Proposed “No Surprises Act” favors commercial health plans

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What’s the news: The most recently circulated “No Surprises Act” before Congress is an improvement over previous iterations of the bill that seeks a legislative remedy to the issue of surprise billing, but—in its current form—the measure still puts financially stressed physician practices at a disadvantage while favoring commercial health plans.

More work is needed to iron out the details and to vet the bill’s provisions with the physicians who would be affected.

“As we have stated many times before, the AMA strongly supports protecting patients from the financial impact of unanticipated medical bills that arise when patients reasonably believe that the care they received would be covered by their health insurer, but it was not because their insurer did not have an adequate network of contracted physicians to meet their needs,” AMA Executive Vice President and CEO James L. Madara, MD, wrote in a letter to congressional leaders.

“In these cases, patients should be responsible only for cost-sharing amounts they would otherwise have been subject to if the care had been provided in-network, and these costs should count toward their in-network out-of-pocket maximums and annual deductibles,” Dr. Madara added.

The measure does include an independent dispute resolution (IDR) process that takes in account circumstances such as a physician’s training, experience and performance on quality and outcome measures as well as the patient’s acuteness and complexity of their needed treatment.

But, Dr. Madara noted, the complexity of the process is such that many physicians—particularly those in smaller practices—may not have the resources to take advantage of the IDR process to obtain fair compensation for their services.

Learn how the AMA is working to protect patients from unanticipated medical bills.

Why it’s important: Due to constraints created by the COVID-19 pandemic, physicians have
averaged a 32% drop in revenue since February, according to a recent AMA survey.

Additionally, the Congressional Budget Office has predicted that there will soon be significant reductions of in-network rates, the 2021 Medicare physician payment schedule calls for significant cuts for several medical specialties, and the 2% Medicare sequester will compound the financial stress on physician practices and “strain the ability of small practices to keep their doors open,” Dr. Madara wrote.

The AMA remains committed to working with Congress to find a solution, but clarification is needed on several provisions contained in the bill.

For example, it is assumed but not clear that when an out-of-network physician submits a claim the health plan will make an initial payment.

Other troublesome issues in the bill include:

- The two-calendar-day timeframe for one party to notify the other party and the Health and Human Services secretary that they are initiating the IDR process is inadequate, especially if notification would fall on a weekend or holiday. Significantly more time should be allowed.
- It appears that the IDR entity could consider payment data from Medicare and Medicaid (which pay physicians and other providers below the cost of providing care because spending for these programs is largely a function of state and federal budgets with no opportunity for negotiation), but is prohibited from considering billed charges or usual and customary charges, further skewing the process in favor of commercial health plans.
- The bill requires out-of-network providers to include a list of in-network providers and information on medical care management, such as prior-authorization requirements, as part of the notice and consent agreement. It is unclear how out-of-network providers would obtain this information since they have no contractual relationship with the plan.
- Out-of-network physicians could essentially be penalized when a health plan includes erroneous information in its in-network physician directory, including instances when physicians are listed in plan directories with which they have no relationship and therefore no knowledge that their information is included.
- There appears to be no purpose to the requirement that physicians wait 90 days to seek fair compensation. The administrative costs and ability to batch claims is sufficient to encourage small physician practices not to file frivolous claims and to seek to utilize the IDR process in the most efficient way possible.

The AMA has developed a five-page summary of the bill that identifies the elements of the bill in more detail.
Find out how physicians took their message on surprise billing to Capitol Hill earlier this year.

**What's next:** Congress appears poised to include the language of the No Surprises Act in a large end-of-the-year legislative package to be passed before it adjourns for the holidays.

“We believe that the urgency of passing surprise-billing legislation while these and other issues remain unresolved is unwarranted and unreasonable as our nation’s physicians, hospitals, and patients are grappling with the surging COVID-19 pandemic,” Dr. Madara wrote. “Physicians’ practices are currently financially stressed more than any time in our nation’s history.”