Policy Brief

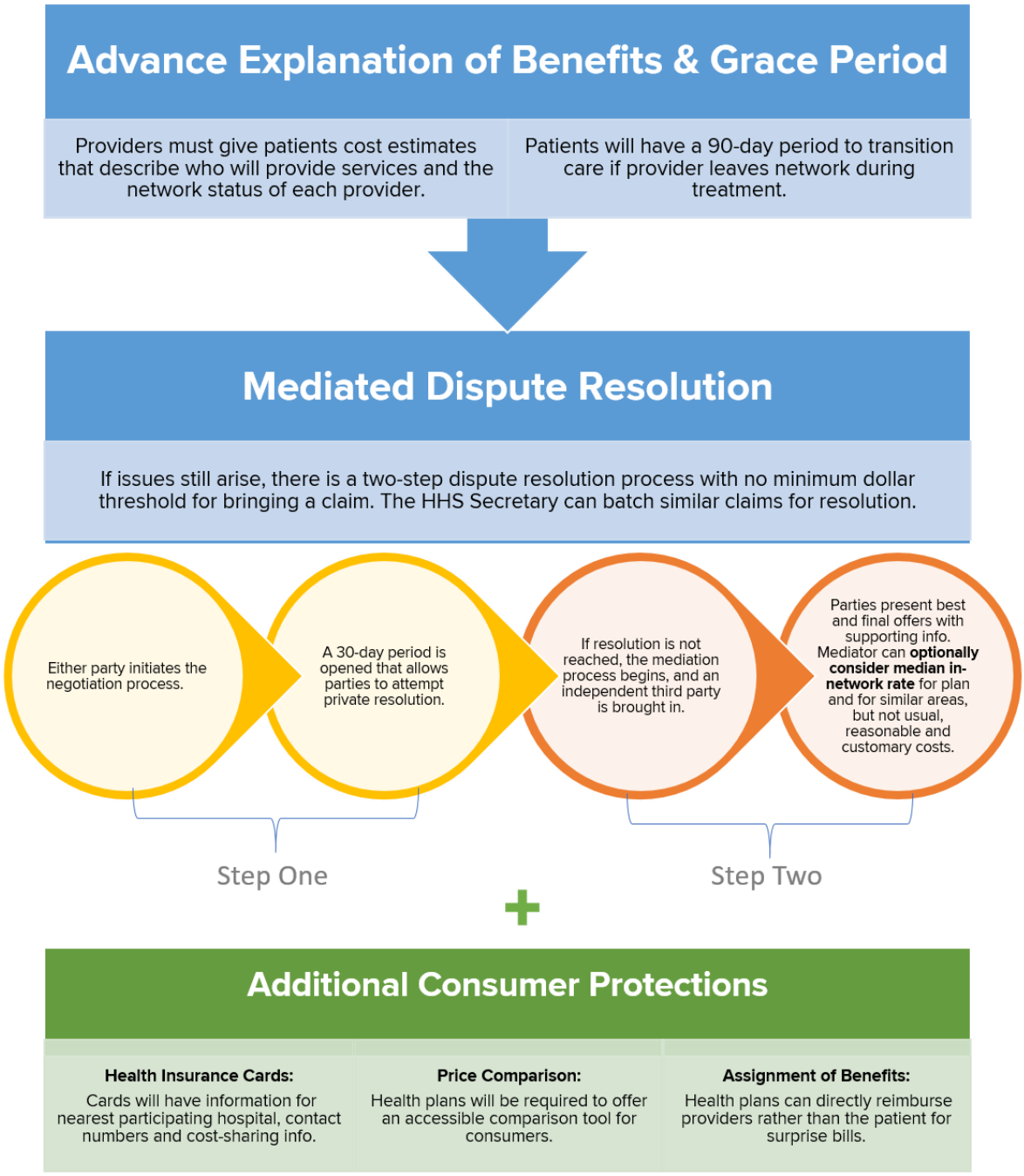
February 14, 2020

Education and Labor, Ways and Means Compete on Surprise Billing Solutions

Surprise billing legislation was poised to be one of fall session's biggest achievements—a sort of closing salvo for retiring Senator Lamar Alexander (R-TN), who championed the issue in the GOP-led Senate. Strong resistance from provider and insurance lobbies, however, ultimately stalled Sen. Alexander's bill for the fall. Now that spring session is in full swing, two House proposals have surfaced on the issue. One from Ways and Means seeks to chart out a process without a minimum disputable amount or any mandatory controversial rate-setting terms. The other from Education and Labor more closely aligns with Alexander's familiar baseball-style arbitration plan. Learn about proposed surprise billing legislation, key provisions of the proposals and what to expect this spring below.

