

## Protecting Consumers from Surprise Health Care Bills

BY COLLEEN BECKER

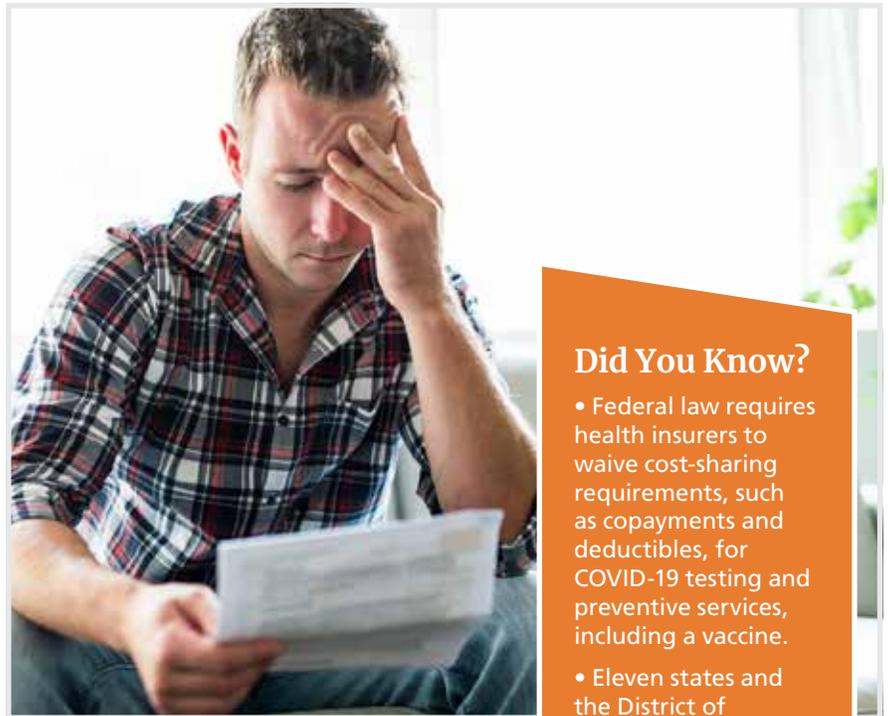
In recent years, balance and surprise billing have been the focus of a policy debate at the state and federal levels. The debate arose from [stories](#) of unsuspecting consumers getting shockingly high bills after receiving medical care from out-of-network providers. State lawmakers responded with a variety of legislative action designed to protect consumers. As these types of bills [emerge for coronavirus-related health care services](#), patients are voicing concerns again, giving the topic renewed attention.

But first, it might be helpful to understand balance or surprise billing. These terms are similar, and often confused, but they mean different things. A surprise bill is a statement an insured person receives unexpectedly. Balance billing happens when a provider's charges are more than the health insurance company pays, and the provider or facility then bills the patient the difference—or balance. This often occurs because either the provider or facility is out of network.

Surprise and balance billing can happen together or separately, and stem from a variety of sources. According to a [2017 survey](#) that used claims data from large employers, these situations are more common in emergencies, when patients may not have the ability or choice to make appropriate or cost-effective health care decisions. [An average of 18%](#) of those who visited an emergency room had at least one out-of-network charge from either the facility, the provider or both—although some state averages were much higher.

Most state and federal proposals include provisions that hold consumers harmless in certain situations and alleviate them of responsibility for any costs incurred beyond their [in-network](#) cost-sharing requirement.

[Laws](#) often diverge in how policymakers address the payment standard used. For example, some states established specific reimbursement rates



### Did You Know?

- Federal law requires health insurers to waive cost-sharing requirements, such as copayments and deductibles, for COVID-19 testing and preventive services, including a vaccine.
- Eleven states and the District of Columbia created a special open enrollment period on their state-based health insurance exchanges allowing anyone without health insurance to buy a plan.
- Twenty-nine states have enacted surprise billing legislation, including Indiana, Maine and Virginia so far in 2020.

for emergency and/or non-emergency services. One of the early adopter states, [California](#), set the rate at which health insurers must reimburse for non-emergency services provided by out-of-network providers at in-network facilities. The rate is either 125% of the amount of the Medicare reimbursement rate or the average amount paid in the provider's geographic region, whichever is higher. Other states, such as [Texas](#) and [New York](#), have chosen to resolve payment disputes using arbitration through an independent dispute resolution (IDR) process. Still others, like Colorado, have adopted a [hybrid approach](#): Providers that disagree with the rate at which they are reimbursed as dictated by the payment standard may initiate binding arbitration.

While some view IDR as an alternative to government rate-setting, [others](#) suggest that arbiters sometimes rely on information, such as billed charges, that could drive up costs.

