

# Surprise Medical Bills

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# Strategies for Protecting Consumers

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- **Billing Prohibition**
  - Prohibits out-of-network providers from balance billing consumers in surprise billing scenarios
- **Hold Harmless Provision**
  - Holds consumer harmless in surprise billing scenarios by limiting responsibility to in-network cost sharing
  - Less protective – without prohibition – if consumers are not aware that they are protected
- **Disclosure Requirements**
  - Require providers, facilities, and insurers to disclose information – network status, cost-sharing responsibility
  - Not fully protective since consumers may not understand disclosure or be able to change behavior, or information may be incomplete for making decisions

# Strategies for Determining Payment

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- Reimbursement Benchmark
  - Sets a specific reimbursement rate for surprise out-of-network services
  - Common reimbursement benchmarks:
    - Percentage of Medicare
    - Percentage of contracted rate
    - “Commercially reasonable” rate
- Independent Dispute Resolution (IDR)
  - Process for assisting payers and providers in coming to agreement on fair rate of payment
  - Final offer (baseball-style) arbitration is common
  - Guidelines to assist in determining appropriate payment

# State Legislative Activity

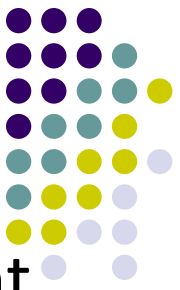
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- Georgetown studies of state laws
  - 2009: California Healthcare Foundation
  - 2015: Robert Wood Johnson Foundation
  - 2017--: Commonwealth Fund
- Technical assistance, supported by the Arnold Foundation
- Survey of state laws or regulations in place through 2020

# Defining Comprehensive Protection

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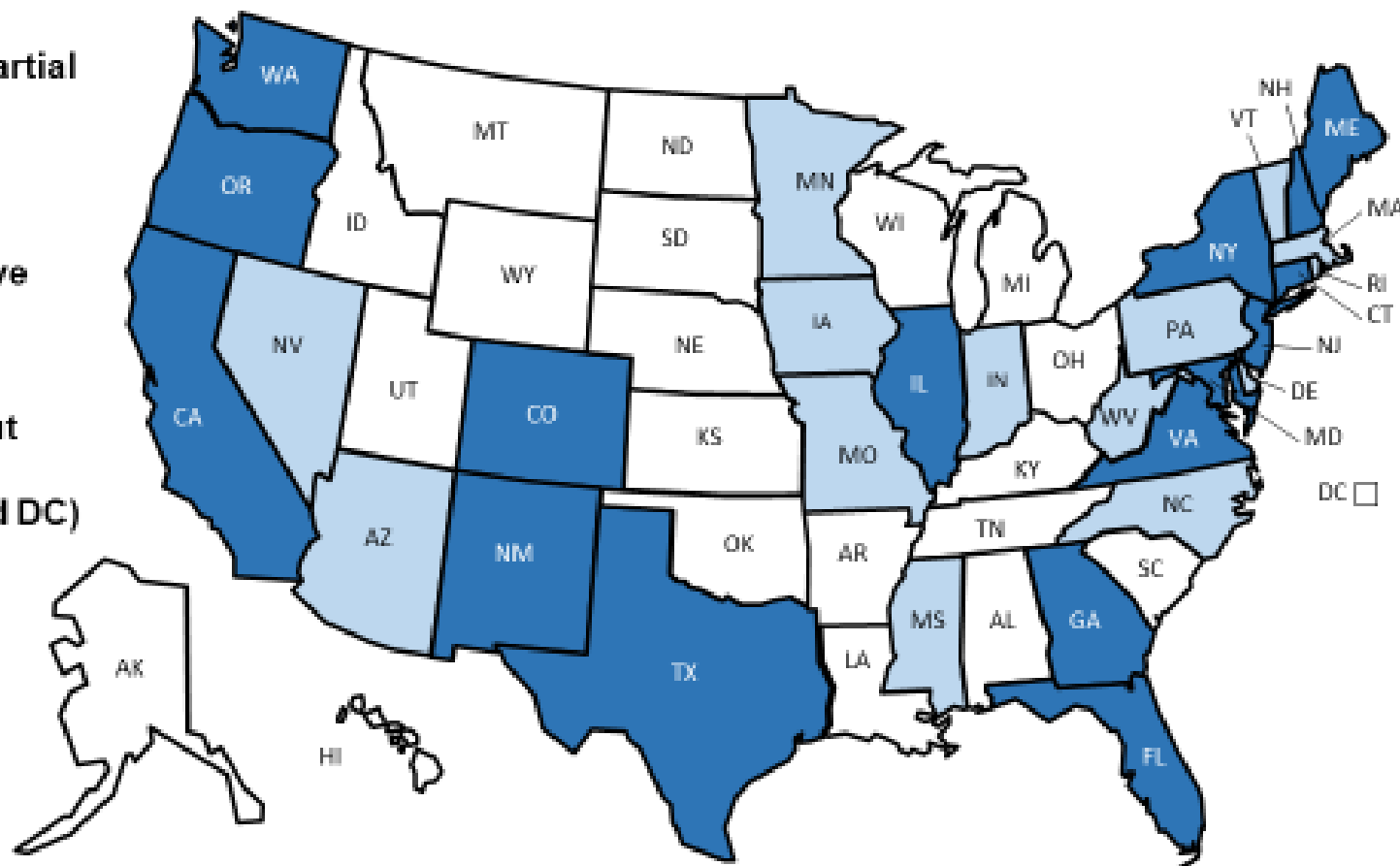


