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# **Why Surprise Out-of-Network Billing Happens and How to Stop It**

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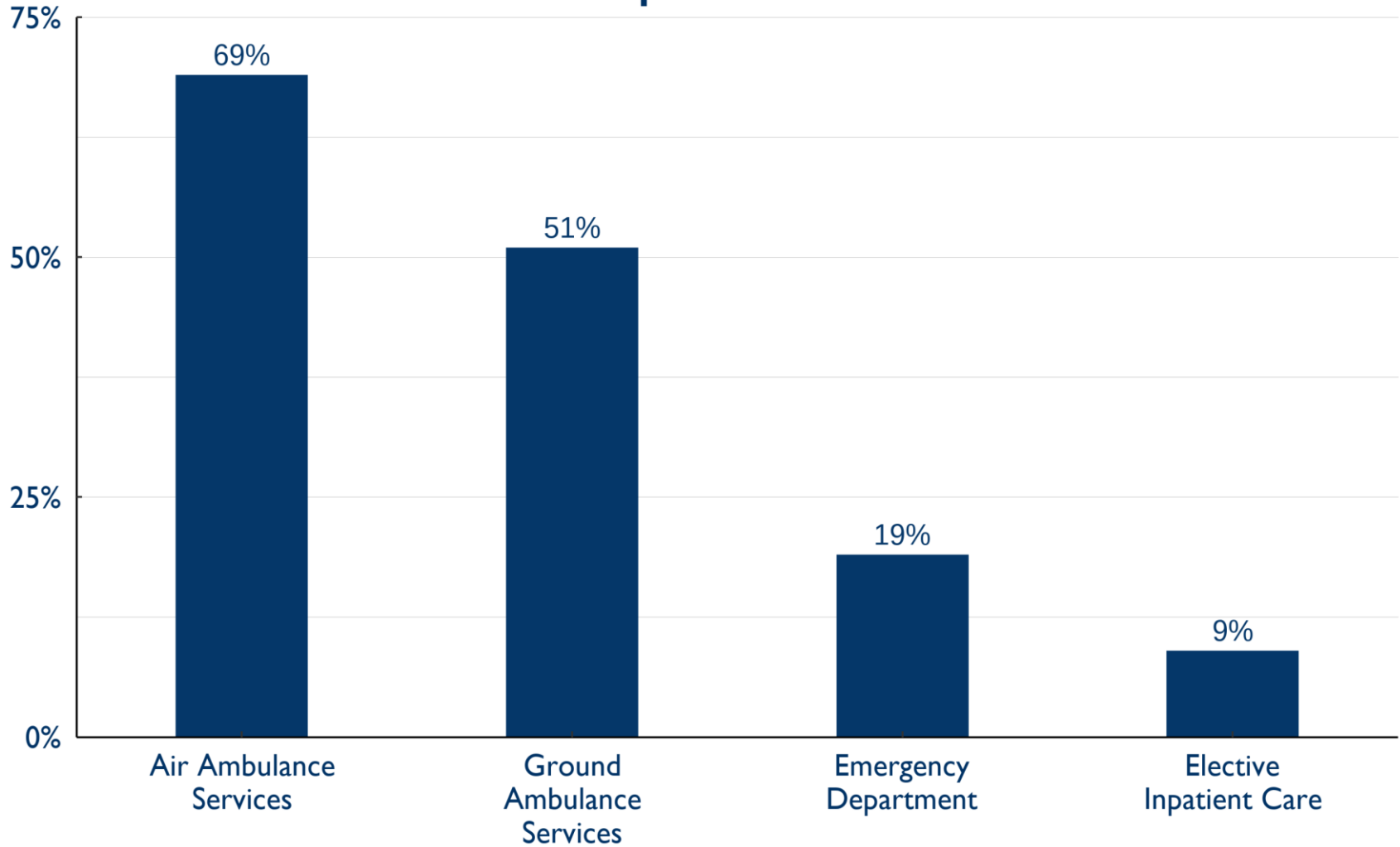
## Surprise bills can arise when patients lack choice

### Where they come from Why

Emergency situations	<ul style="list-style-type: none"><li>• ED physicians OON at in-network facility</li><li>• Ambulance dispatched is OON</li><li>• Closest emergency facility is OON</li></ul>
Nonemergency care at an in-network facility	<ul style="list-style-type: none"><li>• Surgery at in-network facility with in-network surgeon may include an OON anesthesiologist, radiologist, pathologist, assistant surgeon, or other specialist</li><li>• OON hospitalist provides care at INN facility</li></ul>

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## Percentage of Visits Leading to a Potential Surprise Out-of-Network Bill



Source: Garmon & Chartock, 2017; Government Accountability Office, 2019

## Market Failure

**Separate contracting for hospitals and emergency or hospital-based clinicians that patients don't choose causes market failure**

**Typical price-volume trade-off does not apply**

- Patients choose hospitals & surgeons, not their emergency or hospital-based clinicians (or ambulances, hospitalists)
- Same flow of patients regardless of network status
- Potentially lucrative OON billing option unavailable to other physicians

