

116TH CONGRESS
1ST SESSION

H. R. 3784

To amend title XXVII of the Public Health Service Act and title XI of the Social Security Act to prohibit surprise billing with respect to air ambulance services.

IN THE HOUSE OF REPRESENTATIVES

JULY 16, 2019

Mr. NEGUSE introduced the following bill; which was referred to the
Committee on Energy and Commerce

A BILL

To amend title XXVII of the Public Health Service Act and title XI of the Social Security Act to prohibit surprise billing with respect to air ambulance services.

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 “Air Ambulance Afford-
5 ability Act of 2019”.

6 **SEC. 2. PROHIBITING SURPRISE BILLING WITH RESPECT**
7 **TO AIR AMBULANCE SERVICES.**

8 (a) AIR AMBULANCE SERVICES.—

1 (1) IN GENERAL.—Section 2719A of the Public
2 Health Service Act (42 U.S.C. 300gg–19a) is
3 amended by adding at the end the following new
4 subsections:

5 “(e) AIR AMBULANCE SERVICES.—

6 “(1) IN GENERAL.—Subject to paragraph (2),
7 in the case of air ambulance services furnished to a
8 participant, beneficiary, or enrollee of a health plan
9 (as defined in paragraph (3)(A)) by a nonpartici-
10 pating provider (as defined in paragraph (3)(C)), the
11 plan—

12 “(A) shall not impose on such participant,
13 beneficiary, or enrollee a cost-sharing amount
14 (expressed as a copayment amount or coinsur-
15 ance rate) for such services so furnished that is
16 greater than the cost-sharing amount that
17 would apply under such plan had such services
18 been furnished by a participating provider;

19 “(B) shall calculate such cost-sharing
20 amount as if the negotiated rate that would
21 have been charged by such participating pro-
22 vider for such services were equal to the
23 amount determined in accordance with sub-
24 section (f) for such services (or, in the case of
25 such services furnished in a State described in

1 paragraph (3)(E)(i), the amount determined by
2 such State for such services in accordance with
3 the method described in such paragraph);

4 “(C) shall pay to such provider furnishing
5 such services to such participant, beneficiary, or
6 enrollee the amount by which the recognized
7 amount (as defined in paragraph (3)(E)) for
8 such services exceeds the cost-sharing amount
9 imposed for such services (as determined in ac-
10 cordance with subparagraphs (A) and (B)); and

11 “(D) shall count toward any deductible or
12 out-of-pocket maximums applied under the plan
13 any cost-sharing payments made by the partici-
14 pant, beneficiary, or enrollee with respect to
15 such services so furnished in the same manner
16 as if such cost-sharing payments were with re-
17 spect to services furnished by a participating
18 provider.

19 “(2) EXCEPTION FOR CERTAIN SERVICES.—The
20 provisions of paragraph (1) shall not apply in the
21 case of air ambulance services that—

22 “(A) are not furnished with respect to an
23 individual with an emergency medical condition
24 (as defined in subsection (b)(2)(A)); and

1 “(B) are furnished by a provider that is in
2 compliance with the requirement of section
3 1128A(t)(3) of the Social Security Act with re-
4 spect to such services.

5 “(3) DEFINITIONS.—In this subsection and
6 subsection (f):

7 “(A) HEALTH PLAN.—The term ‘health
8 plan’ means a group health plan and health in-
9 surance coverage offered by a health insurance
10 issuer in the group or individual market.

11 “(B) PROVIDER.—The term ‘provider’
12 means a provider of services or a supplier (as
13 such terms are defined in section 1861 of the
14 Social Security Act).

15 “(C) NONPARTICIPATING PROVIDER.—The
16 term ‘nonparticipating provider’ means, with re-
17 spect to air ambulance services and a group
18 health plan or health insurance coverage offered
19 by a health insurance issuer, a provider or sup-
20 plier of such services that is licensed by the
21 State involved to furnish such services and that
22 does not have a contractual relationship with
23 the plan or coverage for furnishing such serv-
24 ices.

1 “(D) PARTICIPATING PROVIDER.—The
2 term ‘participating provider’ means, with re-
3 spect to air ambulance services and a group
4 health plan or health insurance coverage offered
5 by a health insurance issuer, a provider or sup-
6 plier of such services that is licensed by the
7 State involved to furnish such services and that
8 has a contractual relationship with the plan or
9 coverage for services.

