



Health Policy Briefing

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House Panels Advance Additional Surprise Billing Proposals

The House Education and Labor Committee, which has jurisdiction over employer-sponsored health insurance plans, approved its surprise billing legislation, the **Ban Surprise Billing Act** (H.R. 5800), last week by a vote of 32-13 after hours of debate over whether the bill appropriately balances the interests of providers and payers. The House Ways and Means Committee also considered a bill (H.R. 5826) to protect patients against surprise insurance gaps last week, advancing the **Consumer Protections Against Surprise Medical Bills Act** by voice vote.

House lawmakers are now faced with the task of reconciling the differences between the three pieces of surprise billing legislation that have been advanced out of committee. Each of the bills would prohibit balance billing and hold patients harmless from surprise insurance gaps. The bills differ, however, in how payment disputes between providers and insurers would be resolved.

The House Energy and Commerce Committee and Education and Labor Committee proposals would set a benchmark payment for out-of-network charges based on the median amount for a service in a particular geographic area while providing for an arbitration process for bills above \$750, or \$25,000 for air ambulance services. The Ways and Means Committee proposal does not use a benchmark payment rate, instead relying solely on a mediation and independent dispute resolution (IDR) process. Unlike the other proposals, the plan would not ban surprise bills from air ambulance providers. During the markup, Ways and Means panel members argued that more data on the problem of air ambulance surprise bills needs to be collected first in order to avoid closure of air ambulance companies and a negative impact on rural communities. The White House has signaled

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opposition to the Ways and Means bill, raising concerns that too heavy a reliance on arbitration will increase health care costs. White House spokesperson Judd Deere also stated that the President does want air ambulances to be included in the final surprise billing plan.

During markup, Education and Labor's ***Ban Surprise Billing Act*** was opposed by a bipartisan group of lawmakers who characterized the legislation as government rate-setting. They argued that the bill unfairly favors insurers, and expressed concerns about its potential to drive down prices for providers in their districts and negatively impact patient access to care, voicing support for the rival legislation introduced by the Ways and Means Committee.

The Congressional Budget Office (CBO) has released its cost estimates of the two bills passed out of committee last week. CBO estimates that the ***Ban Surprise Billing Act*** would save \$23.8 billion over the next decade, a figure comparable to that of the measure passed by the House Energy and Commerce Committee. Ways and Means' ***Consumer Protections Against Surprise Medical Bills Act*** would save \$17.8 billion over 10 years.

A bipartisan group of House aides met with House Speaker Nancy Pelosi's (D-Calif.) office last week to discuss a path forward for the rival bills, but no consensus was reached. Lawmakers hope to reach a deal on surprise billing before funding for a number of health care programs expires on May 22. The surprise billing legislation could be used as an offset for the must-pass package of Medicare and Medicaid extenders.

The Senate will return from Presidents' Day recess on February 24, while the House of Representatives is scheduled to reconvene on February 25.

WH Releases President's FY 2021 Budget Proposal

The Office of Management and Budget (OMB) transmitted the President's proposed fiscal year (FY) 2021 budget to Congress last week. The \$4.8 trillion "[Budget for America's Future](#)" projects economic growth above three percent and would add \$5.6 trillion to the deficit over the next decade. The administration requests \$590 billion for nondefense discretionary programs, less than the cap for FY 2021 established in last year's budget agreement. The budget calls for \$96.4 billion in discretionary funding for the U.S. Department of Health and Human Services (HHS) – a nine percent decrease from current levels – as outlined in the [HHS Budget in Brief](#).

The Centers for Disease Control and Prevention's (CDC) budget would be reduced to \$5.62 billion, a nine percent reduction. Funding for the National Institutes of Health (NIH) would be lowered to \$38 billion, a 3.7 percent reduction. In line with previous Trump administration budget proposals, the budget would eliminate the Agency for Healthcare Research and Quality (AHRQ), merging it with the NIH as the National Institute for Research on Safety and Quality. The Food and Drug Administration (FDA) would receive a total of \$6.2 billion - \$3.3 billion in discretionary funds and \$2.9 billion in user fees.

