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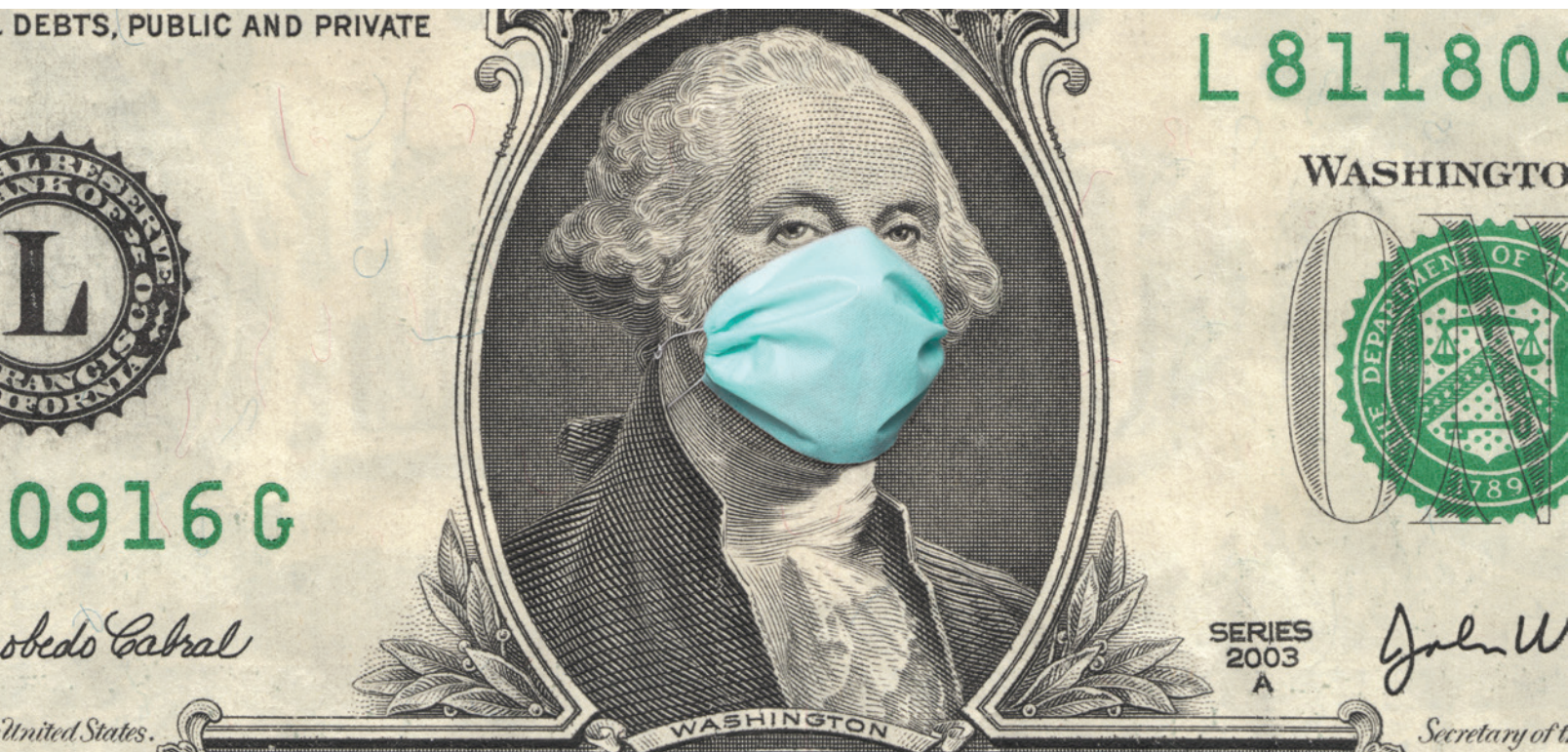


## SURPRISE MEDICAL BILLING UPDATE

*What ASCs need  
to know to help  
patients avoid  
unexpected costs*

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## Surprise Medical Billing Update