10 “(E) RECOGNIZED AMOUNT.—The term
11 ‘recognized amount’ means, with respect to air
12 ambulance services—

13 “(i) in the case of such services fur-
14 nished in a State that has in effect a State
15 law that provides for a method for deter-
16 mining the amount of payment that is re-
17 quired to be covered by a health plan or
18 health insurance issuer offering group or
19 individual health insurance coverage regu-
20 lated by such State in the case of a partici-
21 pant, beneficiary, or enrollee covered under
22 such plan or coverage and receiving such
23 services from a nonparticipating provider,
24 not more than the amount determined in
25 accordance with such law plus the cost-

1 sharing amount imposed for such services
2 (as determined in accordance with para-
3 graph (1)); or

4 “(ii) in the case of such services fur-
5 nished in a State that does not have in ef-
6 fect such a law, an amount determined in
7 accordance with the independent dispute
8 resolution process established under sub-
9 section (f).

10 “(f) INDEPENDENT DISPUTE RESOLUTION PROC-
11 ESS.—

12 “(1) ESTABLISHMENT.—

13 “(A) IN GENERAL.—Not later than 1 year
14 after the date of the enactment of this sub-
15 section, the Secretary, in consultation with the
16 Secretary of Labor, shall establish by regulation
17 an independent dispute resolution process (re-
18 ferred to in this subsection as the ‘IDR proc-
19 ess’) under which entities certified under para-
20 graph (2) (in this subsection referred to as ‘cer-
21 tified IDR entities’) resolve specified claims of
22 nonparticipating providers or health plans, tak-
23 ing into account the factors described in sub-
24 paragraph (C). Such process shall prohibit such
25 an entity from participating in the resolution of

1 such a claim if such entity has a conflict of in-
2 terest with respect to such provider, facility, or
3 the health plan involved.

4 “(B) SPECIFIED CLAIM.—For purposes of
5 subparagraph (A), the term ‘specified claim’
6 means a claim by a nonparticipating provider or
7 health plan that, with respect to air ambulance
8 services furnished by such provider for which a
9 health plan is required to make payment pursu-
10 ant to subsection (e)(1), is made under the IDR
11 process not later than 30 days after the services
12 are furnished.

13 “(C) FACTORS.—The factors described in
14 this subparagraph include—

15 “(i) commercially reasonable rates for
16 comparable services furnished in the same
17 geographic area (which shall take into con-
18 sideration in-network rates for that geo-
19 graphic area and not charges); and

20 “(ii) other factors that may be sub-
21 mitted at the discretion of either party,
22 which may include—

23 “(I) the level of training, edu-
24 cation, experience, and quality and

1 outcomes measurements of the pro-
2 vider;

3 “(II) the circumstances and com-
4 plexity of the particular dispute, in-
5 cluding the time and place of the serv-
6 ice;

7 “(III) the market share held by
8 the provider or that of the plan;

9 “(IV) demonstration of good
10 faith efforts (or lack of good faith ef-
11 forts) made by the provider or the
12 plan to contract for negotiated rates,
13 if applicable; and

14 “(V) other relevant economic as-
15 pects of provider reimbursement for
16 the same specialty within the same ge-
17 ographic area.

18 “(2) CERTIFICATION OF ENTITIES.—

19 “(A) PROCESS OF CERTIFICATION.—As
20 part of the regulation described in paragraph
21 (1), the Secretary, in consultation with the Sec-
22 retary of Labor, shall establish a certification
23 process under which eligible entities may be cer-
24 tified to carry out the IDR process.

1 “(B) ELIGIBILITY.—For purposes of sub-
2 paragraph (A), an eligible entity is an entity
3 that is a nongovernmental entity (such as the
4 American Arbitration Association).

5 “(3) SELECTION OF CERTIFIED IDR ENTITY
6 FOR A SPECIFIED CLAIM.—With respect to the reso-
7 lution of a specified claim under the IDR process,
8 the health plan and the nonparticipating provider in-
9 volved shall agree on a certified IDR entity to re-
10 solve such claim. In the case that such plan and
11 such provider cannot so agree, such an entity shall
12 be selected by the Secretary at random.