The budget proposes significant spending reductions for Medicare, Medicaid, and other mandatory programs. It includes a total of \$920 billion in Medicaid cuts over the next decade, with \$150 billion in cuts resulting from implementation of Medicaid work requirements and other savings achieved from changes such as tighter beneficiary eligibility screening and transitions to state block grant funding. The budget also calls for approximately \$756 billion in savings from the Medicare program. This money would come from reducing program fraud and waste and through site-neutral payment policies, which the budget estimates could save \$164 billion over the decade.

The budget includes \$844 billion in spending cuts over 10 years stemming from the "President's health reform vision," the administration's plan to repeal and replace the Affordable Care Act (ACA). While an exact proposal is not spelled out, the budget does call for ending additional funding to states that expanded their Medicaid programs under the 2010 health care law.

The budget also assumes a savings of \$135 billion over the next decade from drug pricing legislation. While the budget does not endorse any specific legislation, this figure is similar to the cost estimate for the drug pricing bill advanced out of the Senate Finance Committee. The budget proposal also expresses support for capping Medicare beneficiaries' annual drug costs and increasing generic and biosimilar competition. The budget proposal calls on Congress to end surprise medical billing, but it does not discuss a particular policy solution or set a savings target.

While Democrats on Capitol Hill quickly characterized the President's budget as 'dead on arrival,' the document is a helpful starting point for understanding the administration's priorities for the coming year.

Ways and Means Advances Private Equity, Hospice Legislation

During its markup last week, the House Ways and Means Committee also passed legislation to increase transparency among private equity firms that invest in medical care providers. The ***Transparency in Health Care Investments Act of 2020*** (H.R. 5825), which was passed by voice vote, would require reporting to the Internal Revenue Service (IRS) separately from annual tax returns certain information with respect to health care providers in which private equity has a financial interest. Such returns would then be made publicly available. Chairman Richard Neal (D-Mass.) argued that this legislation would enable policy makers and regulators to better understand private equity's impact on the health care system. Republicans on the panel, however, expressed opposition to the bill, asserting that it would be an abuse of the tax code. Ranking Member Kevin Brady (R-Texas) suggested that the Committee instead examine the impact of consolidation and acquisition of health care parties by all investors, private or non-profit.

Ways and Means also advanced the ***Helping Our Senior Population in Comfort Environments (HOSPICE) Act*** (H.R. 5821) by voice vote. The bill would provide HHS and the Centers for Medicare and Medicaid Services (CMS) with additional authorities to penalize low-performing Medicare hospice providers. CMS would be permitted to fine hospices \$10,000 for each day they do not meet Medicare program requirements. The agency could also appoint temporary management of, suspend payments to, or terminate the Medicare certification of providers that do not meet program quality requirements. State agencies and accreditation organizations would be required to complete quality surveys of hospices no less than every two years, and submit the results to HHS to be published online. States would also be required to maintain a toll-free hotline for individuals to report hospice abuse and neglect. The bill is a response to a recent report from the HHS Office of the Inspector General finding that between 2012 and 2016 more than 80 percent of hospices had at least one deficiency leading to beneficiary harm. CBO estimates that the bill would save \$181 million over 10 years.

Grassley Remains Optimistic on Fate of Drug Pricing Bill

Senate Finance Chairman Chuck Grassley (R-Iowa) has been meeting with Senate Republicans up for reelection this year hoping to drum up support for the bipartisan drug pricing measure (S. 2543) advanced out of his committee last year. Grassley has said that he needs at least 25 Republican co-sponsors to get the ***Prescription Drug Pricing Reduction Act*** to the Senate floor. So far, 11 Republicans, including Grassley, are on the record in support of the legislation. Sen. Grassley plans to file an updated version of the drug pricing bill that he introduced with Ranking Member Ron Wyden (D-Ore.) in the near future. He has previously discussed adding a provision to overhaul the prescription drug rebate system. Senate Majority Leader Mitch McConnell (R-Ky.) recently said that there remained internal divisions on the issue of prescription drug pricing within his caucus and that he is not sure whether any related legislation could pass the Senate this year. Sen. McConnell stated that the May 22 deadline to fund various health care programs would provide another opportunity for discussions on proposed drug pricing policies.

