

The Daily Dish

Ending Surprise Medical Bills

DOUGLAS HOLTZ-EAKIN | DECEMBER 16, 2020

Eakinomics: Ending Surprise Medical Bills

One of the joys of working in Washington is that people ask you all the time what Congress is going to do. And one of the joys of being me is that people keep asking even though I'm seemingly never right! Until now.

As nicely summarized by AAF's Chris Holt, Congress has evidently settled on an agreement to stop surprise medical bills (SMBs) known as the No Surprises Act. SMBs were one of three issues that I was "sure" that Congress would act on in 2020, the others being prescription drug prices and online privacy legislation. Having nearly struck out, Congress saved me with a surprise (in every sense of that word) agreement late last week.

Recall that a SMB occurs when an insured patient receives care at an in-network facility, but one or more of the providers are not in the patient's insurance network. Or, an insured patient could receive emergency care at an out-of-network facility. The basic goal of policymakers has been to shield the patient from paying the surprise bill. By process of elimination, this means either the insurer picks up the tab or the provider gets reimbursed at the lower, in-network rate, or some combination of both. The years-long food fight on SMBs has revolved around how that allocation gets made.

During that period, Holt writes, "31 states—most recently Michigan—have enacted some level of SMB protections for patients, and a number of states including Ohio and Pennsylvania are debating new legislation. As detailed in recent American Action Forum research, broad consensus has emerged in the various state approaches. States have widely agreed that patients should be protected from SMBs, and three-fifths of states have undertaken measures to do so. Additionally, over two-thirds of states that regulate SMBs mediate payment disputes between payers and providers for out-of-network services. Finally, more than half of the states regulating SMBs have included an independent dispute

resolution process (IDRP) as part of their approach, including most states that enacted SMB laws within the last year."

Still, federal legislation is desirable because the Employee Retirement Income Security Act of 1974 preempts state regulation of the self-insured health plans typically run by large employers. Thus, only federal legislation can address SMBs associated with those plans. The No Surprises Act hits the main point: Patients are protected from unexpected, out-of-network medical bills. Regarding the split of the burden between insurers and providers, there were three main points of contention: whether to require an interim payment prior to entering an IDRP, the means for setting the payment as part of IDRP, and whether to include a dollar threshold for claims to be eligible for IDRP. In each of these cases, the legislation moves toward the positions favored by providers.

So, the odds look very good that SMBs will be addressed this year, at long last. Get ready for privacy legislation and drug price legislation in 2021!