

DEEP DIVE

# Growing attention on surprise medical bills highlights need for legislative action

Surprise medical bills are occurring less frequently than several years ago, but still affect 1 in 5 hospital patients.

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Anecdotes of surprise medical bills, which are invoices patients receive with unexpectedly high costs because they inadvertently received care from outside their insurance network, are easy to come by. The problem has driven some states to pass laws to rein in high charges associated with these bills, but there are gaps that only federal legislation can fill. Researchers have begun looking more closely at instances where surprise medical bills occur and could shed light on an approach that works for patients, providers and payers.

## **Surprise medical bills take centerstage**

Surprise medical bills have drawn a significant amount of media attention in recent years. In 2014, the New York Times published a lengthy report by Elisabeth Rosenthal outlining the stories of several patients stuck with surprise medical bills. In a 2015 Health Affairs Blog post, two mothers, Erin Taylor and Layla Parast, shared their experiences during pregnancy and birth to demonstrate how one was hit with a surprise medical bill even though both were covered by the same health plan and delivered at

the same hospital.

The media attention has driven researchers to delve more deeply into the dilemma. “We had heard lots of anecdotes and expressions of concern about surprise medical bills being a pretty big problem,” Paul Ginsburg, a health policy professor at University of Southern California and coauthor of an October 2016 white paper from the Brookings Institution, told Healthcare Dive.

After seeing reports in the media about surprise medical bills, Christopher Garmon, an economist at the Federal Trade Commission and author of a medical surprise bill study published by Health Affairs in December 2015, decided to look into the issue with a colleague. “As we dug around, we realized there wasn’t much on it,” Garmon told Healthcare Dive.

As attention on surprise medical bills has grown, rates of occurrence have actually dropped. Using data from the Truven Health MarketScan Commercial Claims and Encounters Database, Garmon and his coauthor determined that 20% of hospital admissions resulted in a surprise medical bill in 2014 compared with 28% in 2007. However, the attention placed on surprise medical bills likely did not influence rates of occurrence, according to Garmon. He speculated that the decrease is “because more doctors are being employed by hospital systems.”

### **States take action to address surprise medical bills**

More than a dozen states have passed legislation that directly address surprise medical bills, according to the October 2016 Brookings Institution white paper. Most of these states have taken an approach that caps the amount providers can bill for out-of-network charges. For instance, legislation in Maryland requires HMOs to pay out-of-network providers at least 125% of their average in-network rates or 140% of Medicare rates. In California,

health plans are required to pay out-of-network providers the greater of average contracted rates or 125% of Medicare rates.

New York has taken one of the most comprehensive approaches with a law that bars providers from billing insured patients for out-of-network charges, but allows them to dispute reimbursement offered by health plans. The law established an arbitration process where “each side makes its own offer and the arbitrator can choose only one of the two,” according to Ginsburg. “The process is designed to get reasonable offers and to reduce the number of disputes that go to arbitration.”

Most state laws on surprise medical bills have been implemented relatively recently and data reviewed by Garmon do not indicate whether these laws are having an effect. “It is too soon to tell what the right approach is,” Garmon said. “We are going to have to see how these individual state laws play out and which are most effective.”

His study did reveal that there are regional differences in rates of occurrence. In 2014, surprise medical bills tended to occur more frequently in states with the largest populations, like Florida, New York, and Texas. However, Alaska, which is one of the least populated states, stood out with the highest rates of occurrence. Iowa, Minnesota, New Hampshire, North Carolina, North Dakota, Washington, and Wisconsin had the lowest rates of occurrence.

Garmon could not explain the variation in rates of occurrence. “We really don’t know,” he said. “That’s something that we need further research on. Why is it that the rate of surprise medical bills is so low in the Upper Midwest? What’s going on there? Maybe they are doing something right there and it would be useful to study to understand.”

**A comprehensive fix requires federal legislation**

As it stands, only a portion of patients are protected from exorbitant costs of surprise medical bills. Even in states that have passed legislation addressing surprise medical bills, it does not apply to patients covered through employers with self-funded plans. These are governed by the Employee Retirement Income Security Act (ERISA). Additionally, state laws might only apply to certain types of health plans, to certain types of providers, or to certain types of services.

Whether at the state-level or federal-level, it can be a challenge for lawmakers when it comes to defining surprise medical bills, according to Ginsburg. Kaiser Family Foundation defines a surprise medical bill as “charges arising when an insured individual inadvertently receives care from an out-of-network provider.” Of course, comprehensive federal legislation would require more specific language and “it is not going to cover everything,” Ginsburg said.

A federal law, like most state laws, would most likely apply to some combination of emergency, anesthesiology, pathology, and radiology -- areas where patients often have no real choice whether services are delivered by an in-network or out-of-network provider. The most straightforward policy would be one that caps out-of-network charges, like laws in California and Maryland, and is applied to a clearly defined set of providers and services, according to Ginsburg.

If lawmakers pursue a policy such as this, it would likely stir up controversy between providers, who want higher caps, and payers, who want lower caps. However, there would be benefits on both sides, according to Garmon. For instance, surprise medical bills undermine narrow network plans, which erodes consumer confidence and discourages competition among providers to be included in a narrow network plan.

Crafting legislation that strikes a balance between provider and payer needs could make the plans more appealing, and the benefit to the one in five patients hit with surprise bills is obvious. However, while there is a clear picture of the problem, the solution is no obvious solution. “Anything that you do could have unintended effects,” Garmon said.