Lawmakers Raise Concerns About Organ Procurement, Transplant Oversight

A bipartisan group of senators are raising questions about the adequacy of patient safety standards at the U.S. Organ Procurement and Transplantation Network (OPTN). Senate Finance Committee Chairman Chuck Grassley (R-Iowa), Ranking Member Ron Wyden (D-Ore.), Sen. Todd Young (R-Ind.), and Sen. Ben Cardin (D-Md.) sent a [letter](#) requesting information and data to the United Network for Organ Sharing (UNOS), which has been contracted by Congress to oversee the OPTN. Their letter cites numerous inspector general audits and news reports finding that thousands of available organs go unused and describing organ procurement organizations' (OPO) use of questionable financial practices. The lawmakers ask for details about the organ procurement and transplant process, including: legally required periodic performance reviews of OPOs, audits of OPOs that suggest Medicare was billed for unallowable expenditures, data released to OPOs identified as 'underperforming' or not in good standing over the last year, data related to delayed, mishandled, or damaged organs over the last ten years, data related to the number of organs not recovered or not transplanted over the last ten years, and information relating to the financial improprieties or conflicts of interest of OPOs over the last ten years. The letter requests a response by March 1.

Azar Asked to Reimburse Local Governments for Coronavirus Response

A bipartisan group of 17 senators are [asking](#) HHS Secretary Alex Azar to establish guidelines for state and local governments to be reimbursed for costs incurred in response to the coronavirus outbreak. The lawmakers assert that state and local public health agencies are depleting their resources in support of federal virus monitoring and quarantines, and that federal support will be necessary for them to continue their response efforts.

FDA Announces New Controlled Substances Initiative

The Food and Drug Administration (FDA) has announced the creation of a new program to coordinate the agency's work on controlled substances, with a focus on opioids and stimulants. The program will serve as an FDA liaison to other government organizations, providing expertise on drug applications and scheduling decisions and balancing agency policies to reduce drug misuse with efforts to ensure access for patients with medical need. The controlled substances initiative will be led by Marta Sokolowska, Associate Director for Controlled Substances in the Center for Drug Evaluation and Research (CDER) and be housed within the Office of the CDER Director. The program plans to launch an opioid data warehouse next month that will integrate data sources to help the FDA "better assess vulnerability points in the population, inform us of trends, anticipate new developments in the crisis, and support regulatory changes," according to CDER Deputy Director Douglas Throckmorton. Rising rates of stimulant drug overdose deaths will also be considered by the new initiative. A meeting is scheduled for March 10 to gather patient input on treatments for stimulant use disorder.

Upcoming Congressional Hearings and Markups

House Energy and Commerce Subcommittee on Health hearing on President Trump's budget request for HHS and its agencies for fiscal year (FY) 2021 and the ongoing coronavirus outbreak; time and place TBD; February 26

House Appropriations Subcommittee on Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Member Day; 10:00 a.m., 2362-A Rayburn Bldg.; March 3

Recently Introduced Health Legislation

H.Res.840 — Expressing support for the designation of the last day of February each year as “Rare Disease Day”; Sponsor: Rep. Carson, Andre [D-IN-7]; Committees: House - Energy and Commerce

H.R.5800 — To end surprise medical billing and increase transparency in health coverage; Sponsor: Rep. Scott, Robert C. “Bobby” [D-VA-3]; Committees: House - Energy and Commerce; Education and Labor; Ways and Means; Oversight and Reform

H.R.5806 — To amend title VII of the Public Health Service Act to provide for a loan repayment program for the HIV clinical and dental workforce, and for other purposes; Sponsor: Rep. Lewis, John [D-GA-5]; Committees: House - Energy and Commerce

H.R.5807 — To amend title XXVII of the Public Health Service Act, the Internal Revenue Code of 1986, the Employee Retirement Income Security Act of 1974, and title XI of the Social Security Act to improve the availability and accuracy of provider directory information made available by group health plans and health insurance issuers offering group or individuals health insurance coverage; Sponsor: Rep. Larson, John B. [D-CT-1]; Committees: House - Energy and Commerce; Ways and Means; Education and Labor

H.R.5808 — To amend title XVIII of the Social Security Act to provide for coverage of rural emergency medical access services under the Medicare program, and for other purposes; Sponsor: Rep. Arrington, Jodey C. [R-TX-19]; Committees: House - Ways and Means; Energy and Commerce

