

115TH CONGRESS
1ST SESSION

S. 284

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

IN THE SENATE OF THE UNITED STATES

FEBRUARY 2, 2017

Mr. BROWN introduced the following bill; which was read twice and referred to the Committee on Finance

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 2017”.

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

7 (a) CONDITION OF PARTICIPATION IN MEDICARE.—

8 Section 1866 of the Social Security Act (42 U.S.C.

9 1395cc) is amended—

10 (1) in subsection (a)(1)—

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

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

5 (C) by inserting after such subparagraph
6 (Y) the following new subparagraph:

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

14 (2) by adding at the end the following new sub-
15 section:

16 “(l) REQUIREMENT FOR PURPOSES OF PREVENTING
17 SURPRISE BILLING.—

18 “(1) IN GENERAL.—For purposes of subsection
19 (a)(1)(Z), the requirements described in this para-
20 graph are, with respect to a hospital or critical ac-
21 cess hospital, in the case of an individual with health
22 benefits coverage, including benefits under a group
23 health plan or health insurance coverage offered in
24 the group or individual market (as such terms are
25 defined in section 2791 of the Public Health Service

1 Act) or under this title, title XIX, title XXI, or an-
2 other government-sponsored health plan or program,
3 who seeks to be furnished items or services or is to
4 be furnished items or services by the hospital or crit-
5 ical access hospital (including by a provider of serv-
6 ices or supplier that furnishes items or services at
7 the hospital or critical access hospital), that the hos-
8 pital or critical access hospital—

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

17 “(I) contains the information required
18 under paragraph (2); and

19 “(II) is signed and dated by the indi-
20 vidual; and

21 “(ii) retains a copy of each such notice for
22 a period specified through rulemaking by the
23 Secretary; and

24 “(B) in the case that such hospital or crit-
25 ical access hospital (or provider of services or

1 supplier furnishing services at such hospital or
2 critical access hospital) is not within the health
3 care provider network or otherwise a partici-
4 pating provider of services or supplier with re-
5 spect to such health benefits coverage of such
6 individual, obtains from the individual the con-
7 sent described in paragraph (3).

8 “(2) INFORMATION INCLUDED IN NOTICE.—

9 The notice described in paragraph (1)(A) shall in-
10 clude, with respect to an individual with health bene-
11 fits coverage described in paragraph (1) who seeks
12 to be furnished items or services or is to be fur-
13 nished items or services by a hospital or critical ac-
14 cess hospital (including by a provider of services or
15 supplier that furnishes items or services at the hos-
16 pital or critical access hospital), a notification of
17 each of the following:

18 “(A) Whether the hospital or critical ac-
19 cess hospital is not within the health care pro-
20 vider network or otherwise a participating pro-
21 vider of services or supplier with respect to such
22 health benefits coverage of such individual.

23 “(B) If the hospital or critical access hos-
24 pital is not within such network or otherwise
25 such a participating provider or supplier, the

1 estimated amount that the hospital or critical
2 access hospital will charge the individual for
3 such items and services in excess of any cost
4 sharing obligations that the individual would
5 otherwise have under such health benefits cov-
6 erage for such items and services if the hospital
7 or critical access hospital were within such net-
8 work or otherwise participating in such cov-
9 erage.

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

18 “(D) If any of such providers of services or
19 suppliers are not within such network or other-
20 wise such a participating provider or supplier,
21 the estimated amount that such providers of
22 services or suppliers will charge the individual
23 for such items and services in excess of any cost
24 sharing obligations that the individual would
25 otherwise have for such items and services if

1 the providers of services or suppliers were with-
2 in such network or otherwise participating in
3 such coverage.

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

22 “(A) acknowledges that the individual has
23 been—

24 “(i) provided with a written estimate
25 of the charge that the individual will be as-

1 sessed for the items or services anticipated
2 to be furnished to the individual by the
3 hospital, critical access hospital, provider
4 of services, or supplier that is not within
5 such network or otherwise such a partici-
6 pating provider of services or supplier; and

7 “(ii) informed that the payment of
8 such charge by the individual will not ac-
9 crue toward any limitation that the health
10 benefits coverage places upon the annual
11 out-of-pocket expenses to be paid by the
12 individual or upon the in-network deduct-
13 ible to be paid by the individual; and

14 “(B) documents the consent of the indi-
15 vidual to—

16 “(i) be furnished with such items or
17 services by such hospital, critical access
18 hospital, provider of services, or supplier,
19 as applicable; and

20 “(ii) in the case that the individual is
21 so furnished such items or services, be
22 charged an amount approximate to the es-
23 timated charge described in subparagraph
24 (A)(i) with respect to such items or serv-
25 ices.

1 “(4) LIMITATIONS ON PAYMENT BY INDIVIDUAL.—For purposes of subsection (a)(1)(Z), the
2 requirements under this paragraph are the following:
3

4 “(A) IN CASE OF NONCOMPLIANCE BY
5 HOSPITALS AND CRITICAL ACCESS HOSPITALS.—In the case of an individual with
6 health benefits coverage described in paragraph
7 (1) who is furnished items or services by a hospital or critical access hospital (or provider of
8 services or supplier furnishing services at such
9 hospital or critical access hospital) that is not
10 within the health care provider network or otherwise a participating provider of services or
11 supplier with respect to such health benefits
12 coverage of such individual, if the hospital or
13 critical access hospital does not comply with the
14 requirements of paragraph (1) with respect to
15 the furnishing of such items or services to such
16 individual, the hospital or critical access hospital (or, as applicable, the provider of services
17 or supplier furnishing such items or services to
18 such individual) may not charge the individual
19 more than the amount that the individual would
20 have been required to pay in cost sharing if
21 such items or services had been furnished by a
22
23
24
25

1 hospital or critical access hospital, as applicable
2 (or by a provider of services or supplier, as ap-
3 plicable) that is within such network or that is
4 otherwise such a participating provider of serv-
5 ices or supplier.

6 “(B) IN CASE OF SAME-DAY EMERGENCY
7 SERVICES.—In the case of an individual with
8 health benefits coverage described in paragraph
9 (1) who is furnished items or services by a hos-
10 pital or critical access hospital (or provider of
11 services or supplier furnishing services at such
12 hospital or critical access hospital) that is not
13 within the health care provider network or oth-
14 erwise a participating provider of services or
15 supplier with respect to such health benefits
16 coverage of such individual on the same date on
17 which the individual makes an appointment for
18 such items or services (or otherwise presents at
19 the hospital or critical access hospital for such
20 services such as in the case of items and serv-
21 ices furnished with respect to an emergency
22 medical condition, as defined in section
23 1867(e)), the hospital or critical access hospital
24 (or, as applicable, the provider of services or
25 supplier furnishing such items or services to

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

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

○