



## State Work to Counteract Surprise Medical Billing

BY COLLEEN BECKER

Numerous people have reported receiving extremely high medical bills that they unknowingly incurred while visiting a health care facility or receiving treatment. Surprise medical bills, a practice also known as balance billing, occurs when someone seeks care at an **in-network** facility but receives treatment or services from a provider that is out of network.

As an example, a woman seeks care for a broken limb. She is careful to go to a hospital that is in her health insurance plan's network. She remits her copayment and receives an X-ray. Several days or weeks after the visit, the woman receives a bill for hundreds, possibly thousands, of dollars. Even though the patient was seen at an in-network hospital, the radiologist who read her X-ray was not in her insurance network. Still, the patient is responsible for picking up the out-of-network cost.

Like this scenario, some of the most common services for which patients receive balance bills include laboratory work, medical imaging or anesthesiology. Other instances occur when patients go to an emergency room or have surgery, and then receive out-of-network services or visits with health care providers without their knowledge or authorization.

This issue affects all demographics. According to a Kaiser Family Foundation [survey](#) that accounted for age, self-reported health status and pre-existing conditions, approximately 4 in 10 respondents said there was a time in the past 12 months when they received an unexpected medical bill. During that same time frame, about 1 in 10 reported receiving a surprise medical bill from an out-of-network provider. As reported by [Health Affairs](#), 1 in 5 patients who sought care at an emergency department received that care from an out-of-network provider.

### Did You Know?

- One in five patients who seeks care at an in-network emergency facility are seen by an out-of-network provider.
- Most state insurance departments have regulatory authority to set standards ensuring that the provider networks developed by insurers are of "adequate" size.
- To date, [nine states](#) have comprehensive laws protecting consumers against surprise billing.

One reason a patient might receive a balance bill is because of how health insurance [network adequacy](#) standards are developed and measured. To help control the cost of premiums to consumers, some health insurance carriers have opted to use restrictive networks rather than allow more robust participation by both providers and facilities. Although these practices may lower premiums, consumers may not realize the limitations of their plan or know which providers and facilities are within their network.

## State Action

Several states have explored ways to protect consumers from these surprise bills. Researchers at the Georgetown University Center for Health Insurance Reform (CHIR) issued reports in [2017](#) and [2019](#) detailing how states have addressed surprise bills. Based on four indicators, CHIR rated states on how they:

- Extend consumer protections to include both emergency department and in-network hospital settings.
- Apply laws to all types of insurance, including both Health Maintenance Organizations (HMOs) and Preferred Provider Organizations (PPOs).
- Protect consumers both by holding them harmless from extra provider charges—meaning they are not responsible for the charges—and prohibiting providers from balance billing.
- Adopt an adequate payment standard to determine how much the insurer pays the provider or to establish a process to resolve payment disputes between providers and insurers.

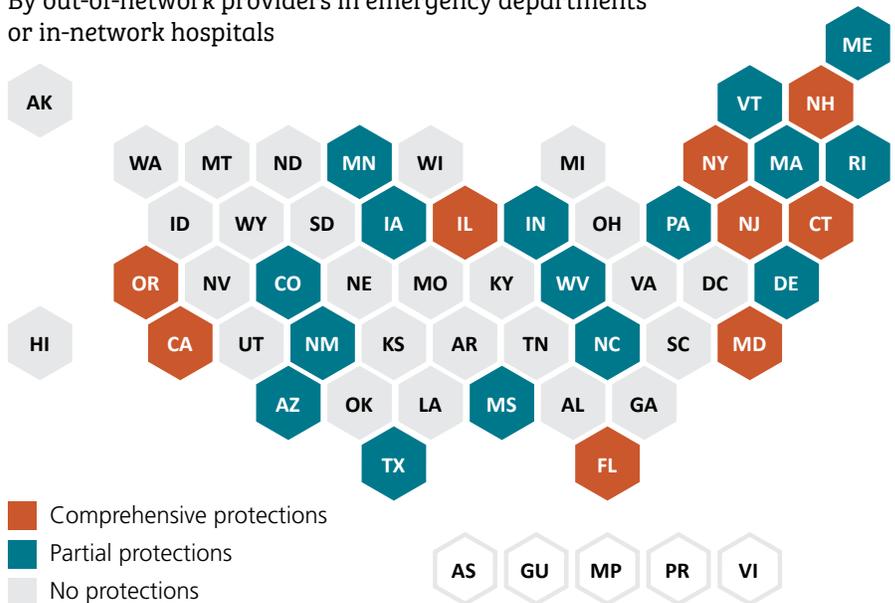
In 2017, the researchers found more than half of states did not have any laws in place protecting consumers from balance billing and only six states had comprehensive balance billing statutes. Now, 18 months later, the experts at CHIR found that nine states now have comprehensive consumer protection laws against surprise billing. Moreover, four states—Arizona, Maine, Minnesota and Oregon—adopted their first-ever balance billing laws during the 2018 session.

First in the nation, [New York](#) requires that plans must not only come up with a “reasonable” payment amount, but also show how the amount compares to “usual and customary” rates. These rates are [defined](#) as the 80th percentile of all charges for a health care service. If any party is dissatisfied, they can appeal the amount through an independent dispute resolution process.

Acknowledging this issue, the National Association of Insurance Commissioners (NAIC) amended its [Health Benefit Plan Network Adequacy and Access Model Act](#) to include some patient protections

## State Laws Protecting Against Balance Billing

By out-of-network providers in emergency departments or in-network hospitals



Source: Center on Health Insurance Reforms, Georgetown University Health Policy Institute

against balance billing. NAIC model acts are not enforceable by law, but often give states a roadmap for legislative action. To date, [four states](#)—Colorado, Georgia, Hawaii and Maryland—have adopted the revised model act.

## Federal Action

Although states have autonomy within their borders, current state laws do not apply to the [roughly 60 percent](#) of privately insured Americans enrolled in “self-insured” health plans most common among large employers. In self-insured plans, the employer assumes the financial risk for providing health care benefits to its employees. These plans are regulated by the federal law known as the [Employee Retirement Income Security Act \(ERISA\)](#). Only federal action can protect people guarded by ERISA.

Although surprise billing is not a new concern among federal lawmakers, the Trump administration has pledged it would be a top priority moving forward. The subject is also gaining renewed attention among congressional leaders. Both the Senate Finance and Senate Health, Education, Labor and Pensions committees, as well as the House Ways and Means Committee, are investigating the issue. During the 2018 session, four senators proposed separate legislation, including a bipartisan proposal led by U.S. Senator Chuck Grassley (R-Iowa). One of the most critical aspects of the draft proposal, titled “[Protecting Patients from Surprise Medical Bills Act](#),” is that it would protect people in the ERISA-covered population.

## Additional Resources

- [NCSL webpage, “Insurance Carriers and Access to Healthcare Providers | Network Adequacy”](#)
- [NCSL brief, “Health Cost Containment and Efficiency Strategies - Combating Health Care Fraud and Abuse”](#)
- [NCSL blog “States Tackling Balance Billing Issue”](#)

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