H.R.5809 — To amend title XXVII of the Public Health Service Act, the Internal Revenue Code of 1986, and the Employee Retirement Income Security Act of 1974 to require group health plans and health insurance issuers to include certain information on any health insurance membership card issued by such plan or issuer; Sponsor: Rep. Beyer, Donald S., Jr. [D-VA-8]; Committees: House - Energy and Commerce; Ways and Means; Education and Labor

H.R.5816 — To amend title XXVII of the Public Health Service Act, the Internal Revenue Code of 1986, the Employee Retirement Income Security Act of 1974, and title XI of the Social Security Act to require group health plans and health insurance issuers to provide for certain coverage in the case of a change in a provider’s network status, and for other purposes; Sponsor: Rep. Moore, Gwen [D-WI-4]; Committees: House - Energy and Commerce; Ways and Means; Education and Labor

H.R.5817 — To amend title XXVII of the Public Health Service Act, the Internal Revenue Code of 1986, and the Employee Retirement Income Security Act of 1974 to require health plans to provide to participants, beneficiaries, and enrollees an advanced explanation of benefits with respect to items and services scheduled to be received from providers and facilities and to amend title XI of the Social Security Act to require health care providers and health care facilities to provide good faith estimates of the expected charges for furnishing such items and services; Sponsor: Rep. Nunes, Devin [R-CA-22]; Committees: House - Energy and Commerce; Ways and Means; Education and Labor

H.R.5821 — To amend title XVIII of the Social Security Act to establish hospice program survey and enforcement procedures under the Medicare program, and for other purposes; Sponsor: Rep. Panetta, Jimmy [D-CA-20]; Committees: House - Ways and Means; Energy and Commerce

H.R.5825 — To amend the Internal Revenue Code of 1986 to provide for reporting by certain investors with respect to certain specified medical care providers; Sponsor: Rep. Neal, Richard E. [D-MA-1]; Committees: House - Ways and Means

H.R.5826 — To amend title XXVII of the Public Health Service Act, the Employee Retirement Income Security Act of 1974, the Internal Revenue Code of 1986, and title XI of the Social Security Act to prevent certain cases of out-of-network surprise medical bills, strengthen health care consumer protections, and improve health care information transparency, and for other purposes; Sponsor: Rep. Neal, Richard E. [D-MA-1]; Committees: House - Energy and Commerce; Ways and Means; Education and Labor; Transportation

H.R.5833 — To amend title XVIII of the Social Security Act to permit the use of certain psychological evaluation via telehealth for Medicare coverage of neurostimulation services for the treatment of chronic pain; Sponsor: Rep. Latta, Robert E. [R-OH-5]; Committees: House - Energy and Commerce; Ways and Means

S.3261 — A bill to amend the Internal Revenue Code of 1986 to allow qualified distributions from health savings accounts for certain home care expenses; Sponsor: Sen. Gardner, Cory [R-CO]; Committees: Senate - Finance

S. 3271 — A bill to amend the Federal Food, Drug, and Cosmetic Act with respect to limitations on exclusive approval or licensure of orphan drugs, and for other purposes; Sponsor: Sen. Cassidy, Bill [R-LA]; Committees: Senate - Health, Education, Labor, and Pensions

H.R.5855 — To amend the Public Health Service Act to establish a grant program supporting trauma center violence intervention and violence prevention programs, and for other purposes; Sponsor: Rep. Ruppertsberger, C. A. Dutch [D-MD-2]; Committees: House - Energy and Commerce

H.Res.853 — Recognizing the maternal health crisis in the United States and the importance of reducing mortality and morbidity among all women, and honoring mothers; Sponsor: Rep. McEachin, A. Donald [D-VA-4]; Committees: House - Energy and Commerce

H.R.5858 — To require the Secretary of Defense to seek to enter into an agreement with the National Academies of Sciences, Engineering, and Medicine to study and report on the incidence of cancer diagnosis and mortality among pilots in the uniformed services, and for other purposes; Sponsor: Rep. Luria, Elaine G. [D-VA-2]; Committees: House - Armed Services

