

## NO SURPRISE HERE...THE DEBATE CONTINUES ON SURPRISE BILLING

It is no surprise that state and federal legislators are taking action to address the issue of unexpected medical bills, otherwise known in the health care industry as “surprise billing.” Surprise billing generally occurs when a patient receives care at an out-of-network facility (often emergency care) or from an out-of-network provider at an in-network facility and later receives an unexpected or “surprise” bill for the balance between the provider’s charge and the insurer’s allowable amount. This practice of “balance billing” can leave patients with large bills for services that the patient did not know were out-of-network. At least 25 states have implemented measures to address surprise billing, and several other states have pending legislation regarding this issue. However, these state laws vary significantly and generally do not apply to self-insured employer-sponsored health plans, which are federally regulated.

In addition to the states, both chambers of Congress are actively pursuing a legislative fix for surprise billing. Both the Senate Health, Education, Labor, and Pensions (“HELP”) Committee and the House Energy and Commerce Committee are considering legislation to address this issue. While both versions use a rate-setting approach for settling out-of-network claims, the Energy and Commerce bill adds an arbitration backstop for some disputed claims. Senate HELP leaders have indicated that they are working with senators on potential changes to their legislation before a floor vote. On the House side, other committees with jurisdiction over the issue, such as Ways & Means and Education & Labor, could consider the legislation before the full House takes action on it. The addition of an arbitration requirement is a key item of interest for providers. Without it, out-of-network providers will likely be forced to accept a set reimbursement rate. Particularly if reimbursement is set based on the local in-network rate, payers will have a strong disincentive to agree to higher rates with contracted providers.

Although the federal debate continues, a look at the various approaches under state law may give providers a peek at how states are dealing with this issue and what may be next. Key elements of current state law tend to include one (or a combination) of the following: (i) a prohibition on surprise billing for emergency services; (ii) notice and consent requirements; (iii) mandated dispute resolution to resolve payment disputes between the provider and the insurer; and (iv) in some cases, even reimbursement caps.

For a more in-depth discussion on surprise billing, join Hall Render attorneys in an upcoming webinar on September 24 where we will discuss the ongoing debate surrounding surprise billing, pending legislation at the state and federal level and the potential impact of these proposals on providers and consumers alike. Click [here](#) to register for the webinar.

For more information on surprise billing, please contact:

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