

116TH CONGRESS 1ST SESSION

H. R. 861

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

IN THE HOUSE OF REPRESENTATIVES

January 30, 2019

Mr. Doggett (for himself, Mr. Cartwright, Ms. Judy Chu of California, Mr. Cicilline, Mr. Cohen, Mr. Courtney, Mr. Danny K. Davis of Illinois, Ms. Delauro, Mr. Grijalva, Ms. Hill of California, Ms. Jayapal, Ms. Kaptur, Ms. Kelly of Illinois, Mr. Khanna, Ms. Kuster of New Hampshire, Ms. Lee of California, Mr. Lewis, Ms. Moore, Ms. Norton, Ms. Pingree, Mr. Pocan, Ms. Velázquez, Ms. Schakowsky, Mr. Lipinski, Ms. Degette, Mr. Espaillat, Mr. Welch, Ms. Porter, and Mr. Langevin) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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 2019".

1 SEC. 2. PREVENTING SURPRISE BILLING PRACTICES.

2	(a) Condition of Participation in Medicare.—
3	Section 1866 of the Social Security Act (42 U.S.C.
4	1395cc) is amended—
5	(1) in subsection $(a)(1)$ —
6	(A) in subparagraph (X), by striking
7	"and" at the end;
8	(B) in subparagraph (Y), by striking at
9	the end the period and inserting ", and"; and
10	(C) by inserting after such subparagraph
11	(Y) the following new subparagraph:
12	"(Z) in the case of a hospital or critical ac-
13	cess hospital, to adopt and enforce a policy to
14	ensure compliance with the requirements of
15	paragraphs (1) and (4) of subsection (l) and to
16	meet the requirements of such paragraphs (re-
17	lating to the prevention of surprise billing prac-
18	tices)."; and
19	(2) by adding at the end the following new sub-
20	section:
21	"(l) Requirement for Purposes of Preventing
22	Surprise Billing.—
23	"(1) In general.—For purposes of subsection
24	(a)(1)(Z), the requirements described in this para-
25	graph are, with respect to a hospital or critical ac-
26	cess hospital, in the case of an individual with health

1	benefits coverage, including benefits under a group
2	health plan or health insurance coverage offered in
3	the group or individual market (as such terms are
4	defined in section 2791 of the Public Health Service
5	Act) or under this title, title XIX, title XXI, or an-
6	other government-sponsored health plan or program,
7	who seeks to be furnished items or services or is to
8	be furnished items or services by the hospital or crit-
9	ical access hospital (including by a provider of serv-
10	ices or supplier that furnishes items or services at
11	the hospital or critical access hospital), that the hos-
12	pital or critical access hospital—
13	"(A)(i) provides to the individual (or to a
14	representative of the individual), on the date on
15	which the individual makes an appointment to
16	be furnished such items or services, if applica-
17	ble, and on the date on which the individual is
18	furnished such items and services, a written no-
19	tice specified by the Secretary through rule-
20	making that—
21	"(I) contains the information required
22	under paragraph (2); and
23	"(II) is signed and dated by the indi-
24	vidual; and

1	"(ii) retains a copy of each such notice for
2	a period specified through rulemaking by the
3	Secretary; and

"(B) in the case that such hospital or critical access hospital (or provider of services or supplier furnishing services at such hospital or critical access hospital) is not within the health care provider network or otherwise a participating provider of services or supplier with respect to such health benefits coverage of such individual, obtains from the individual the consent described in paragraph (3).

"(2) Information included in notice.—
The notice described in paragraph (1)(A) shall include, with respect to an individual with health benefits coverage described in paragraph (1) who seeks to be furnished items or services or is to be furnished items or services or is to be furnished items or services by a hospital or critical access hospital (including by a provider of services or supplier that furnishes items or services at the hospital or critical access hospital), a notification of each of the following:

"(A) Whether the hospital or critical access hospital is not within the health care provider network or otherwise a participating pro-

vider of services or supplier with respect to such health benefits coverage of such individual.

"(B) If the hospital or critical access hospital is not within such network or otherwise such a participating provider or supplier, the estimated amount that the hospital or critical access hospital will charge the individual for such items and services in excess of any cost sharing obligations that the individual would otherwise have under such health benefits coverage for such items and services if the hospital or critical access hospital were within such network or otherwise participating in such coverage.