To shield consumers from potentially unexpected high costs related to the coronavirus, [states implemented protections](#) and [health insurers waived cost-sharing requirements](#)—such as copayments and deductibles—for COVID-19 testing and [preventive services, including a vaccine](#). [Federal law now makes this a requirement](#). Eleven states and the District of Columbia created a special open enrollment period on their state-based health exchanges allowing anyone without health insurance to buy a plan.

## State Action

By mid-March, prior to the World Health Organization declaring a pandemic, [29 states](#) had enacted surprise billing legislation—including new 2020 laws in Indiana, Maine and Virginia. In the early weeks of the pandemic, [four states](#) adopted measures extending or propping up protections already in place for [testing and/or treatment](#) of COVID-19 while at least two states, [Ohio](#) and Wisconsin, implemented new surprise billing protections specific to COVID-19 coverage.

Meanwhile, [19 states](#), territories and Washington, D.C., are still in session, six others have suspended operations due to the coronavirus, and several more have concluded for the year.

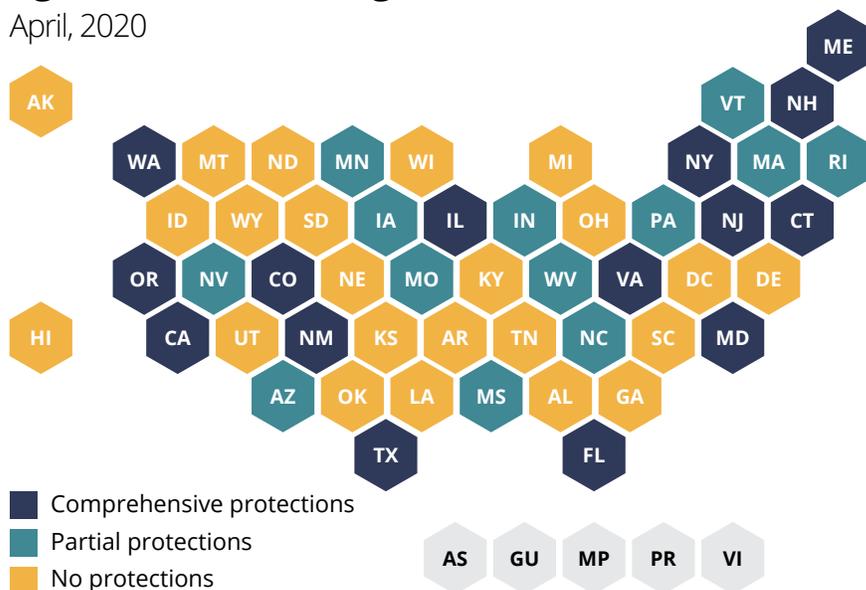
The [wide-ranging approaches](#) states have pursued over time amount to an intricate patchwork of laws. Moreover, state law only affects a portion of plans in which people are enrolled, like those purchased on the individual market and other fully insured plans. These plans typically cover people who do not get coverage through a large employer and do not qualify for Medicaid. [Self-funded, large employer plans](#)—employers with over 50 employees in most states—are governed by the federal [Employee Retirement Income Security Act of 1974 \(ERISA\)](#). Only federal action would align state laws and apply to all plan types.

## Federal Action

Protecting consumers from balance or surprise bills is one area where lawmakers on both sides of the aisle tend to agree. Several bipartisan [propos-](#)

## State Laws Protecting Consumers Against Balance Billing

April, 2020



Source: *The Commonwealth Fund, 2020*

als were approved in committees in both chambers before Congress’ attention turned to the COVID-19 pandemic.

Much like state laws, proposals in Congress would largely hold consumers harmless from paying amounts above their plan’s in-network cost-sharing requirement. They are also similar in that they either set specific payment parameters or provide for negotiations and dispute resolution through an IDR process.

The [Lower Health Care Costs Act \(SB 1895\)](#) is supported by members in both chambers, and would allow for both an IDR process and set a payment standard to median in-network rates. This measure would also address balance bills from air ambulance companies—an [issue](#) that can only be solved by federal law.

In February, [two additional bills](#) on the topic were approved by two separate House committees. The COVID-19 pandemic stopped the momentum of these proposals and so far, the packages passed out of Congress have [yet to include](#) these types of provisions.

## Additional Resources

- [NCSL’s Coronavirus \(COVID-19\) Resources for States](#)
- [NCSL’s State Action on Coronavirus \(COVID-19\): State Legislation Data Visualization and Database](#)
- [NCSL webinar, “Taken By Surprise: State Approaches to Surprise Medical Billing”](#)

## NCSL Contact

**Colleen Becker**  
303-856-1653