Surprise Billing

Widespread media reports of patients experiencing "surprise" medical bills have generated bipartisan interest to insulate patients from extraordinary out-of-pocket costs. However, disagreement remains regarding an appropriate payment amount from the insurer to the out-of-network physician.

What are "surprise medical bills?"

- Unanticipated, or "surprise," medical bills can arise when patients reasonably believe the care they received would be covered by their health insurer, but it was not. These gaps in coverage usually occur in an emergency, or when an out-of-network physician the patient did not select takes part in their care (e.g., an anesthesiologist scheduled for a scheduled surgery, or an on-call specialist for emergency care).

What should be included in legislation to effectively address this growing problem for Kentuckians?

- Legislation should protect patients by making them responsible only for the cost-sharing amounts they would otherwise pay if the care had been provided in-network. Additionally, these costs should count toward their in-network out-of-pocket maximums and annual deductibles.
- Any initial payments to the out-of-network physician should reflect a commercially reasonable rate that is fair to all stakeholders in the private market; these rates should include actual local charges as determined through an independent claims database. Payments should not be tied to median in-network or Medicare rates.
- When the minimum payment from the payer for out-of-network care is insufficient, an independent dispute resolution (IDR) process should be developed to determine a reasonable payment by the health insurance company for the care provided.
- The IDR process should be structured so that a range of factors is considered in determining a mutually fair payment—such as the complexity of the service rendered, the experience of the physician providing the service, the rate that physicians or other providers charge for the service in a geographic area, and commercial insurance data from an independent and transparent source. There is strong, compelling evidence that this approach is successfully resolving out-of-network payment disputes between health insurance companies and out-of-network providers without negatively impacting patient access to care or increasing insurance premiums.
- Minimal thresholds, if any, should be set at a level that is realistic and based on the distribution and range of real-world claims and payments.
- The IDR threshold should allow for batching of claims that involve identical plans and providers and the same or similar procedures that occur within reasonable timeframes, with consideration given to the size and resources of the individual or group providing those services. This is to ensure that providers, regardless of specialty and cost of services, can benefit from a fair IDR process.
- A balanced solution requires that insurers be held accountable for addressing their own contributions to the problem.
- Any legislation addressing surprise billing should also establish strong, measurable, and enforceable network adequacy requirements based on measurable standards. Such requirements will prevent surprise bills before they happen.
- Benefits should be assigned to the physician or other providers so that they may pursue payment for services provided directly with the insurer without further involving the patient.
- Legislation should allow ERISA plans to opt-in to the process as outlined above – ensuring such protections are available to all patients without threat of federal preemption.

Why is it critical to pass legislation in 2020?

- Patients are held financially responsible for the costs that their insurer will not pay. The situation is inequitable and can keep patients from seeking needed medical services, which could further exacerbate access to care issues for some of Kentucky's most vulnerable citizens.
- Surprise billing will become more common as many market dynamics continue to worsen – narrow networks, inaccurate provider directories, insurer consolidation, provider consolidation, and a proliferation of "skinny plans."
- Without a legislative solution to protect patients, they are at risk of baring the financial brunt due to gaps in coverage.

Support legislation to help protect Kentuckians from surprise medical bills!

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