- Extend protections to both emergency department and in-network hospital settings
- Apply laws to all types of insurance, including both HMOs and PPOs
- Protect consumers by prohibiting providers from balance billing and limiting their out-of-pocket costs to in-network cost sharing
- Adopt either or both:
  - an adequate payment standard – a rule to determine how much the insurer pays the provider or
  - Independent dispute resolution process to resolve payment differences between providers and insurers.

# State Laws Protecting Consumers Against Balance Billing, June 2020



-  States with partial protections (14 states)
-  States with comprehensive protections (16 states)
-  States without protections (20 states and DC)



SOURCE: Data collection and analysis as of June 2020 by researchers at the Center on Health Insurance Reforms, Georgetown University Health Policy Institute.

# Ongoing State Activity

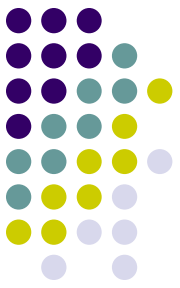
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- Laws passed in 2019
  - CO, NV, NM, TX, WA
- Laws passed in 2020
  - IN, ME, VA
  - GA (pending governor's signature),
- Ongoing consideration this session
  - LA, MI, OH, PA

# Primary Approach: Rate Standard

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- Example states: CA, CT, MD, NM, OR
- Some also include a limited dispute resolution process
- Approaches
  - Predetermined fee schedule (e.g., % of Medicare) offers certainty, transparency
  - Public benchmarking database (e.g., in-network rate based on state APCD) uses a market-based approach
  - Insurer's internal data (e.g., in-network rate)



# Primary Approach: Dispute Resolution

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- Example states: NJ, NY, TX, VA, WA
- Some (NY, VA, WA) require an initial payment using a rule such as a commercially reasonable rate
- Key elements of dispute resolution
  - Best and final offer (baseball style) approach
  - Preliminary negotiations required
  - Minimum dollar threshold
  - Paying for IDR (loser pays)
  - Factors considered by arbitrator

# Hybrid Approaches

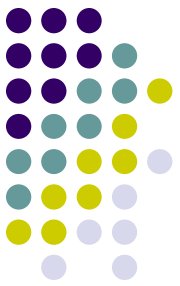
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- Combines:
  - Initial payment based on a payment standard
  - Independent dispute resolution if parties find payment amount unacceptable
- Example states: CO, FL, GA, ME
  - Hybrid elements: VA, WA
- Addresses weaknesses of separate approaches
- Opportunity for political compromise among stakeholders