**Hospital role**

- Contract with emergency & hospital-based clinicians
- Most hospitals don't allow docs to surprise bill

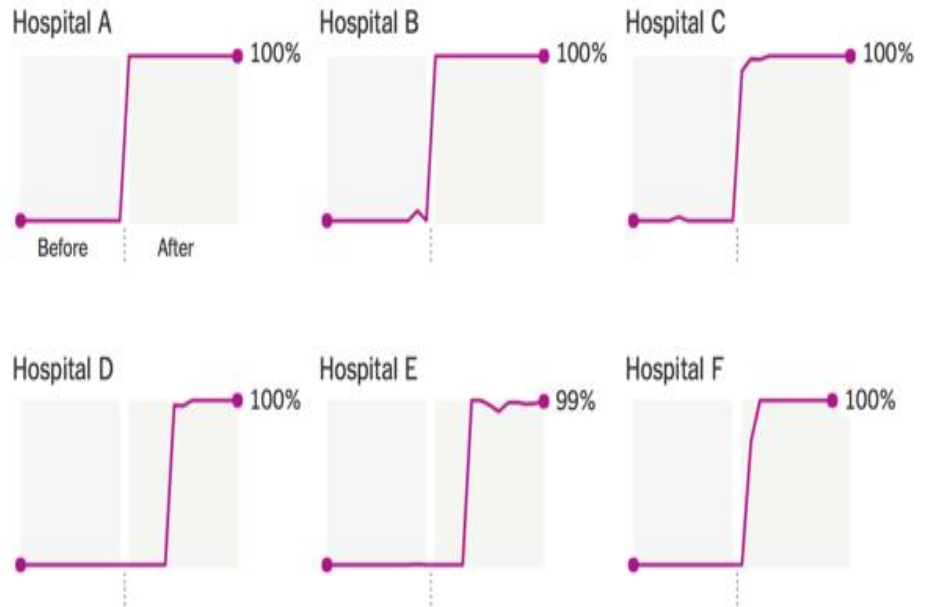
# This reflects strategic behavior ... but not by all providers

**Majority of hospitals have very low out-of-network ER billing rates. At 15% of hospitals, *at least 80% are unexpectedly treated by OON clinician***

## 'Like a Light Switch'

In several hospital emergency rooms, out-of-network rates for customers of one large insurer jumped to nearly 100 percent after EmCare took over. Below, the year before and the year after a switch.

Percent of in-network E.R. visits where doctors' fees were billed as out of network



## Physicians that Can Surprise Bill Have Very High Charges

Ratio of Charges to Medicare Allowed Amounts by Physician Type, 2016

	20 <sup>th</sup> Percentile	Median	80 <sup>th</sup> Percentile
Anesthesiology	2.52	5.51	11.08
Emergency Medicine	2.79	4.65	7.50
Diagnostic Radiology	2.64	4.02	8.03
Pathology	2.25	3.43	5.10
All Other Specialists	1.46	2.27	4.01
All Primary Care	1.39	2.03	3.54

Source: Analysis of Medicare Provider Utilization and Payment Data: Physician and Other Supplier Public Use Files, calendar year 2016

## Market failure affects all patients through high in-network rates

### Average contracted commercial payment rates:

- Anesthesiologists ≈ 350% of Medicare
- Pathologists ≈ 350% of Medicare
- Emergency Medicine ≈ 300% of Medicare
- Radiologists ≈ 200% of Medicare
- Average across all physicians ≈ 133% of Medicare

**Result is higher premiums for everyone**

# Key Elements of a Comprehensive Solution

## Take patients out of the middle

- They should not have to initiate action
- Limit exceptions

## Be comprehensive

- Emergency and non-emergency services
- All types of health plans
- Protect self-insured enrollees as well as fully-insured

## Avoid policies that increase health spending



# Contracting Regulation

## Two options

1. **In-network guarantee:** As a condition of working at a facility, require emergency & facility-based clinicians to contract with all the same health plans as the facility. If out-of-network, these clinicians are prohibited from billing patients or health plans.
2. **Simple surprise billing ban:** Out-of-network emergency and facility-based clinicians practicing at an in-network facility are prohibited from billing a patient for more than in-network cost-sharing amounts.

## Benefits

- State regulatory authority over providers avoids ERISA preemption
- Sidesteps the need to create a benchmark or arbitration process
- Potential for a real market

# Stopping Surprise Billing in Indiana

## New Indiana law

- Appears to protect all commercially-insured Hoosiers from surprise bills for non-emergency services from out-of-network providers at in-network facilities (subject to notice and consent exceptions)
- **Great first step: 1<sup>st</sup> surprise billing law in the nation to protect residents in self-insured employer health plans**

## Next steps

- Extend protections in the law to out-of-network emergency services
- Limit loopholes that might allow some providers to sidestep the protections

# Billing Regulation

## Three parts

1. Ban balance billing
2. Insurers treat OON care as in-network
3. Determine OON payment amount

## Establishing the payment amount

- Do not base on billed charges
- Current contracted rates are already highly inflated
- Little risk of setting amount “too low”

## Arbitration

- Punts rate decision, less transparent, adds admin costs