



Welcome to

Addressing Surprise Medical Bills: *New Research and State Approaches*

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Welcome and Introduction

Lynn Quincy

Associate Director, Health Reform Policy

and

Director, Health Care Value Hub



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Agenda for Today

Welcome & Introduction – Lynn Quincy (CU, Hub)

Grid of Legislative Solutions - Nancy Metcalf and Ronni Sandroff (consultants)

State Legislative Updates:

- Stacey Pogue, Center for Public Policy Analysis: **Texas** Update
- Ryan Biehle, Colorado Consumer Health Initiative: **Colorado** Lessons Learned
- Anthony Wright, Health Access: **California** Successes
- Chuck Bell, CU: **NY** Implementation, **CT** & a pending bill in **NJ**

Leveraging the Consumer Complaint Process – Blake Hutson (CU)

Advocate Actions - Blake Hutson (CU)

Q&A



What is a Surprise Medical Bill?

A surprise medical bill is any bill for which a health insurer paid less than a consumer expected.

Not every out-of-network bill is a surprise bill.

Many surprise bills are the result of enrollees not understanding their in-network coverage but far too many are the result of patients inadvertently using an out-of-network provider.



Examples

- *Patient arranges for in-network hospital and in-network surgeon but gets a surprise bill from out-of-network assistant surgeon – a person they never met.*
- *Patient goes to an in-network ER but there are no in-network ER docs available to treat the patient.*

Balance Billing

Charges from Out-of-Network Providers

In-network providers are capped on what they can bill you

Out-of-network doctors can bill as much as they want.

Example:

	Provider Charge	Plan Allowed Amount	Balance
Total	\$500	\$300	\$200
Plan Pays		\$150 (50%)	\$0
Patient Pays		\$150	\$200



How Often do Surprise Bills Occur?

Over a two year period, 30% of privately insured Americans received a bill where the plan paid much less than expected or nothing.

- Surprise Medical Bill Survey, Consumer Reports (May 2015)



Who's in Charge?

Fully insured plans (individual and small group private coverage)	State regulator
Self-insured plans (large employer)	U.S. Department of Labor
Medicare	balance billing prohibited as almost all providers “accept” Medicare.
Medicaid	balance billing prohibited



Legal & Regulatory Fixes for Surprise Bills

A review of state approaches to 6 key problems

**Nancy Metcalf &
Ronni Sandroff**

Consultants





What Causes Surprise Bills?

- **Inaccurate provider directories**
- **Inadequate provider networks**
- **Lack of disclosure**
- **Insufficient consumer remedies when a surprise bill occurs.**
- **Insufficient consumer awareness of their rights**



Inaccurate provider directories

- **Create/enforce directory accuracy standards (CA proposed) (federal standards at a minimum).**
- **Secret shopper investigation to check accuracy of directories.**
- **Hold consumers harmless for relying on inaccurate directory information.**



Lack of Disclosure

- **Require hospitals and/or insurers to disclose number and % of out-of-network (OON) physicians at in-network hospitals.**
- **Require disclosure of network status prior to receiving non-emergency services.**
- **Hold consumers harmless for OON bills not disclosed more than 72 hours before service.**
- **DON'T SETTLE for blanket advance disclaimer – it's not meaningful protection.**



Unavailability of in-network specialists at network hospitals

- **Consumers must be held harmless for OON bills in this category and prohibit OON providers from directly balance billing consumers for services at network hospitals.**
- **DON'T force hospitals to use only in-network providers and labs. This could lead to service shortages.**



Paying Providers When Balance Billing is Prohibited

- **Set a formula or range for settling OON bills, such as a state fee schedule (MD) or a defined percentage of U&C, such as 80% of Fair Health (NY).**
- **OR require mandatory arbitration/mediation of disputes (NY)**
- **DO NOT require insurers to pay full charges – it will drive providers from networks and increase premiums.**