# Indiana: Non-Emergency Services

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- New law: IN H 1004
- HMOs and PPOs: for non-emergency services by out-of-network professionals at in-network facilities, state prohibits out-of-network providers from billing enrollees beyond in-network cost sharing.
- Protections apply to services provided by all or most classes of health care professionals
- Consent exception
  - Protections do not apply if provider gives a notice about out-of-network status and a good faith estimate at least 5 days prior to the scheduled procedure and the patient signs a consent form

# Indiana: Applicability of Protections

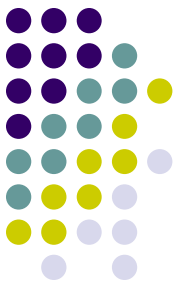
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- Prohibitions in new Indiana law for non-emergency services apply to all providers in the state
- These rules might also protect enrollees of self-funded plans

# Indiana: Emergency Services

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- Georgetown interpretation of earlier state law (Ind. Code Ann. § 27-13-36-9)
- Applies to HMOs only
  - Requires insurers to hold enrollees harmless for amounts beyond in-network cost sharing;
  - Prohibits out-of-network providers from billing enrollees for any amount beyond in-network cost sharing
- Unclear how or if these provision are interpreted or enforced by the state

# Lessons: Applicability of State Laws

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- Settings and provider types
  - States addressing only certain specialties
  - Out-of-network hospitals
  - Ground ambulance services
  - Air ambulance services
- Insurance types
  - Exclusions, e.g., short-term limited-duration plans
  - Voluntary provisions for ERISA plans

# Lessons: Consumer Protections

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- Limits of relying solely on a disclosure and informed consent approach
- Protections may be limited by consent-based exceptions
- Requirement to refund overpayments
- Provide specific enforcement authority

# Other Policy Considerations

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- Consider impacts on health care system
  - Effect on plan-provider network negotiations
  - Relationship with network adequacy
  - Impact on health costs and premiums
- Reporting requirements regarding effectiveness of surprise billing prohibitions and broader impacts



# Impact of State Policies

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- Impact analysis limited
- New York: arbitration approach
  - Stakeholder consensus that law achieved primary goal; views mixed about impact
  - Some newer evidence that insurers' payments to doctors have increased "as much as 5 percent"
- California: rate-setting approach
  - Doctors: anecdotal reports of fee reductions
  - Insurers: evidence of more in-network providers
  - RAND qualitative analysis: stakeholders mixed about impact
  - Brookings quantitative analysis: fewer out-of-network claims

# Gaps in State Regulation

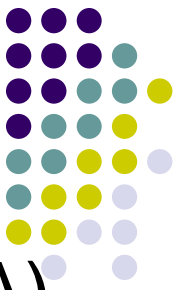
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- States without laws protecting consumers
- No state jurisdiction over self-funded plans
- Air ambulance services
- Services received in another state

# Federal Legislation, 2019-2020

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- Sens. Alexander (R-TN) and Murray (D-WA)
  - July 2019: Approved, Senate HELP Committee
- Reps. Pallone (D-NJ) and Walden (R-OR)
  - July 2019: Approved, House Energy & Commerce
- December 2019: compromise announced by Senate HELP, House E&C leadership
- Reps. Scott (D-VA) and Foxx (R-NC)
  - Feb 2020: Approved, House Ed & Labor
- Reps. Neal (D-MA) and Brady (R-TX)
  - Feb 2020: Approved, House Ways & Means

# Federal Bills: Scope of Protection



Provision	Senate HELP/House E&C compromise	House Education & Labor	House Ways & Means
Settings	Applies to fully insured, self-funded plans Emergency, post-stabilization, and non-emergency care in network facilities Certain exceptions apply	Same	Same
Air Ambulance	Included	Included	Excluded, but creates a cost reporting requirement
Ground Ambulance	Excluded	Commission to consider how to incorporate protections for users of ground ambulance services	Excluded

