

116TH CONGRESS
1ST SESSION

H. R. 861

To amend title XVIII of the Social Security Act to prevent surprise billing practices, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 30, 2019

Mr. DOGGETT (for himself, Mr. CARTWRIGHT, Ms. JUDY CHU of California, Mr. CICILLINE, Mr. COHEN, Mr. COURTNEY, Mr. DANNY K. DAVIS of Illinois, Ms. DELAURO, Mr. GRIJALVA, Ms. HILL of California, Ms. JAYAPAL, Ms. KAPTUR, Ms. KELLY of Illinois, Mr. KHANNA, Ms. KUSTER of New Hampshire, Ms. LEE of California, Mr. LEWIS, Ms. MOORE, Ms. NORTON, Ms. PINGREE, Mr. POCAN, Ms. VELÁZQUEZ, Ms. SCHAKOWSKY, Mr. LIPINSKI, Ms. DEGETTE, Mr. ESPAILLAT, Mr. WELCH, Ms. PORTER, and Mr. LANGEVIN) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title XVIII of the Social Security Act to prevent surprise billing practices, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “End Surprise Billing
5 Act of 2019”.

1 **SEC. 2. PREVENTING SURPRISE BILLING PRACTICES.**

2 (a) **CONDITION OF PARTICIPATION IN MEDICARE.—**

3 Section 1866 of the Social Security Act (42 U.S.C.
4 1395cc) is amended—

5 (1) in subsection (a)(1)—

6 (A) in subparagraph (X), by striking
7 “and” at the end;

8 (B) in subparagraph (Y), by striking at
9 the end the period and inserting “, and”; and

10 (C) by inserting after such subparagraph
11 (Y) the following new subparagraph:

12 “(Z) in the case of a hospital or critical ac-
13 cess hospital, to adopt and enforce a policy to
14 ensure compliance with the requirements of
15 paragraphs (1) and (4) of subsection (l) and to
16 meet the requirements of such paragraphs (re-
17 lating to the prevention of surprise billing prac-
18 tices).”; and

19 (2) by adding at the end the following new sub-
20 section:

21 “(l) **REQUIREMENT FOR PURPOSES OF PREVENTING**
22 **SURPRISE BILLING.—**

23 “(1) **IN GENERAL.—**For purposes of subsection
24 (a)(1)(Z), the requirements described in this para-
25 graph are, with respect to a hospital or critical ac-
26 cess hospital, in the case of an individual with health

1 benefits coverage, including benefits under a group
2 health plan or health insurance coverage offered in
3 the group or individual market (as such terms are
4 defined in section 2791 of the Public Health Service
5 Act) or under this title, title XIX, title XXI, or an-
6 other government-sponsored health plan or program,
7 who seeks to be furnished items or services or is to
8 be furnished items or services by the hospital or crit-
9 ical access hospital (including by a provider of serv-
10 ices or supplier that furnishes items or services at
11 the hospital or critical access hospital), that the hos-
12 pital or critical access hospital—

13 “(A)(i) provides to the individual (or to a
14 representative of the individual), on the date on
15 which the individual makes an appointment to
16 be furnished such items or services, if applica-
17 ble, and on the date on which the individual is
18 furnished such items and services, a written no-
19 tice specified by the Secretary through rule-
20 making that—

21 “(I) contains the information required
22 under paragraph (2); and

23 “(II) is signed and dated by the indi-
24 vidual; and

1 “(ii) retains a copy of each such notice for
2 a period specified through rulemaking by the
3 Secretary; and

4 “(B) in the case that such hospital or crit-
5 ical access hospital (or provider of services or
6 supplier furnishing services at such hospital or
7 critical access hospital) is not within the health
8 care provider network or otherwise a partici-
9 pating provider of services or supplier with re-
10 spect to such health benefits coverage of such
11 individual, obtains from the individual the con-
12 sent described in paragraph (3).

13 “(2) INFORMATION INCLUDED IN NOTICE.—
14 The notice described in paragraph (1)(A) shall in-
15 clude, with respect to an individual with health bene-
16 fits coverage described in paragraph (1) who seeks
17 to be furnished items or services or is to be fur-
18 nished items or services by a hospital or critical ac-
19 cess hospital (including by a provider of services or
20 supplier that furnishes items or services at the hos-
21 pital or critical access hospital), a notification of
22 each of the following:

23 “(A) Whether the hospital or critical ac-
24 cess hospital is not within the health care pro-
25 vider network or otherwise a participating pro-

1 vider of services or supplier with respect to such
2 health benefits coverage of such individual.

3 “(B) If the hospital or critical access hos-
4 pital is not within such network or otherwise
5 such a participating provider or supplier, the
6 estimated amount that the hospital or critical
7 access hospital will charge the individual for
8 such items and services in excess of any cost
9 sharing obligations that the individual would
10 otherwise have under such health benefits cov-
11 erage for such items and services if the hospital
12 or critical access hospital were within such net-
13 work or otherwise participating in such cov-
14 erage.

15 “(C) Whether any of the providers of serv-
16 ices or suppliers furnishing items or services at
17 the hospital or critical access hospital who will
18 furnish the items or services to the individual
19 are not within the health care provider network
20 or otherwise a participating provider of services
21 or supplier with respect to such health benefits
22 coverage of such individual.