13 “(4) PAYMENT DETERMINATION.—

14 “(A) TIMING.—A certified IDR entity that
15 receives a request from a nonparticipating pro-
16 vider or health plan under this subsection shall,
17 not later than 30 days after receiving such re-
18 quest, determine the amount the health plan is
19 required to pay such provider or facility for
20 services described in paragraph (1), in accord-
21 ance with subparagraph (C), in the case that a
22 settlement described in subparagraph (B) is not
23 reached.

24 “(B) SETTLEMENT.—

1 “(i) IN GENERAL.—If such entity de-
2 termines that a settlement between the
3 health plan and the provider is likely, the
4 entity may direct the parties to attempt,
5 for a period not to exceed 10 days, a good
6 faith negotiation for a settlement.

7 “(ii) TIMING.—The period for a set-
8 tlement described in clause (i) shall accrue
9 towards the 30-day period required under
10 subparagraph (A).

11 “(C) DETERMINATION OF AMOUNT.—

12 “(i) DECISIONS.—The health plan and
13 the nonparticipating provider shall each
14 submit to the certified IDR entity a final
15 offer of payment with respect to services
16 which are the subject of the specified
17 claim. Such entity shall select the offer
18 that such entity determines is the most
19 reasonable based on the factors described
20 in paragraph (1)(C).

21 “(ii) EFFECT OF DECISION.—A deci-
22 sion of a certified IDR entity under clause
23 (ii)—

24 “(I) shall be binding; and

1 “(II) shall not be subject to judi-
2 cial review, except in a case described
3 in any of paragraphs (1) through (4)
4 of section 10(a) of title 9, United
5 States Code, as determined by the
6 Secretary in consultation with the
7 Secretary of Labor.

8 “(iii) COSTS OF INDEPENDENT DIS-
9 PUTE RESOLUTION PROCESS.—The party
10 whose calculation is not chosen under sub-
11 paragraph (B)(ii) shall be responsible for
12 paying all fees charged by the certified
13 IDR entity. If the parties reach a settle-
14 ment prior to completion of the IDR proc-
15 ess, the costs of such process shall be di-
16 vided equally between the parties, unless
17 the parties otherwise agree.

18 “(iv) PAYMENT.—Not later than 30
19 days after a decision described in clause (i)
20 is made, the health plan shall pay to the
21 provider or supplier of the services with re-
22 spect to which the specified claim is made
23 the amount determined under this sub-
24 section.

1 “(v) PUBLIC AVAILABILITY.—The cer-
2 tified IDR entity shall make each final
3 offer selected under clause (i) available to
4 the public. Any information submitted to
5 the entity by the health plan, provider, or
6 facility, other than such final offer, may
7 not be disclosed by the entity.”.

8 (2) EFFECTIVE DATE.—The amendments made
9 by this subsection shall apply with respect to plan
10 years beginning on or after January 1, 2021.

11 (b) PREVENTING CERTAIN CASES OF BALANCE
12 BILLING.—Section 1128A of the Social Security Act (42
13 U.S.C. 1320a–7a) is amended by adding at the end the
14 following new subsections:

15 “(t)(1) Subject to paragraph (2), in the case of an
16 individual with benefits under a health plan or health in-
17 surance coverage offered in the group or individual market
18 who is furnished on or after January 1, 2021, air ambu-
19 lance services by a nonparticipating provider (as defined
20 in section 2719A(e)(3) of the Public Health Service Act),
21 if such provider holds the individual liable for a payment
22 amount for such services so furnished that is more than
23 the cost-sharing amount for such services (as determined
24 in accordance with section 2719A(e)(1) of the Public
25 Health Service Act), such provider shall be subject, in ad-

1 dition to any other penalties that may be prescribed by
2 law, to a civil money penalty of not more than an amount
3 determined appropriate by the Secretary for each specified
4 claim.

5 “(2) Paragraph (1) shall not apply to a nonpartici-
6 pating provider, with respect to air ambulance services
7 furnished by the provider to a participant, beneficiary, or
8 enrollee of a health plan or health insurance coverage of-
9 fered by a health insurance issuer, if—

10 “(A) such services are not furnished with re-
11 spect to an individual with an emergency medical
12 condition (as defined in section 2719A(e)(3) of the
13 Public Health Service Act); and

14 “(B) the provider is in compliance with the re-
15 quirement of paragraph (3).