What ASCs need to know to help patients avoid unexpected costs **BY ROBERT KURTZ**

Over several years, congressional hearings and the continued rise in the cost of healthcare and patient copays contributed to a heightened awareness of the ill effects of surprise medical bills. At the same time, organizations like AARP, local governments and the media were sharing guidance for patients on how to protect themselves from these bills. National media, such as ProPublica and Kaiser Health News, also were regularly reporting on the negative impact surprise medical bills could have on patients, and consumers were sharing their surprise medical billing stories with the media and government officials, asking for relief.

The COVID-19 pandemic put surprise medical billing on even more people's radars, says Ryan Blaney,

a partner in Proskauer Rose who is based in Washington, DC. "There were provisions around surprise medical billing included in some [pandemic] relief bills. The provisions largely focused on laboratories, COVID-19 testing and other areas concerning the coronavirus, but the fact that surprise medical billing was included shows it is a top issue."

On December 27, President Trump signed H.R. 133, the *Consolidated Appropriations Act, 2021*. One of the provisions of this bill limits the practice of balance billing patients that leads to what is commonly called "surprise medical bills" (see sidebar on page 9).

The medical bills described as a "surprise" are not new types of bills, says Glenn Wilkins, client services manager for in2itive Business Solu-

tions in Overland Park, Kansas. What is new—and thus largely responsible for the surprise labeling—is the amount of the bills and how patients react to them.

A surprise medical bill, also referred to as a balance bill, occurs when a patient receives a bill for services not covered by insurance, i.e., out of network. Since out-of-network providers tend to charge more than insurers pay, the balance falls to patients. As insurance plans have moved away from offering out-of-network benefits, uncovered care can lead to high patient bills.

"The surprise not only concerns the bill's amount, but also a patient's expectation that the services they received were in network and thus covered," Wilkins says. "Out-of-network services can lead to patient bills that are unexpectedly higher than they would have been if those same services were delivered by an in-network provider."

### Impact on Patients and ASCs

Surprise medical bills are more commonly associated with emergency and urgent care, says Andrew Weiss, CASC, administrator of Summit Surgical Center in Voorhees, New Jersey. In these instances, patients have less time—and thus control—to verify and arrange for in-network care. Yet, even with the non-urgent nature of ambulatory surgery, surprise medical bills can accompany a procedure.

“These bills are likely to occur with an ancillary provider rather than the ASC or surgeon,” Weiss says. “Pathology is a good example. A patient goes to an in-network ASC, sees an in-network surgeon but does not know that the center uses what turns out to be an out-of-network laboratory.”

Anesthesia providers are another common example, Blaney says. “Anesthesiologists and nurse anesthetists are in high demand and have significant negotiating power with insurance companies, so it is not unusual for anesthesia providers to step out of network. Patients may confirm that the ASC and their surgeon are in network, but they are likely not going to ask about anesthesia or other ancillary service providers.”

While ASCs might not typically be the source for surprise medical bills, patients might still direct their ire about receiving such bills at surgery centers, Wilkins says. “Since a patient is generally communicating about surgery with their surgeon and the ASC, there is an expectation that they will be looking out for the patient's best interests, both clinically and financially.”

Upset patients might take their displeasure about surprise medical bills to social media, review websites and the media. Blaney says patients are increasingly bringing these bills to their employer's human resources departments for assistance, which can bring additional attention to the bills



### New Law Takes Aim at Surprise Medical Bills

In late December, then President Trump signed the *Consolidated Appropriations Act, 2021*. Among its provisions: limiting the practice of balance billing patients, which leads to what is commonly referred to as “surprise medical bills.”

Under this bill, patients will be required to pay only the in-network cost-sharing amount for many types of out-of-network care provided at facilities that are in their health plan's network. A notice and consent process will make sure that patients can opt for out-of-network care. Providers will be required to post information about the new balance billing requirements and practices and will be subject to penalties for violations.

