

Doctors take message on surprise-billing fix to Capitol Hill

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Indiana doctors in Washington for the AMA National Advocacy Conference discuss health care with Rep. Trey Hollingsworth, R, Ind.

It was the perfect health care political advocacy storm: A sharply divided Congress facing a looming deadline works to generate consensus on an issue of broad public concern and unveils several imperfect pieces of legislation just as 500 physician advocates converge on the nation's capital.

"You're here at a historic time," said Todd Askew, the AMA's senior vice president of advocacy, at the AMA National Advocacy Conference's opening in Washington last week. Meanwhile, on Capitol Hill, the House Education and Labor Committee would mark up its version of out-of-network surprise billing legislation the next day, followed by the House Ways and Means Committee the day after.

"Never underestimate the power of showing up, in person, to make the case for the AMA position," said AMA President Patrice A. Harris, MD, MA, in her opening remarks welcoming the 500 attendees to the conference. "Things are happening, and I can assure you our advocacy matters."

Over the next three days, physicians would hear from top health care experts in the Trump administration and in Congress, including Sen. Bill Cassidy, MD, R, La., and pay visits to congressional offices to press their views on how best to deal with unanticipated out-of-network costs.

"We have a special role," Dr. Cassidy, a gastroenterologist from Baton Rouge, told the physicians at the conference. "In our schooling, we were trained to be the patient's advocate. I say that political action is: Be our patients' advocates by other means."

Learn more about the market-based fixes for surprise billing supported by the AMA and 110 other physician organizations.

Poll: Health care a top voter concern

Setting the scene, Askew explained that amid political dysfunction, health care issues appear to offer a chance for legislative action before electoral tensions take over completely.

"Health care, for better or worse, is again at the top of the electoral agenda," Askew said, noting that large majorities in a recent Kaiser Health tracking poll want action to lower prescription-drug costs and protect coverage for preexisting conditions under the Affordable Care Act. Meanwhile, 80% in that poll said they want Congress to protect people from surprise out-of-network bills.

"Each of those issues offer a tangible way that lawmakers could provide immediate and popular relief and support to patients who are afraid that they're going to not be able to afford the care they need," Askew said.

Why surprise-billing action is likely

Congress faces a May 22 deadline when funding for several popular health programs expires. And while the funding is expected to be renewed, the intent will be to package several other health-related measures along with the extension of those programs.

The House Democrats passed a drug-pricing bill in December that Askew described as very broad and very partisan. The Senate's Republican leadership is not acting on it.

A separate drug-pricing bill has been introduced in the Senate Finance Committee that Askew said was "nominally bipartisan" but lacked sufficient GOP support for the leadership to take action on.

Read more on the AMA's effort to get escalating drug costs under control.

The fate of protections for pre-existing conditions is in the hands of the judicial branch awaiting the resolution of *Texas v. United States*, which Askew said is unlikely to be decided before the November elections.

"So, that leaves surprise billing as the most likely candidate for Congress to find when it goes searching for a bipartisan, popular proposal that they can enact to make people feel like they're paying attention to their fear about health care costs," Askew said.

Find out how to fix surprise billing without impeding patients' access to care.

What AMA seeks on surprise billing

Dr. Harris outlined what the AMA is looking for in surprise-billing legislation.

"We are working to ensure that any surprise-billing legislation passed by Congress limits out-of-pocket expenses for patients to what they would have owed with an in-network physician or facility, but also to make sure that physicians receive fair payment for the care we provide," said Dr. Harris, an Atlanta psychiatrist. "Patients should not be penalized because their insurer failed to provide an adequate network of physicians to meet their health care needs."

Askew described the House Education and Labor Committee's surprise-billing legislation as a "nonstarter" for the AMA and nearly every other physician organization. Among that bill's shortcomings is a \$750 threshold that must be reached in order for physicians to initiate appeals and trigger the dispute-resolution process.

“The vast majority of claims by physicians that could be characterized as a surprise bill, they do not reach that \$750 threshold,” said Askew.

Regarding a bill introduced in the Energy and Commerce Committee, he said that it “has some improvements, but still needs some work.”

That leaves the bill introduced last week in the Ways and Means Committee, which doesn’t include a threshold and does feature a “baseball-style” independent dispute-resolution process in which a mediator chooses which offer is the most reasonable and the losing side covers the costs of the proceedings.

“It is not ideal, but it is better than any proposal we’ve seen out there so far,” Askew said. “Every step of the way, we have made incremental improvements. Congress has come to understand your position more and more, and we have to keep pressing that message.”

The Consumer Protections Against Surprise Medical Bills Act of 2020 (H.R. 5826) bill was passed unanimously by the Ways and Means Committee last week.

“We support the underlying mechanism for resolving these disputes, including the eligibility of all disputed claims for negotiation and mediation,” Dr. Harris said in an AMA statement.

“We also appreciate that the mediator must consider a wide range of supporting information submitted by physicians in rendering a final determination.”

Senator stumps for STOP Act

There are two surprise-billing measures introduced in the Senate, including one passed by the Health, Education, Labor and Pensions Committee last June, and the “Stopping the Outrageous Practice of Surprise Medical Bills Act,” or STOP Act, sponsored by Dr. Cassidy.

Dr. Cassidy spoke at the AMA National Advocacy Conference and made the case for passage of his bill, which the AMA weighed in on last May.

The STOP Act includes an interim payment made during the negotiation process equal to the median in-network price to help small practices cover their office expenses while the process plays out. It also calls on the mediator to consider what payment amount is “commercially reasonable,” which Dr. Cassidy described as a term used in Washington state that takes in account payer mix and other factors pertaining to whether a practice is rural, suburban or urban.

Going further, he noted that the bill addresses fairness issues, explaining that a mediator assigned to a dispute involving an insurance company with a “narrow, narrow network” would be instructed to “look at that and be prejudicial against the insurance company.”

The result would be greater incentive to find common ground.

“We do think that the push would be towards the insurance company and the providers finding a place where they could be together because neither wishes the arbiter to be prejudiced against them,” Dr. Cassidy said.