Protection for ERISA (self-insured) plan members

- **ERISA plans not subject to state insurance regulation but cover 30-40% of population.**
- **Allow ERISA plan members to initiate mediation process directly with providers (NY)**
- **Enact surprise bill protections under consumer protection or professional licensure statutes, not insurance statutes (NJ and CO proposed bills).**



State Spotlight: Texas

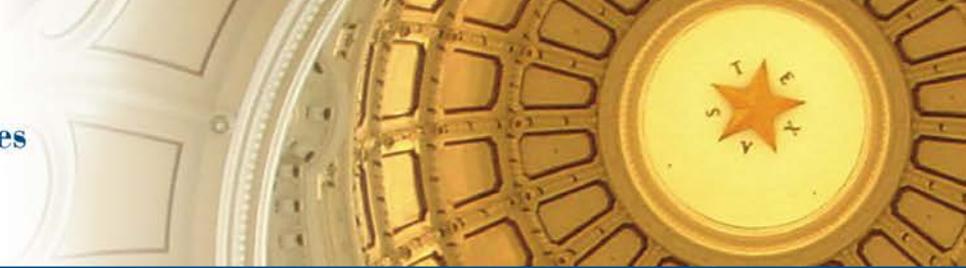
Stacey Pogue

**Senior Policy Analyst
Center for Public Policy
Priorities**





Center for Public Policy Priorities



Texas Update on Balance Billing

Out-of-Network Surprise Bills— New Research and State Approaches
Consumers Union Webinar
Friday, June 5, 2015

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Summary of Texas Action

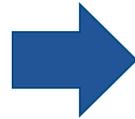


An Example

HB 2256

As Filed, 2009

Hospitals can't have an exclusive contract with one ER physician group, one anesthesiology group, etc., unless the physician group is in-network with all of the same plans as the hospital.



Opposition from doctors, hospitals, and/or health plans.



Mediation right for balance bills that top \$1,000.

Incremental Progress

- Established advisory committee and conduct DOI data call to study network adequacy of facility-based physicians.
- Increased disclosure from plans and providers about potential for balance billing.
- Balance bills paid must count toward in-network deductibles and out-of-pocket limits.
- Provider directories must provide balance billing-related data.
- Mediation for balance bills over \$1,000.