"(C) Whether any of the providers of services or suppliers furnishing items or services at the hospital or critical access hospital who will furnish the items or services to the individual are not within the health care provider network or otherwise a participating provider of services or supplier with respect to such health benefits coverage of such individual.

"(D) If any of such providers of services or suppliers are not within such network or otherwise such a participating provider or supplier,

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the estimated amount that such providers of services or suppliers will charge the individual for such items and services in excess of any cost sharing obligations that the individual would otherwise have for such items and services if the providers of services or suppliers were within the such network or otherwise participating in such coverage.

"(3) Consent described.—For purposes of paragraph (1)(B), the consent described in this paragraph, with respect to an individual with health benefits coverage described in paragraph (1) who is to be furnished items or services by a hospital or critical access hospital (or provider of services or supplier furnishing services at such hospital or critical access hospital) that is not within the health care provider network or otherwise a participating provider of services or supplier with respect to such health benefits coverage of such individual, is a document specified by the Secretary through rulemaking that is signed by the individual (or by a representative of the individual) not less than 24 hours prior to the individual being furnished such items or services by such hospital, critical access hospital,

1	provider of services, or supplier, respectively, and
2	that—
3	"(A) acknowledges that the individual has
4	been—
5	"(i) provided with a written estimate
6	of the charge that the individual will be as-
7	sessed for the items or services anticipated
8	to be furnished to the individual by the
9	hospital, critical access hospital, provider
10	of services, or supplier that is not within
11	such network or otherwise such a partici-
12	pating provider of services or supplier; and
13	"(ii) informed that the payment of
14	such charge by the individual will not ac-
15	crue toward any limitation that the health
16	benefits coverage places upon the annua
17	out-of-pocket expenses to be paid by the
18	individual or upon the in-network deduct
19	ible to be paid by the individual; and
20	"(B) documents the consent of the indi-
21	vidual to—
22	"(i) be furnished with such items or
23	services by such hospital, critical access
24	hospital, provider of services, or supplier
25	as applicable; and

l	"(ii) in the case that the individual is
2	so furnished such items or services, be
3	charged an amount approximate to the es-
4	timated charge described in subparagraph
5	(A)(i) with respect to such items or serv-
5	ices.

"(4) Limitations on payment by individual.—For purposes of subsection (a)(1)(Z), the requirements under this paragraph are the following:

"(A) IN CASE OF NONCOMPLIANCE BY HOSPITALS AND CRITICAL ACCESS HOS-PITALS.—In the case of an individual with health benefits coverage described in paragraph (1) who is furnished items or services by a hospital or critical access hospital (or provider of services or supplier furnishing services at such hospital or critical access hospital) that is not within the health care provider network or otherwise a participating provider of services or supplier with respect to such health benefits coverage of such individual, if the hospital or critical access hospital does not comply with the requirements of paragraph (1) with respect to the furnishing of such items or services to such individual, the hospital or critical access hos-

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pital (or, as applicable, the provider of services or supplier furnishing such items or services to such individual) may not charge the individual more than the amount that the individual would have been required to pay in cost sharing if such items or services had been furnished by a hospital or critical access hospital, as applicable (or by a provider of services or supplier, as applicable) that is within such network or that is otherwise such a participating provider of services or supplier.

"(B) In case of same-day emergency services.—In the case of an individual with health benefits coverage described in paragraph (1) who is furnished items or services by a hospital or critical access hospital (or provider of services or supplier furnishing services at such hospital or critical access hospital) that is not within the health care provider network or otherwise a participating provider of services or supplier with respect to such health benefits coverage of such individual on the same date on which the individual makes an appointment for such items or services (or otherwise presents at the hospital or critical access hospital for such

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services such as in the case of items and services furnished with respect to an emergency medical condition, defined in section as 1867(e)), the hospital or critical access hospital (or, as applicable, the provider of services or supplier furnishing such items or services to such individual) may not charge the individual more than the amount that the individual would have been required to pay in cost sharing if such items or services had been furnished by a hospital or critical access hospital, as applicable (or by a provider of services or supplier, as applicable) that is within such network or that is otherwise such a participating provider of services or supplier.".

16 (b) Effective Date.—The amendments made by
17 subsection (a) shall apply with respect to agreements
18 under section 1866(a)(1) of the Social Security Act (42
19 U.S.C. 1395cc(a)(1)) that are filed with the Secretary of
20 Health and Human Services on a date that is not less
21 than 12 months after the date of the enactment of this
22 Act.

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