



The Daily Dish

Surprise Medical Bills

DOUGLAS HOLTZ-EAKIN | SEPTEMBER 8, 2020

Eakinomics: Surprise Medical Bills

If you roll the clock back to the beginning of 2020, the top health policy items would have been the price of prescription drugs and the resolution of surprise medical bills (SMBs). Most observers – Eakinomics included – anticipated that Congress would pass legislation addressing each. Enter the pandemic and now it appears that nothing will pass Congress, at least before the election.

But that does not mean nothing is going on. As AAF's Christopher Holt notes in his detailed [survey](#), "In fact, 30 states have enacted some level of SMB protections for patients, and a number of states including Michigan, Ohio, and Pennsylvania are currently debating new legislation." Even more important, the states appear to have coalesced around a few general approaches. This suggests, first, that it is possible to get bipartisan agreement on a way to address SMBs and, second, that the state actions provide a concise menu of federal options.

Recall that a surprise medical bill occurs when the patient receives a bill from a provider who is not in her insurance company's network. The canonical circumstances are emergency care where there is no choice but to use out-of-network (OON) providers or non-emergency care where the patient assumes that all the providers are in network, but at least one is not. A common example is a scheduled surgery at an in-network hospital but where the anesthesiologist is out-of-network.

What have the states done? "State lawmakers and regulators have largely unified around the principle of holding patients harmless for any additional costs beyond their in-network deductibles and cost-sharing requirements when they receive OON services due to circumstances beyond their control, and further that patients should be excluded from payment disputes between payers and providers."

That's great. But if the patient does not pay the provider's bill, that leaves only limited possibilities. At one extreme, the provider could get no reimbursement. At the other, the insurance company could cover the bill as charged. Or, there could be an insurer-provider settlement for an amount somewhere in between.

Of the 30 states that have acted, four have a regulated payment rate. Another 10 have mandated an independent dispute resolution process (IDRP) on insurers and providers. Another seven have essentially combined these approaches by regulating an initial, up-front payment and then having bargaining over any additional payment. For those keeping score at home, that totals 21 states, so nine states have no specified solution to the payment-determination process.

At least to my eye, two lessons seem clear. First, there is still a need for a federal standard to address SMBs in all circumstances. Second, the work in the states is a good roadmap for Congress in drafting legislation. Details will still matter, but the basic elements have been laid out by the states.