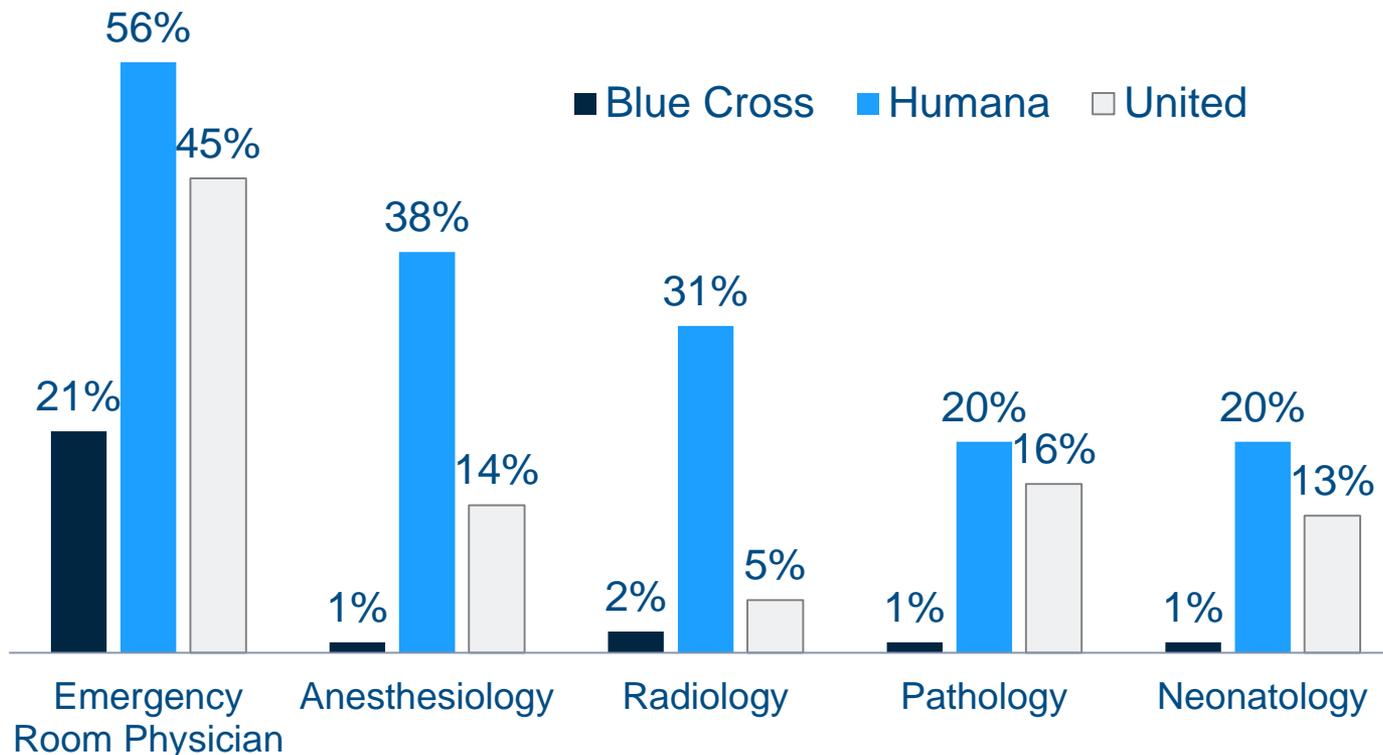


Balance Billing-related Data Available in Texas

- For each in-network hospital, percentage of dollars billed out-of-network for hospital-based physicians by type.
- A list of in-network hospitals that have no in-network ER doctors, anesthesiologists, radiologists, pathologists, or neonatologists.

Many In-network ERs Have No In-network ER doctors

Percentage of In-network Hospitals with No In-network Provider, by Physician Specialty



2015 Consumer Agenda: Stop Surprise Emergency Medical Bills



- Consumer bill to end balance billing in emergencies and set up NY-style arbitration.
- Strong opposition from doctors. Our bill dies.
- Bill to improve existing mediation passes. Balance bills over \$500 can be challenged in mediation.

How We've Made Progress in Texas

- Commitment from longtime chairs of House and Senate oversight committees
- Commitment from former DOI commissioner
- State/capitol employees getting balance bills
- First pass at mediation adopted as part of network adequacy. Helped to have new protection included in a larger bill, so there is something for everyone to love and hate
- In 2015, support from insurers and Texas Association of Business; extensive media coverage of data analysis; great stories for testimony and media from Consumer Union story bank

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State Spotlight: Colorado

Ryan Biehle

Policy Associate
Colorado Consumer Health Initiative





**Colorado
Consumer
Health
Initiative**

Curbing Surprise Medical Bills - CO

**Ryan Biehle
Policy Associate**

Current Law in Colorado

- Protections for consumers who see out-of-network provider @ in-network facility
- §10-16-704(3) C.R.S. requires carriers to hold consumers harmless
- Applies to DOI-regulated plans only
 - Not ERISA

2015 Proposed Policy

- Many iterations & stakeholder aims
 - Cap OON charges (% of Medicare)
 - Other ways to limit OON (e.g. arbitration)
 - Prohibit providers from balance billing consumer
 - Disclosure to consumers
 - By Facility, by provider, by the Carrier upon receiving bill from provider (BUT, no contract relationship)
 - Apply to ERISA plans

Introduced Version SB15-259

- SB15-259, Sen. Irene Aguilar
- Introduced Bill:
 - Prohibit provider balance billing. Provider, facility & carrier must all hold consumer harmless
 - Disclosure to consumers by facility, provider & carriers
 - Disclose estimated charges if seeking care, intentionally, at OON provider/facility
 - Failure to comply = Deceptive Trade Practice
 - Title 6 of Colorado Revised Statutes. Covers ERISA plans?

