115TH CONGRESS
1ST SESSION

S. 284

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

IN THE SENATE OF THE UNITED STATES

FEBRUARY 2, 2017

Mr. BROWN introduced the following bill; which was read twice and referred to the Committee on Finance

---

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''End Surprise Billing Act of 2017''.

SEC. 2. PREVENTING SURPRISE BILLING PRACTICES.

(a) CONDITION OF PARTICIPATION IN MEDICARE.—Section 1866 of the Social Security Act (42 U.S.C. 1395cc) is amended—

(1) in subsection (a)(1)—

(A) in subparagraph (X), by striking ''and'' at the end;

(B) in subparagraph (Y), by striking at the end the period and inserting '', and''; and

(C) by inserting after such subparagraph (Y) the following new subparagraph:

''(Z) in the case of a hospital or critical access hospital, to adopt and enforce a policy to ensure compliance with the requirements of paragraphs (1) and (4) of subsection (l) and to meet the requirements of such paragraphs (relating to the prevention of surprise billing practices).''; and

(2) by adding at the end the following new subsection:

''(l) REQUIREMENT FOR PURPOSES OF PREVENTING SURPRISE BILLING.—

''(1) IN GENERAL.—For purposes of subsection (a)(1)(Z), the requirements described in this paragraph are, with respect to a hospital or critical access hospital, in the case of an individual with health benefits coverage, including benefits under a group health plan or health insurance coverage offered in the group or individual market (as such terms are defined in section 2791 of the Public Health Service

Act) or under this title, title XIX, title XXI, or another government-sponsored health plan or program, who seeks to be furnished items or services or is to be furnished items or services by the 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), that the hospital or critical access hospital—

''(A)(i) provides to the individual (or to a representative of the individual), on the date on which the individual makes an appointment to be furnished such items or services, if applicable, and on the date on which the individual is furnished such items and services, a written notice specified by the Secretary through rulemaking that—

''(I) contains the information required under paragraph (2); and

''(II) is signed and dated by the individual; and

''(ii) retains a copy of each such notice for a period specified through rulemaking by the 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 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 provider 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, 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 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, provider of services, or supplier, respectively, and that—

''(A) acknowledges that the individual has been—

''(i) provided with a written estimate of the charge that the individual will be as-

sessed for the items or services anticipated to be furnished to the individual by the hospital, critical access hospital, provider of services, or supplier that is not within such network or otherwise such a participating provider of services or supplier; and

''(ii) informed that the payment of such charge by the individual will not accrue toward any limitation that the health benefits coverage places upon the annual out-of-pocket expenses to be paid by the individual or upon the in-network deductible to be paid by the individual; and

''(B) documents the consent of the individual to—

''(i) be furnished with such items or services by such hospital, critical access hospital, provider of services, or supplier, as applicable; and

''(ii) in the case that the individual is so furnished such items or services, be charged an amount approximate to the estimated charge described in subparagraph (A)(i) with respect to such items or services.

''(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 HOSPITALS.—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 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.

''(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 services such as in the case of items and services furnished with respect to an emergency medical condition, as defined in section 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.''.

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

○