Ways and Means' Approach

The Consumer Protections Against Surprise Medical Bills Act is a bipartisan effort introduced by Rep. Kevin Brady (R-TX, pictured above) and Rep. Richard Neal (D-MA) out of the Ways and Means Committee. To some surprise, the bill has already been endorsed by groups like the American Hospital Association, though it only marginally protects providers due to the lack of an interim payment option. It could also still result in steep commercial reimbursement cuts. Further, health care groups worry that the bill does little to encourage insurers to update their network directories regularly. Click the image below to see a summary of the proposed Ways and Means legislation, which passed committee on Wednesday.



Education and Labor's Approach

Concurrently, Rep. Bobby Scott (D-VA) and Rep. Virginia Foxx (R-NC) introduced a bill from the Education and Labor (E&L) Committee that closely tracks Alexander's proposed legislation, including a median in-network rate benchmark and binding baseball-style arbitration. E&L passed this bill on Tuesday after contentious debate. Though more easily reconciled with the Senate approach, House members, including former Health and Human Services Secretary Donna Shalala (D-FL), have spoken out against the bill.

Spring Session Predictions

With impeachment over, elections looming and a Health Extenders package that expires on May 22nd, Congress has some work to do. States are already passing their own balance billing prohibitions, and health news media are driving grassroots activism with regular reporting on extraordinary surprise billing

stories. There's a nationwide demand for action, but there isn't yet a Congressional proposal that balances interests. Sen. Alexander has pledged to keep fighting, and the new Ways and Means approach shows mere incremental potential for not alienating hospitals and insurers in a critical year for patient costs and the incumbent administration's health care record.

Annual Rule Governing Health Insurance Exchanges Proposed

CMS has released the proposed 2021 Notice of Benefit and Payment Parameters rule. Better known as the "payment notice," the rule governs the regulatory and financial standards of the Health Insurance Exchanges—the online marketplace where more than 11 million Americans purchase coverage. The proposed rule includes changes to automatic reenrollment, Medical Loss Ratio (MLR) standards and prescription drug out-of-pocket costs. Most significantly, changes to the enrollment process could expose enrollees to surprise bills by automatically reenrolling them without tax credits. Click here for a summary of the proposed rule.

Automatic Enrollment Changes Could Disrupt Coverage

Currently, consumers who maintain eligibility for their qualified health plan are automatically reenrolled in that same plan the next year. Under the proposed rule, consumers who are eligible for plans with $0 premiums would be automatically reenrolled *without* their tax credits. Regardless of their eligibility for a no-premium plan, these lower-income enrollees would then be expected to pay more expensive premium costs. CMS hopes that this will educate these consumers to enroll themselves instead next time. Health policy experts worry that the change will increase confusion and disrupt coverage for those who are accustomed to the current auto-enrollment process.

Medical Loss Ratio Excludes Drug Rebates, Includes Wellness Incentives

Under the Affordable Care Act (ACA), insurers are required to spend either 80 or 85% of their premium revenue on health care claims or quality improvement activity expenses. CMS proposes requiring that insurers deduct prescription drug rebates from incurred claims under the MLR. Insurance companies in the individual market could, however, include the cost of wellness incentives as a quality improvement activity—something that was previously limited to those in the group market.

Insurers Given Autonomy Over Out-of-Pocket Limits

Under the notice, insurers can (but are not required to) count the dollar value of drug coupons towards a consumer's annual out-of-pocket cost limit. Previously, insurers could exclude the coupon from counting only when the coupon was for a brand-name drug with a generic equivalent. Under the new proposal, CMS gives insurers full discretion on whether the coupon should count toward an enrollee's limit.

