

115TH CONGRESS  
1ST SESSION

# H. R. 817

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

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 2, 2017

Mr. DOGGETT (for himself, Mr. BUTTERFIELD, Mr. CARTWRIGHT, Ms. JUDY CHU of California, Mr. CICILLINE, Ms. CLARKE of New York, Mr. COHEN, Mr. COURTNEY, Mr. DANNY K. DAVIS of Illinois, Ms. DELAURO, Mr. GALLEGRO, Mr. GARAMENDI, Mr. GENE GREEN of Texas, Mr. GRIJALVA, Mr. HASTINGS, Ms. KELLY of Illinois, Mr. LANGEVIN, Ms. LEE, Mr. LEWIS of Georgia, Mr. LIPINSKI, Ms. LOFGREN, Ms. MOORE, Mr. NADLER, Ms. NORTON, Mr. POCAN, Ms. SCHAKOWSKY, Mr. TONKO, Mr. WELCH, Mr. CONYERS, Mr. ELLISON, Mr. ESPAILLAT, Mrs. LAWRENCE, and Ms. SHEA-PORTER) 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

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## 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 2017”.

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

4           “(B) in the case that such hospital or crit-  
5           ical access hospital (or provider of services or  
6           supplier furnishing services at such hospital or  
7           critical access hospital) is not within the health  
8           care provider network or otherwise a partici-  
9           pating provider of services or supplier with re-  
10          spect to such health benefits coverage of such  
11          individual, obtains from the individual the con-  
12          sent described in paragraph (3).

13          “(2) INFORMATION INCLUDED IN NOTICE.—  
14          The notice described in paragraph (1)(A) shall in-  
15          clude, with respect to an individual with health bene-  
16          fits coverage described in paragraph (1) who seeks  
17          to be furnished items or services or is to be fur-  
18          nished items or services by a hospital or critical ac-  
19          cess hospital (including by a provider of services or  
20          supplier that furnishes items or services at the hos-  
21          pital or critical access hospital), a notification of  
22          each of the following:

23                 “(A) Whether the hospital or critical ac-  
24                 cess hospital is not within the health care pro-  
25                 vider network or otherwise a participating pro-

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

3 “(B) If the hospital or critical access hos-  
4 pital is not within such network or otherwise  
5 such a participating provider or supplier, the  
6 estimated amount that the hospital or critical  
7 access hospital will charge the individual for  
8 such items and services in excess of any cost  
9 sharing obligations that the individual would  
10 otherwise have under such health benefits cov-  
11 erage for such items and services if the hospital  
12 or critical access hospital were within such net-  
13 work or otherwise participating in such cov-  
14 erage.

15 “(C) Whether any of the providers of serv-  
16 ices or suppliers furnishing items or services at  
17 the hospital or critical access hospital who will  
18 furnish the items or services to the individual  
19 are not within the health care provider network  
20 or otherwise a participating provider of services  
21 or supplier with respect to such health benefits  
22 coverage of such individual.

23 “(D) If any of such providers of services or  
24 suppliers are not within such network or other-  
25 wise such a participating provider or supplier,

1 the estimated amount that such providers of  
2 services or suppliers will charge the individual  
3 for such items and services in excess of any cost  
4 sharing obligations that the individual would  
5 otherwise have for such items and services if  
6 the providers of services or suppliers were with-  
7 in such network or otherwise participating in  
8 such coverage.

9 “(3) CONSENT DESCRIBED.—For purposes of  
10 paragraph (1)(B), the consent described in this  
11 paragraph, with respect to an individual with health  
12 benefits coverage described in paragraph (1) who is  
13 to be furnished items or services by a hospital or  
14 critical access hospital (or provider of services or  
15 supplier furnishing services at such hospital or crit-  
16 ical access hospital) that is not within the health  
17 care provider network or otherwise a participating  
18 provider of services or supplier with respect to such  
19 health benefits coverage of such individual, is a doc-  
20 ument specified by the Secretary through rule-  
21 making that is signed by the individual (or by a rep-  
22 resentative of the individual) not less than 24 hours  
23 prior to the individual being furnished such items or  
24 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 annual  
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

1                   “(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-  
6                   ices.

7                   “(4) LIMITATIONS ON PAYMENT BY INDI-  
8                   VIDUAL.—For purposes of subsection (a)(1)(Z), the  
9                   requirements under this paragraph are the following:

10                   “(A) IN CASE OF NONCOMPLIANCE BY  
11                   HOSPITALS AND CRITICAL ACCESS HOS-  
12                   PITALS.—In the case of an individual with  
13                   health benefits coverage described in paragraph  
14                   (1) who is furnished items or services by a hos-  
15                   pital or critical access hospital (or provider of  
16                   services or supplier furnishing services at such  
17                   hospital or critical access hospital) that is not  
18                   within the health care provider network or oth-  
19                   erwise a participating provider of services or  
20                   supplier with respect to such health benefits  
21                   coverage of such individual, if the hospital or  
22                   critical access hospital does not comply with the  
23                   requirements of paragraph (1) with respect to  
24                   the furnishing of such items or services to such  
25                   individual, the hospital or critical access hos-



1           pital (or, as applicable, the provider of services  
2           or supplier furnishing such items or services to  
3           such individual) may not charge the individual  
4           more than the amount that the individual would  
5           have been required to pay in cost sharing if  
6           such items or services had been furnished by a  
7           hospital or critical access hospital, as applicable  
8           (or by a provider of services or supplier, as ap-  
9           plicable) that is within such network or that is  
10          otherwise such a participating provider of serv-  
11          ices or supplier.

12                   “(B) IN CASE OF SAME-DAY EMERGENCY  
13           SERVICES.—In the case of an individual with  
14           health benefits coverage described in paragraph  
15           (1) who is furnished items or services by a hos-  
16           pital or critical access hospital (or provider of  
17           services or supplier furnishing services at such  
18           hospital or critical access hospital) that is not  
19           within the health care provider network or oth-  
20           erwise a participating provider of services or  
21           supplier with respect to such health benefits  
22           coverage of such individual on the same date on  
23           which the individual makes an appointment for  
24           such items or services (or otherwise presents at  
25           the hospital or critical access hospital for such

1 services such as in the case of items and serv-  
2 ices furnished with respect to an emergency  
3 medical condition, as defined in section  
4 1867(e)), the hospital or critical access hospital  
5 (or, as applicable, the provider of services or  
6 supplier furnishing such items or services to  
7 such individual) may not charge the individual  
8 more than the amount that the individual would  
9 have been required to pay in cost sharing if  
10 such items or services had been furnished by a  
11 hospital or critical access hospital, as applicable  
12 (or by a provider of services or supplier, as ap-  
13 plicable) that is within such network or that is  
14 otherwise such a participating provider of serv-  
15 ices 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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