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Consensus over Solutions to Surprise Medical Bills Continue to Remain Elusive

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Over the next few months, Congress will attempt to pass legislation to tackle the issue of surprise billing where patients face unexpected and often exorbitantly high bills from out-of-network hospitals or physicians. There is bipartisan and bicameral agreement on the importance of holding patients harmless from this financial burden, which has only become more costly for patients in both inpatient and emergency department settings. However, there are deep divisions as to how to resolve billing disputes in circumstances where patients find themselves out of network.

The primary stakeholders to be impacted by any forthcoming legislation – insurers and providers – are diligently advocating for their preferred legislative proposals. With the goal of ensuring a transparent and predictable payment system, insurers support the creation of a benchmark-based payment. Concerned about the potential for narrower networks and the use of in-network payment rates, providers are pushing for independent dispute resolution (IDR) or arbitration in lieu of a benchmark rate.

Before August recess, the Senate Health, Education, Labor and Pensions (HELP) Committee passed legislation that addresses surprise billing with benchmarking by tying payment to median in-network rates. The House Energy and Commerce Committee passed similar surprise billing legislation, which was led by Committee Chair Frank Pallone (D-NJ) and Ranking Member Greg Walden (R-OR). However, during markup of the legislation, the Committee adopted Representatives Raul Ruiz's (D-CA) and Larry Bucshon's (R-IN) amendment that provides an independent dispute resolution backstop. That is, if the benchmark payment is not agreed to, either the provider or insurer can request an IDR process if a qualifying claim exceeds \$1,250. Senator Bill Cassidy (R-LA) on the HELP Committee has long supported arbitration and is pushing the HELP Committee Chair Lamar Alexander (R-TN) to adopt a similar compromise.

Meanwhile, the House Ways and Means and Education and Labor Committees have yet to take up surprise billing, but intend to do so when they return from recess. Reports indicate the Ways and Means Committee intends to draft its own legislation. The Education and Labor Committee is expected to markup the existing Energy and Commerce legislation for which it shares jurisdiction, which could include Reps. Pallone's and Walden's benchmark-only proposal and Reps. Ruiz's and Phil Roe's (R-TN) IDR-only proposal. Alternatively, time-permitting, the Committee could take up a new legislative compromise to move through the chamber.

What to Watch: Will the House Ways and Means and Education and Labor Committees adopt benchmarking with an arbitration backstop or will members pick one approach over the other? Will the Senate follow suit or maintain its benchmarking approach?