MA and Part D Proposals Released

On February 5th, the Centers for Medicare and Medicaid Services (CMS) released a proposed rule and an advanced notice for the Medicare Advantage (MA) and Part D Prescription Drug Benefit programs. These proposals reflect the current Administration's health priorities of improving kidney care and transparency for beneficiaries. For example, the proposals include expanding MA enrollment to End Stage Renal Disease (ESRD) patients and requiring Part D plan sponsors to implement a Real-Time Benefit Tool (RTBT). MA and Part D both have strong bipartisan support and are growing, with MA now accounting for 34% of all Medicare beneficiaries, making these programs an effective platform for CMS to launch new initiatives. Below are highlights of the advanced notice and proposed rule.

Advance Notice (Part I and II) Highlights

Several proposals in the notice are part of an on-going, three-year phase-in for planned changes to the MA risk adjustment model. These proposals include:

- Transitioning from Risk Adjustment Processing System (RAPS) data to encounter data
    - Calculating CY 2020 risk scores by 50% RAPS data and 50% encounter data
    - Calculating CY 2021 risk scores by 25% RAPS data and 75% encounter data
- Including kidney disease and behavioral health as payment conditions in the MA risk adjustment
- Estimating a net year-over-year revenue increase by 0.93% in CY 2021 for MA plans
- Incorporating new measure concepts into the Star Ratings quality measurement program

Proposed Rule Highlights

- Modifying the MA and Part D Quality Rating System
- Expanding enrollment in MA to individuals with ESRD starting in 2021

- Requiring Part D sponsors to have a Drug Management Program
- Requiring that sponsors implement a RTBT by January 2022
- Allowing sponsors to establish up to two specialty tiers and give them the flexibility to determine which drugs are "preferred" for lower cost sharing

President Trump Releases FY2021 Proposed Budget

The Trump Administration released the FY 2021 budget on February 10, 2020 with a proposed spend of $4.8 trillion. If enacted, the Department of Health and Human Services would see a 10% reduction overall. Notable health highlights from the budget include:

- A 9% cut to the Center for Disease Control and Prevention's budget. However, some specific infectious disease programs, such as those targeting HIV as part of President Trump's agenda, are continuing to receive significant inflows.
- A continued effort to relocate the Agency for Health Research and Quality into the National Institutes of Health and reduce its funding.
- A proposed 3% spending increase limit for Medicaid and a push for work requirements.
- $74 million in new spending for maternal health programs and a $5 billion investment in combating the opioid epidemic.

Congress must approve the budget, which functions mainly as a representation of the President's priorities. However, with a Democratic House, it is unlikely that the deep cuts to safety-net programs will be approved.

Election Watch 2020: News from the Campaign Trail

The journey to the 2020 presidential elections continues to progress. Below are the latest updates from the campaign trail:

- Bernie Sanders has won the New Hampshire primary, with about a 1% lead over Pete Buttigieg. Amy Klobuchar, Elizabeth Warren and Joe Biden rounded out the top five.
- 24 pledged delegates were awarded in New Hampshire: Sanders and Buttigieg won 9 delegates while Klobuchar was awarded 6. Candidates must win 1,990 delegates to win the nomination.

- Andrew Yang has announced that he will suspend his presidential campaign, saying, "I don't want to take people's donations and support if I don't think we're going to win." Michael Bennet and Deval Patrick have also dropped out.
- Candidates, with the exception of Mike Bloomberg, now head to Nevada for a caucus on February 22nd and to South Carolina for a primary on the 29th.

A Look at the Federal Register

Policy Changes to Medicare Advantage, Part D, Medicaid

CMS released a proposed rule and advanced notice outlining contract year 2021 and 2022 changes to Medicare Advantage (MA), Part C and Part D. The proposed rule also includes proposals for allowing ESRD beneficiaries to enroll in MA. Overall, MA plans are expected to see a 1% year-over-year payment increase in 2021. **Comments are due April 6, 2020.** Learn more about key provisions.

Updates to DMEPOS Prior Authorization List

CMS released a final rule adding six new HCPCS codes for Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) that require prior authorization as a condition of payment.

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