Political Landscape

- Bill failed to pass
- Stakeholder discussions planned for interim
- General agreement on Consumer Disclosure
 - Implementation challenges
- Perspectives
 - Consumers & carriers supported
 - Providers opposed (liability concerns, implementation)



State Updates: California

Anthony Wright

**Executive Director
Health Access California**



SURPRISE MEDICAL BILLS: The California Context

Existing protections against balance billing:

- 1975 – no balance billing by contracted providers (HMOs and PPOs in Knox-Keene licensed plans)
- 2009 – no balance billing by ER doctors (Knox-Keene licensed plans)
Cal. Supreme Court in Prospect case.

Other consumer protections:

- Network adequacy: Plans must provide timely-access to care. (AB 2179 (Cohn), 2002; Department of Managed Health Care regulations)
- Plans must provide access to out-of-network providers when needed care not available in-network, with in-network cost-sharing.

What's missing:

- Protections for non-emergency care, especially when consumers inadvertently get out-of-network care. (e.g. anesthesiologist, radiologist, pathologist, etc.)

AB 533 (Bonta)

Holds consumers “doing the right thing” harmless
 for surprise bills

- **In-network cost sharing only:** Consumers pay the same co-pays and other cost-sharing if they get care from an out-of-network provider at an in-network facility.
- **No balance billing:** Allows plans to not reimburse an out-of-network provider if that provider attempts to balance bill the consumer for more than the in-network cost-sharing.
- **Counts toward out-of-pocket maximum:** Consumer’s out-of-pocket payments to out-of-network provider counts toward annual out-of-pocket maximum as a covered benefit.
- **Consent to out-of-network care:** Consumer can voluntarily consent to use of out-of-network provider if a written estimate of additional cost is provided at least 24-hours before receiving the services.

Status: Passed out of Assembly with strong bipartisan support: (69-1)
 Onward to the Senate!

Opposition Concerns

Opposed by CA Medical Association, ER doctors, anesthesiologists, other specialists.

Billing disputes between health plans and non-contracting providers:

- Mandatory and binding independent dispute resolution process.
- Method of determining “reasonable and customary” value for services.
- “Interim payment” for providers.

???

**Consumer Principles: Don't Put Patients In Middle;
Not Billed Charges; Encourage Both Sides to Contract**



Health Access California

2015 California Patient Protection Legislation to Limit Out of Pocket Costs & Stop Surprise Bills

- SB 137 (E. Hernández) Accurate Provider Directories
 - Accurate Updated, Standardized Directories: For Shoppers & Patients
- AB 248 (R. Hernández) Minimum Value Coverage
- AB 339 (Gordon) Prescription Drug Cost Sharing
 - Protections Including Monthly Cap on Specialty Drug Cost-Sharing;
- AB 533 (Bonta) Surprise Bills
- AB 1305 (Bonta) Limitations on Individual Cost Sharing in Family Coverage



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State Spotlights: New York and New Jersey

Chuck Bell

**Programs Director
Consumers Union**





New York = History of fighting for better protections for out-of-network bills



INGENIX®

- 2009: State investigation leads to \$95 million settlement with 12 insurers
- Creation of nonprofit FairHealth as database for OON charges



