsibility to negotiate fair in-network contracts and to maintain adequate provider networks. Indeed, given the highly concentrated insurance markets throughout the country, the proposal would increase the considerable leverage insurers already have in these negotiations, which is a major contributor to the unanticipated gaps in coverage that lead to surprise billing.

Instead, the AMA is recommending that any surprise billing legislation:

- Establish benchmark rates that are fair to all stakeholders in the private market; benchmark rates should include actual local charges as determined through an independent claims database
- Establish a fair and independent dispute resolution (IDR) process to resolve disputes about payments from insurers to unaffiliated providers for services rendered out-of-network to their beneficiaries
- Protect patients from out-of-network billing and preserve patient access to hospital-based care by holding insurers accountable for addressing their own contributions to the problem

Several Democratic and Republican members of the Energy and Commerce Health Subcommittee urged adoption of an appeals process or independent dispute resolution process to determine out-of-
network rates. Others expressed concerns that unfair out-of-network rates would harm patient access, especially in rural and underserved populations. These concerns reflect a high volume of physician grassroots contacts over the last several weeks. Continued grassroots engagement is essential to improve pending legislation.

The full Committee on Energy and Commerce is expected to take up the bill the week of July 15, at which point further changes may be made to determine out of network payments. Two other House committees share jurisdiction over this issue—the House Ways and Means Committee and the House Education and Labor Committee. At present, dates for action by those two panels have not been set and is not expected to occur until September at the earliest.

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