



Update: Surprise Medical Billing Ban Not Expected to Pass in 2019, Hopeful for 2020

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The Hill has reported that due to the disparity between rival legislation that a surprise medical billing ban is not likely to pass before the end of 2019 and may not gain traction in 2020 as the election year kicks into gear. The crucial disagreement between the two pieces of proposed legislation is how much the insurer should pay the doctor once the patient is protected. The Lower Health Care Costs Act of 2019 set a benchmark rate based on the average payment for that service in that geographic area; whereas the rival Ways and Means Committee proposed that legislation leaves that decision up to an outside arbiter.

This Friday – December 20, 2019 – is the deadline for legislation to pass this year. However, the disagreements apparent in these rival legislation make it seem unlikely that any legislation will be passed banning surprise medical billing prior to this Friday’s deadline. Loren Adler, Associate Director of USC-Brookings Schaeffer Initiative for Health Policy, provided a divergent opinion to NPR that the rival legislation actually demonstrates that there is a decent possibility that Congress will pass a surprise billing ban in 2020, even if it does not happen until February or March 2020 as it would be embarrassing for Congress not to do so, with all of the attention given to a surprise billing ban across party lines.[1] Even if Congress does not move on a surprise billing ban, there is indication that states may not wait for Congress to act.

The Philadelphia Inquirer (the Inquirer) reported on December 17 that the Pennsylvania legislature is attempting to pass a similar surprise billing ban.[2] The bipartisan proposed legislation would set a benchmark rate adjusted by specialty and geography for all out-of-network bills. The proposed legislation would also allow providers to call for arbitration to verify that the benchmark rate is valid. The Inquirer also reported that the Pennsylvania proposed legislation is supported by Pennsylvania’s largest insurer, Independence Blue Cross; however doctors and hospitals have pushed back against proposed surprise billing bans as they argue that they give an unfair advantage to insurers who may use the benchmark rate to their advantage to push doctors out of network. The Pennsylvania House of Representatives is not expected to vote on the proposed surprise billing ban this year and may leave the matter up to Congress in 2020.

While the future of this legislation remains uncertain, we will continue to monitor this legislation. If you have questions or would like further information, please contact Lori Smith (smithl@whiteandwilliams.com; 212.714.3075), Andrew Hamelsky (hamelskya@whiteandwilliams.com; 212.631.4406), Luke Repici (repicil@whiteandwilliams.com; 215.864.7099) or Zaara Nazir (nazirz@whiteandwilliams.com; 973.604.5681).

[1] Rachel Bluth, *Congress Considers Bipartisan Compromise Legislation On Surprise Medical Bills*, National Public Radio, Dec. 17, 2019, <https://www.npr.org/sections/health-shots/2019/12/17/788624397/congress-considers->

bipartisan-compromise-legislation-on-surprise-medical-bills (last accessed Dec. 18, 2019).

[2] Sarah Gantz, *Eliminating surprise medical bills is a bipartisan issue, but legislation is stuck in Pa. and Congress*, The Philadelphia Inquirer, Dec. 17, 2019, <https://www.inquirer.com/health/consumer/surprise-bill-health-care-insurance-20191217.html> (last accessed Dec. 18, 2019).

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