23 “(D) If any of such providers of services or
24 suppliers are not within such network or other-
25 wise such a participating provider or supplier,

1 the estimated amount that such providers of
2 services or suppliers will charge the individual
3 for such items and services in excess of any cost
4 sharing obligations that the individual would
5 otherwise have for such items and services if
6 the providers of services or suppliers were with-
7 in the such network or otherwise participating
8 in such coverage.

9 “(3) CONSENT DESCRIBED.—For purposes of
10 paragraph (1)(B), the consent described in this
11 paragraph, with respect to an individual with health
12 benefits coverage described in paragraph (1) who is
13 to be furnished items or services by a hospital or
14 critical access hospital (or provider of services or
15 supplier furnishing services at such hospital or crit-
16 ical access hospital) that is not within the health
17 care provider network or otherwise a participating
18 provider of services or supplier with respect to such
19 health benefits coverage of such individual, is a doc-
20 ument specified by the Secretary through rule-
21 making that is signed by the individual (or by a rep-
22 resentative of the individual) not less than 24 hours
23 prior to the individual being furnished such items or
24 services by such hospital, critical access hospital,

1 provider of services, or supplier, respectively, and
2 that—

3 “(A) acknowledges that the individual has
4 been—

5 “(i) provided with a written estimate
6 of the charge that the individual will be as-
7 sessed for the items or services anticipated
8 to be furnished to the individual by the
9 hospital, critical access hospital, provider
10 of services, or supplier that is not within
11 such network or otherwise such a partici-
12 pating provider of services or supplier; and

13 “(ii) informed that the payment of
14 such charge by the individual will not ac-
15 crue toward any limitation that the health
16 benefits coverage places upon the annual
17 out-of-pocket expenses to be paid by the
18 individual or upon the in-network deduct-
19 ible to be paid by the individual; and

20 “(B) documents the consent of the indi-
21 vidual to—

22 “(i) be furnished with such items or
23 services by such hospital, critical access
24 hospital, provider of services, or supplier,
25 as applicable; and

1 “(ii) in the case that the individual is
2 so furnished such items or services, be
3 charged an amount approximate to the es-
4 timated charge described in subparagraph
5 (A)(i) with respect to such items or serv-
6 ices.

7 “(4) LIMITATIONS ON PAYMENT BY INDIVIDUAL.—For purposes of subsection (a)(1)(Z), the
8 requirements under this paragraph are the following:

10 “(A) IN CASE OF NONCOMPLIANCE BY
11 HOSPITALS AND CRITICAL ACCESS HOS-
12 PITALS.—In the case of an individual with
13 health benefits coverage described in paragraph
14 (1) who is furnished items or services by a hos-
15 pital or critical access hospital (or provider of
16 services or supplier furnishing services at such
17 hospital or critical access hospital) that is not
18 within the health care provider network or oth-
19 erwise a participating provider of services or
20 supplier with respect to such health benefits
21 coverage of such individual, if the hospital or
22 critical access hospital does not comply with the
23 requirements of paragraph (1) with respect to
24 the furnishing of such items or services to such
25 individual, the hospital or critical access hos-

1 pital (or, as applicable, the provider of services
2 or supplier furnishing such items or services to
3 such individual) may not charge the individual
4 more than the amount that the individual would
5 have been required to pay in cost sharing if
6 such items or services had been furnished by a
7 hospital or critical access hospital, as applicable
8 (or by a provider of services or supplier, as ap-
9 plicable) that is within such network or that is
10 otherwise such a participating provider of serv-
11 ices or supplier.

12 “(B) IN CASE OF SAME-DAY EMERGENCY
13 SERVICES.—In the case of an individual with
14 health benefits coverage described in paragraph
15 (1) who is furnished items or services by a hos-
16 pital or critical access hospital (or provider of
17 services or supplier furnishing services at such
18 hospital or critical access hospital) that is not
19 within the health care provider network or oth-
20 erwise a participating provider of services or
21 supplier with respect to such health benefits
22 coverage of such individual on the same date on
23 which the individual makes an appointment for
24 such items or services (or otherwise presents at
25 the hospital or critical access hospital for such

1 services such as in the case of items and serv-
2 ices furnished with respect to an emergency
3 medical condition, as defined in section
4 1867(e)), the hospital or critical access hospital
5 (or, as applicable, the provider of services or
6 supplier furnishing such items or services to
7 such individual) may not charge the individual
8 more than the amount that the individual would
9 have been required to pay in cost sharing if
10 such items or services had been furnished by a
11 hospital or critical access hospital, as applicable
12 (or by a provider of services or supplier, as ap-
13 plicable) that is within such network or that is
14 otherwise such a participating provider of serv-
15 ices or supplier.”.

16 (b) EFFECTIVE DATE.—The amendments made by
17 subsection (a) shall apply with respect to agreements
18 under section 1866(a)(1) of the Social Security Act (42
19 U.S.C. 1395cc(a)(1)) that are filed with the Secretary of
20 Health and Human Services on a date that is not less
21 than 12 months after the date of the enactment of this
22 Act.

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