FH® Consumer Cost
 Lookup

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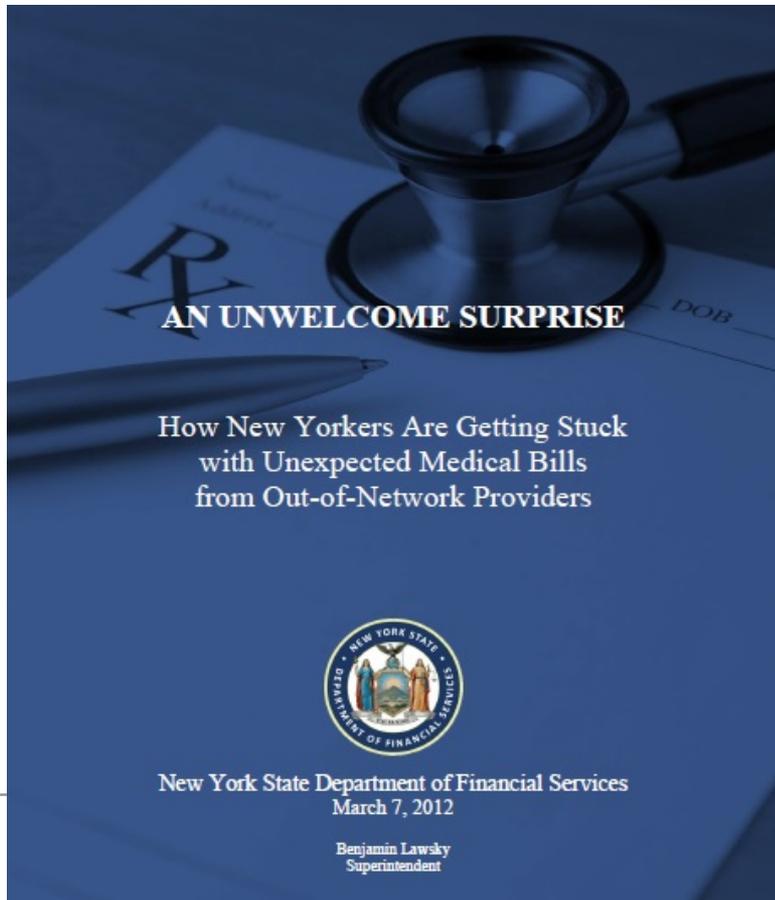
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WELCOME MESSAGE
 from FAIR Health President Robin Gelburd



New York = State embraces active role in preventing surprise bills



Superintendent Ben Lawsky
NY Dept of Financial Services



New York Surprise Medical Bills Law

- Comprehensive package of protections took effect 3/31/2015
- NY DFS developed regulations to guide independent arbitration process
- Materials developed for health plan enrollment documents, assignment of benefits form, provider disclosures
- State monitoring implementation through complaints received



Connecticut SB 811 Passes! (6/1/2015)

- Patients who see OON providers in Emergency Rooms only have to pay in-network rate
- For non-emergency care, patients who receive surprise bills from OON providers would only have in-network cost sharing
- Bill requires disclosure of facility fees
- Beginning in 2017, facility fees not allowed for certain outpatient physician office visits



New Jersey – A4444 & S20 (pending)

- Transparency – network status, costs, provider directories, proposed Healthcare Payment Index (HPI) of in-network claims
- Consumer Protection – against OON charges in ER and “inadvertent” OON in non-emergency situations
- Independent Arbitration – Baseball style
- Cost Containment
- Measuring Success



Surprise Medical Bills: Are Regulators Aware of the Extent of Consumer Problems?

Blake Hutson

**Senior Associate
Consumers Union**





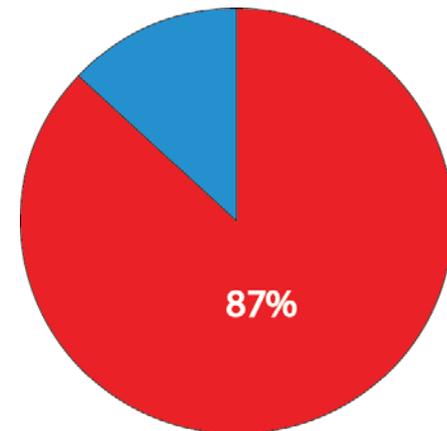
“Because regulators rely heavily on complaints as an indicator of potential problems with a health plan’s network, it is imperative that consumers are aware of the ability to file complaints with the DOI and the process for doing so”

Source: NAIC Consumer Representatives Report, *Ensuring Consumers’ Access to Care: Network Adequacy State Insurance Survey Findings & Recommendations for Regulatory Reforms in a Changing Insurance Market* (November 2014)



But Consumers Unaware of their Rights

- **87% don't know relevant state agency** tasked with handling complaints about health insurance
- **72% unsure if they have the right to appeal** to the state or independent medical expert if their health plan refuses coverage for medical services they think they need
- Nearly three-quarters unsure if they had the right to appeal to the state or an independent medical expert if their health plan refused coverage for medical services.