When reimbursement disputes between a provider and plan arise, they will be settled through a structured process involving open negotiations between the parties and arbitration. The bill requires plans to maintain price comparison tools on their websites so that policyholders can research their cost-sharing responsibility. This provision of the legislation also includes other obligations for providers and plans. The US Department of Health and Human Services secretary will issue final rules to guide implementation and provide clarity for providers and plans prior to the limitations going into effect in 2022.

and potentially sour employers on working with ASCs.

“Considering the national scrutiny on these practices, physicians and private equity firms looking to invest in ASCs may also be dissuaded by reports of surprise medical bills because of the reputational harm they can cause,” Blaney says.

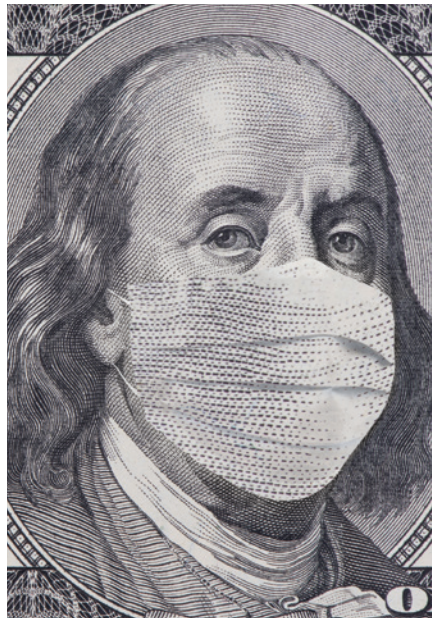
Weiss adds, “You are not going to survive in business if you are associated with a model that routinely leads to surprise bills.”

ASCs also have the potential to run afoul of state laws if they are not careful, Weiss says. The Commonwealth Fund states that as of November 2020, more than 30 states had enacted laws

intended to protect patients from balance billing. This includes New Jersey, where Weiss’s ASC is located. “New Jersey passed a law in 2018 intended to regulate out-of-network billing that was branded under surprise medical billing,” he says. “The law included rules around notifying patients about network status, collections and penalties. As regulations come up, ASCs must determine how they apply to their situation.”

**Protecting Patients**

ASCs should prioritize minimizing the number of surprise medical bills that reach their patients, Wilkins says. “The keys here are patient engagement and transparency. Determine what aspects of care that a patient is scheduled to receive at your ASC is in network and out of network, then share this information with the patient prior to the procedure.”



Assemble and maintain a list that identifies which payers are in network with your ASC, its surgeons and any ancillary providers, Blaney says. “ASCs are increasingly assign-

ing staff members to serve as insurance coordinators who are tasked with confirming in-network status and helping patients make sound financial decisions.”

Blaney also emphasizes the importance of performing patient insurance verification on the day of surgery. This is a recommended practice in normal times, he says, but one that has taken on greater significance during the pandemic. “COVID-19 has caused substantial economic upheaval. Job turnover brings changes in insurance coverage. That increases the probability of someone going from in network to out of network between when they are scheduled for surgery and when they undergo the procedure.”

Get in network with as many insurance companies as possible, assuming doing so makes financial sense, Wilkins advises. “This will help reduce the likelihood of a surprise medical bill coming from your center.”

**Future Trends**

Blaney says he is monitoring price transparency laws closely. “I look at this as being in a similar bucket as surprise medical billing. If patients are able to clearly determine what care is likely to cost before they go to a facility, then they will not be surprised following the visit.”

While ASCs should strive to ensure patients do not receive surprise medical bills for services related to their surgery, this does not mean centers should welcome more out-of-network billing legislation, Weiss says. “I am all for transparency but if you lose your ability to treat patients out of network, you largely lose your ability to negotiate commercial contracts. We do not want to end up in a place where ASCs are forced to be in network or take an unfavorable contract. I think it is important for ASCs to lobby for less control in this area.” <<

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