H.R.5867 — To direct the Secretary of Veterans Affairs to establish or update certain clinical practice guidelines of the Department of Veterans Affairs, and for other purposes; Sponsor: Rep. Cisneros, Gilbert Ray, Jr. [D-CA-39]; Committees: House - Veterans' Affairs; Armed Services; Energy and Commerce

H.R.5882 — To amend title XIX of the Social Security Act to provide States with the option under the Medicaid program to pay for covered outpatient drugs through risk-sharing value-based agreements, and for other purposes; Sponsor: Rep. Schrader, Kurt [D-OR-5]; Committees: House - Energy and Commerce

S.3277 — A bill to amend title XIX of the Social Security Act to strengthen the infrastructure of, access to, and reporting of Medicaid home and community-based services, and for other purposes; Sponsor: Sen. Casey, Robert P., Jr. [D-PA]; Committees: Senate - Finance

H.Res.859 — Supporting the goals and ideals of the "International Year of the Nurse and the Midwife", as designated by the World Health Organization; Sponsor: Rep. Johnson, Eddie Bernice [D-TX-30]; Committees: House - Energy and Commerce

H.R.5889 — To amend the Patient Protection and Affordable Care Act to require the Secretary of Health and Human Services to set forth a method of determining maximum out-of-pocket limits and annual updates to premium tax credit eligibility; Sponsor: Rep. Axne, Cynthia [D-IA-3]; Committees: House - Energy and Commerce

H.R.5894 — To direct the Secretary of Health and Human Services to issue guidance requiring the list prices of drugs to be included in advertisements for such drugs; Sponsor: Rep. Davids, Sharice [D-KS-3]; Committees: House - Energy and Commerce

H.R.5897 — To amend title XIX of the Social Security Act to require the Secretary of Health and Human Services to make certain information available on a public website relating to intermediate care facilities for individuals with intellectual disabilities certified for participation under the Medicaid program, and for other purposes; Sponsor: Rep. Gallego, Ruben [D-AZ-7]; Committees: House - Energy and Commerce

H.R.5900 — To amend title XIX of the Social Security Act to streamline enrollment under the Medicaid program of certain providers across State lines, and for other purposes; Sponsor: Rep. Kennedy, Joseph P., III [D-MA-4]; Committees: House - Energy and Commerce

H.R.5909 — To strengthen mental health collaboration in communities, and for other purposes; Sponsor: Rep. Trone, David J. [D-MD-6]; Committees: House - Judiciary

S.Res.500 — A resolution supporting the goals and ideals of the “International Year of the Nurse and the Midwife”, as designated by the World Health Organization; Sponsor: Sen. Merkley, Jeff [D-OR]; Committees: Senate - Health, Education, Labor, and Pensions

S.Res.505 — A resolution expressing the sense of the Senate that the United States will continue to provide support to international partners to help prevent and stop the spread of coronavirus; Sponsor: Sen. Cassidy, Bill [R-LA]; Committees: Senate - Foreign Relations

S.3290 — A bill to amend title XI of the Social Security Act to require the Secretary of Health and Human Services to verify whether a health care provider is licensed in good standing before issuing the provider a unique health identifier, and for other purposes; Sponsor: Sen. Scott, Rick [R-FL]; Committees: Senate - Finance

S.3297 — A bill to amend title XIX of the Social Security Act to require the Secretary of Health and Human Services to make certain information available on a public website relating to intermediate care facilities for individuals with intellectual disabilities certified for participation under the Medicaid program, and for other purposes; Sponsor: Sen. McSally, Martha [R-AZ]; Committees: Senate - Finance

S.3302 — A bill to improve global health security, and for other purposes; Sponsor: Sen. King, Angus S., Jr. [I-ME]; Committees: Senate - Foreign Relations

S.3309 — A bill to provide for a Public Health Emergency Fund, and for other purposes; Sponsor: Sen. Cassidy, Bill [R-LA]; Committees: Senate - Health, Education, Labor, and Pensions

S.3317 — A bill to improve the operation of the Organ Procurement and Transplantation Network; Sponsor: Sen. Young, Todd [R-IN]; Committees: Senate - Health, Education, Labor, and Pensions

S.3318 — A bill to promote transparency in health care pricing; Sponsor: Sen. Cassidy, Bill [R-LA]; Committees: Senate - Health, Education, Labor, and Pensions