16 “(3)(A) For purposes of paragraph (2) and section
17 2719A(e)(2) of the Public Health Service Act, a non-
18 participating provider is in compliance with this para-
19 graph, with respect to air ambulance services furnished
20 by the provider to a participant, beneficiary, or enrollee
21 of a health plan or health insurance coverage offered by
22 a health insurance issuer, if the provider—

23 “(i)(I) provides to the participant, beneficiary,
24 or enrollee (or to a representative of the participant,
25 beneficiary, or enrollee), on the date on which the

1 participant, beneficiary, or enrollee schedules such
2 services, if applicable, and on the date on which the
3 individual is furnished such services—

4 “(aa) an oral explanation of the written
5 notice described in item (bb) and such docu-
6 mentation of the provision of such explanation,
7 as the Secretary determines appropriate; and

8 “(bb) a written notice specified, not later
9 than July 1, 2020, by the Secretary through
10 rulemaking that—

11 “(AA) contains the information re-
12 quired under subparagraph (B); and

13 “(BB) is signed and dated by the par-
14 ticipant, beneficiary, or enrollee; and

15 “(II) retains, for a period specified through
16 rulemaking by the Secretary, a copy of the docu-
17 mentation described in subclause (I)(aa) and the
18 written notice described in subclause (I)(bb); and

19 “(ii) obtains from the participant, beneficiary,
20 or enrollee (or representative) the consent described
21 in subparagraph (C).

22 “(B) For purposes of subparagraph (A)(i), the infor-
23 mation described in this subparagraph, with respect to a
24 nonparticipating provider and a participant, beneficiary,
25 or enrollee of a health plan or health insurance coverage

1 offered by a health insurance issuer, is a notification of
2 each of the following:

3 “(i) That the health care provider is a non-
4 participating provider with respect to the group
5 health plan or health insurance coverage.

6 “(ii) The estimated amount that such provider
7 will charge the participant, beneficiary, or enrollee
8 for such services involved.

9 “(C) For purposes of subparagraph (A)(ii), the con-
10 sent described in this subparagraph, with respect to a par-
11 ticipant, beneficiary, or enrollee of a group health plan or
12 health insurance coverage offered by a health insurance
13 issuer, who is to be furnished air ambulance services by
14 a nonparticipating provider, is a document specified by the
15 Secretary through rulemaking that—

16 “(i) is signed by the participant, beneficiary, or
17 enrollee (or by a representative of the participant,
18 beneficiary, or enrollee) not less than 24 hours prior
19 to the participant, beneficiary, or enrollee being fur-
20 nished such services by such provider;

21 “(ii) acknowledges that the participant, bene-
22 ficiary, or enrollee has been—

23 “(I) provided with a written estimate and
24 an oral explanation of the charge that the par-
25 ticipant, beneficiary, or enrollee will be assessed

1 for the services anticipated to be furnished to
2 the participant, beneficiary, or enrollee by such
3 nonparticipating provider; and

4 “(II) informed that the payment of such
5 charge by the participant, beneficiary, or en-
6 rollee will not accrue toward meeting any limi-
7 tation that the group health plan or health in-
8 surance coverage places on cost-sharing; and

9 “(iii) documents the consent of the participant,
10 beneficiary, or enrollee to—

11 “(I) be furnished with such services by
12 such nonparticipating provider; and

13 “(II) in the case that the individual is so
14 furnished such services, be charged an amount
15 that may be greater than the amount that
16 would otherwise be charged the individual if
17 furnished by a participating provider (as de-
18 fined in section 2719A(e)(3) of the Public
19 Health Service Act) with respect to such serv-
20 ices and plan or coverage.

21 “(4) The provisions of subsections (c), (d), (e), (g),
22 (h), (k), and (l) shall apply to a civil money penalty or
23 assessment under paragraph (1) in the same manner as
24 such provisions apply to a penalty, assessment, or pro-
25 ceeding under subsection (a).

1 “(5) In this subsection, the terms ‘group health plan’,
2 ‘health insurance issuer’, and ‘health insurance coverage’
3 have the meanings given such terms, respectively, in sec-
4 tion 2791 of the Public Health Service Act”.

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