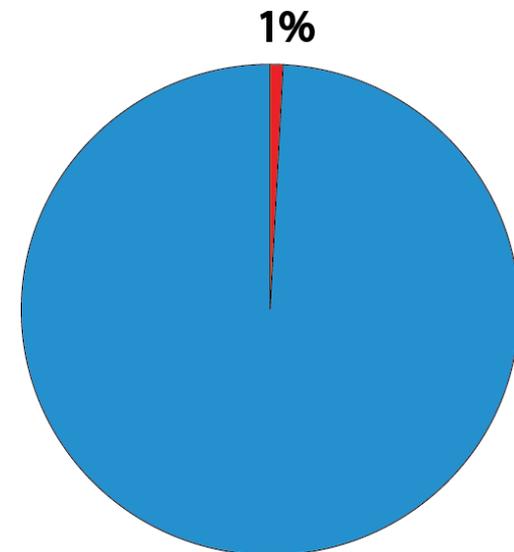


Source: Consumer Reports, National Research Center (May 5, 2015)



Only a Tiny Percentage Contact Regulators

- **Only 1% of consumers with surprise medical bills contacted their state regulator**
- More than 90% of complaints go to parties who are part of the problem: insurance companies and providers

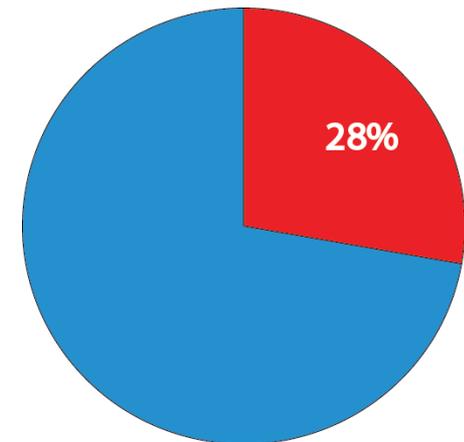


Source: Consumer Reports, National Research Center (May 5, 2015)



Consumers Dis-satisfied with Resolution of Billing Issues

- Only 28% consumers were satisfied with the resolution of their billing issues
- Majority (57%) ended up paying their bill in full



Source: Consumer Reports, National Research Center (May 5, 2015)



Strategies to Improve the Complaint Process

- Enhance consumer external appeal rights to include all plan types and out-of-network referrals (NY)
- Include consumer assistance and regulator contact info on the bottom of all EOBs (MD, NY)
- Require description of appeal rights and regulator contact info on all official insurance complaint/grievance decisions
- Ensure sufficient funding for all consumer complaint agencies: DOI, Ombudsman, Consumer Assistance Programs.
- Establish a comprehensive, standardized list of complaint codes that all DOIs use to systematically track consumer complaints and compare across states.
- Create one centralized entity where consumers can complain regardless of what type of health insurance they have – like “411”
- Increase awareness via Marketing campaign by regulatory agency.



Use Insurance Complaints as a Starting Point for Surprise Bills Advocacy

- Consumers are having problems, want to complain, but don't know their rights and the process.
- Regulators can't raise awareness of these issues if they aren't hearing from consumers.
- Work with your insurance division to understand the complaints they receive, improve the process, and highlight the problems for lawmakers.
- Pro-actively encourage consumers to file complaints.
- Check out our insurance complaint tool. Let us know if you'd like to be listed.

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Stand up to **SURPRISE** Medical Bills

These days it's not enough to have health insurance, pay your monthly premiums, and understand your co-pays and deductibles. Even the savviest consumers can get hit with surprise bills from out-of-network doctors.

Often your hospital is in-network, but after the fact you get the "surprise" – the anesthesiologist was out-of-network. But many people don't know where to turn with complaints about these surprise bills. Use our new tool below to find out where to complain in your state.

Choose a state to view resources:

SELECT YOUR STATE

ConsumersUnion.org/insurance-complaint-tool



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Next Webinar: Spotlight on Oregon

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