

Surprise Out-of Network Medical Bills: Grid of State Legislative Solutions

A surprise medical bill is any bill for which a health insurer paid less than a consumer expected. A surprise out-of-network bill is when a consumer goes to an in-network facility but unknowingly gets treated by and billed by an out-of-network provider. Consumer Report’s May 2015 survey found that almost one-third of the privately insured population had received surprise medical bills and one out of four people got surprise bills from an out-of-network provider. Few of the consumers surveyed knew of their rights or even where to complain. States should consider the remedies below to help protect fully insured consumers. Uninsured consumers and those in self-insured plans will need similar remedies.

Problem?	Overarching Remedy	Do Consider	Don’t Consider
<p>Inaccurate provider directories mislead patients into choosing a provider that is not in network.</p>	<p>Insurers must maintain accurate and up-to-date network provider directories and consumers must easily be able to identify and link to the correct directory for their plan.</p>	<ul style="list-style-type: none"> ● Relieve consumers of payment responsibility for out-of-network bills caused by inaccurate provider directories, including requiring restitution for consumers who relied on inaccurate directories when enrolling in or using care. (PA, NY, CA) ● Undertake “secret shopper” investigations to assess the accuracy of provider directories. ● Create standards for directory accuracy, with auditing and penalties for noncompliance. (CA) At a minimum, apply federal provider directory standards for Marketplace plans to the entire market, including a requirement for frequent updates. (CA=weekly) ● Institute a notice requirement for patients if their doctor is dropped or opts out of a network during plan year. 	
<p>Lack of appropriate consumer disclosures to guard against out-of-network care and clarify extent of out-of-network coverage.</p>	<p>Inform consumers whether providers are in-network or out-of-network in a way that preserves meaningful consumer choice and clearly signals when networks are narrower than average.</p> <p>In-network hospitals must report on network status of all providers who practice at that hospital, including contracting providers.</p>	<ul style="list-style-type: none"> ● Create new summary measures that signal to the consumer the relative amount of out-of-network coverage available under their plan options. ● Require in-network hospitals to report to regulators and/or health plans the percent of emergency department physicians who are out of network (TX) or require in-network hospitals to report to regulators and/or health plans the percent of all physicians with admitting privileges who are out of network. ● Require providers to make pre-service disclosure of estimated patient costs at least three business days before service to allow patients to make other plans or arrange for in-network providers. ● Relieve consumers of payment responsibility for undisclosed out-of-network bills (NY). 	<ul style="list-style-type: none"> ● Permit a blanket disclaimer that informs the consumer that they might be treated by an out-of-network provider at some unspecified point in the future. ● Require disclaimer, but with too little advance notice to enable consumers to consider other provider options.

Problem	Overarching Remedy	Do Consider	Don't Consider
In-network doctors, labs, etc., not routinely available at in-network hospitals.	Improve presence of these providers in the network. Establish ban on balance billing that explicitly protects the consumer from having to pay unavoidable or inadvertent out-of-network charges or balance bills. Provide alternative remedies when an outright ban on balance billing not in place.	<ul style="list-style-type: none"> ● Include standards for in-hospital status in network adequacy regulations. ● Relieve consumers of out-of-network payment responsibility in situations when an out-of-network provider performs a service at an in-network facility without sufficient prior notice to patient. ● In addition, or alternatively, require that cost sharing associated with surprise out-of-network bills count towards consumers' in-network out-of-pocket maximums and deductibles. 	<ul style="list-style-type: none"> ● Force hospitals to use only doctors and labs that are part of the hospital's networks. This could result in service shortages. ● Have the health plan pay full charges when balance billing prohibited. (See alternatives below.)
Uncertainty about provider payments for surprise out-of-network medical bills.	An explicit remedy for how providers will be paid by insurers when balance billing is prohibited, including a clear independent dispute resolution process, that leaves consumers out of the mix.	<ul style="list-style-type: none"> ● An objective, transparent reference point or formula for settling provider reimbursement when balance billing is prohibited. ● An independent dispute resolution process if providers wish to appeal the basis amount. Cost of dispute review process paid for by providers and insurers (NY, NJ). 	<ul style="list-style-type: none"> ● Require insurers to pay out-of-network providers' full charges for surprise medical bills. This could reduce providers' incentive to join networks and result in higher insurance premiums and other costs to consumers.
Consumers unaware of their rights to challenge surprise bills.	A robust program is critical to inform consumers of their rights and complaint channels. Strong and transparent consumer complaint categories for regulators that reveal network adequacy and out-of-network billing problems are needed.	<ul style="list-style-type: none"> ● Extend consumer external appeal rights to include out-of-network referrals. (NY) ● Include consumer assistance and regulator contact info on the bottom of all EOBs to fully insured enrollees so consumers can inquire about their rights, register complaints, and receive help. (MD) ● If balance billing is permitted, require out-of-network providers to include consumer information about rights and complaint channels, with their balance bills. (NY) ● Require that all official complaint/grievance decisions prominently display information about appeal rights to state agency, with contact information. ● Create a marketing campaign to increase awareness of role of regulators and consumer rights. (OR) 	<ul style="list-style-type: none"> ● Adopt surprise medical bill policies without consumer notification provisions. Consumers who receive balance bills may pay them if unaware of available protections.