# Federal Bills: Consumer Protection



<b>Provision</b>	<b>Senate HELP/House E&amp;C compromise</b>	<b>House Education &amp; Labor</b>	<b>House Ways &amp; Means</b>
Hold Harmless	Limit consumers to in-network cost sharing, application of in-network deductibles, and in-network OOP maximum	Same	Same
Ban on Balance Billing	Applied to providers and facilities	Applied to providers and facilities	Applied to providers and facilities

# Federal Bills: Determining Payment



Provision	Senate HELP/House E&C compromise	House Education & Labor	House Ways & Means
Payment Standard	Median in-network rate for insurer for 2019, inflated for future years	Median in-network rate for insurer for 2019, inflated for future years	None, although median in-network rate used to determine cost sharing
Dispute Resolution	Option for binding arbitration for cases over \$750 with other restrictions; Loser pays	Option for binding arbitration for cases over \$750 (\$25K for air ambulance) with other restrictions; Loser pays	Independent mediated negotiation process if parties do not reach voluntary agreement in 30 days; Loser pays
Factors considered in IDR	Allowed: median in-network rate; training, education, experience, and quality; Prohibited: billed charges	Allowed: median in-network rate; training, education, experience, and quality; market share; Prohibited: billed charges	Allowed: median in-network rate and information submitted by parties; Prohibited: usual and customary or billed charges

# Federal Bills: State Roles



Provision	Senate HELP/House E&C compromise	House Education & Labor	House Ways & Means
Interaction with State Laws	Defers to state payment standard or dispute resolution process for state-regulated group and individual plans	Same	Same
Enforcement	State enforcement; federal enforcement as fallback Federal enforcement through civil money penalties	State enforcement; federal enforcement as fallback Federal enforcement through civil money penalties	Federal enforcement through civil money penalties

# Special Measure for Pandemic

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- States
  - New protections specific to emergency
    - Examples: Massachusetts and Wisconsin
  - Bulletins urging but not requiring protection from balance billing
  - Reminders about existing protections
- Federal government
  - Testing rules “effectively preclude” balance billing by labs
  - Recipients of federal provider relief funds may not balance bill actual or presumptive COVID-19 patients



# Looking Ahead

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- Federal legislation still possible in 2020
  - Need compromise acceptable to stakeholders
  - Legislative vehicle
- State action likely to continue
  - States without protections
  - Stronger laws in states with protections
- Indiana
  - Need to address emergency services
  - Should payment amounts be addressed?
  - Clarify impact on self-funded plan enrollees
  - Enforcement

# Georgetown Resources (1)

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- Georgetown surprise billing resource (Arnold Ventures):  
<https://surprisemedicalbills.chir.georgetown.edu/>
- Federal Action blog post (Commonwealth Fund):
  - <https://www.commonwealthfund.org/blog/2020/update-surprise-billing-legislation-new-bills-contain-key-differences>
- State Balance Billing Protections blog posts and interactive map (Commonwealth Fund):
  - <https://www.commonwealthfund.org/blog/2019/states-are-taking-new-steps-protect-consumers-balance-billing-federal-action-necessary>
  - <https://www.commonwealthfund.org/blog/2020/states-can-prevent-surprise-bills-coronavirus-care>
  - <https://www.commonwealthfund.org/publications/maps-and-interactives/2020/apr/state-balance-billing-protections>

# Georgetown Resources (2)

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- State use of payment standards (Commonwealth Fund)
  - <https://www.commonwealthfund.org/blog/2020/addressing-surprise-billing-setting-payment-standards-out-network-providers>
- State use of dispute resolution (Commonwealth Fund)
  - <https://www.commonwealthfund.org/blog/2020/how-states-are-using-independent-dispute-resolution-resolve-out-network-payments-surprise>
- Health Affairs blog on hybrid approaches:
  - <https://www.healthaffairs.org/doi/10.1377/hblog20190708.627390/full/>
- Coronavirus protections, interactive state map
  - <https://www.commonwealthfund.org/publications/maps-and-interactives/state-action-related-covid-19-coverage-critical-services-private>