



Georgia Association of Public Pension Trustees
FOURTEENTH ANNUAL CONFERENCE

4B - Surprise Healthcare Bill Regulatory and Litigation Developments

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In this session, we will:

- **Recognize** what a balance bill and surprise bill are and the severe harm they have been causing patients throughout the U.S.;
- **Recognize** the situations in which patients are most susceptible to large balance/surprise medical bills;
- **Explain** how new legislation can shield patients from the negative consequences of balance/surprise bills and what situations patients need to avoid to make sure they fall within the protections of the new law; and
- **Recognize** things a patient should never do upon entering a physicians' office or a hospital to help them avoid large balance/surprise medical bills.



Medical Billing 101:

Definitions and Relationship between Prices and Charges

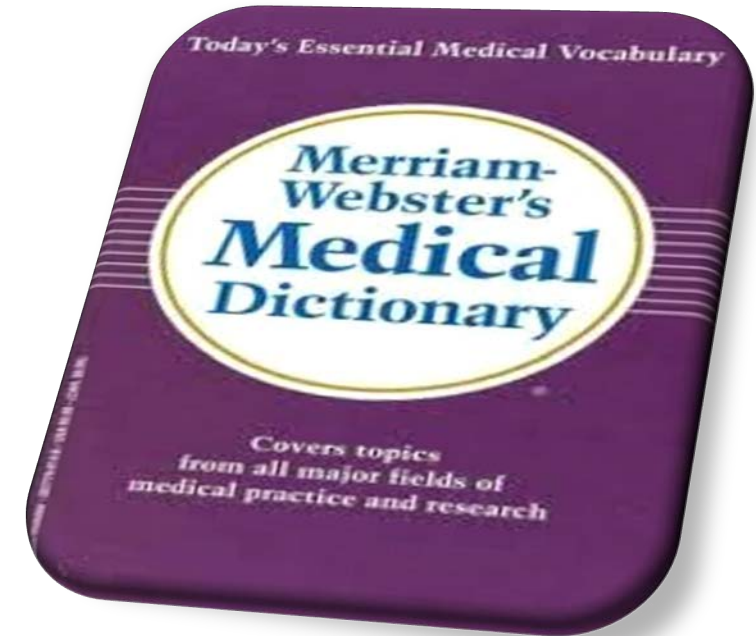
Amount	Definition	Ratio
Medicaid price	Price that state Medicaid programs pay providers	0.72*
Medicare price	Administratively set price that the Medicare program pays providers	1.0 (reference)
Commercial in-network price	Negotiated price between commercial insurer and in-network provider	1.43
Commercial out-of-network price	Price paid to patient for out-of-network provider (typically not negotiated)	Higher
Provider charge	Billed amount from the chargemaster which is solely determined by the provider and not negotiated: A “ sticker price ”	Highest

*The national average Medicaid-to-Medicare price ratio is obtained from the Kaiser Family Foundation, “Medicaid-to-Medicare Fee Index” (<https://www.kff.org/medicaid/state-indicator/medicaid-to-medicare-fee-index>).



What is a Balance Bill? Surprise Bill?

- **Balance Bill:** A bill received by the patient from an **out-of-network** (“OON”) **provider** for the difference between the provider charge and the portion of the charge paid by the patient’s insurer
- **Surprise Bill:** A balance bill received by the patient from an OON provider whom the patient did not choose or could not avoid, commonly from care rendered at an **in-network facility** by an out-of-network provider
 - Typically these bills are large because asking price is the provider’s charge rather than an in-network negotiated price



Why are Chargemaster Prices Generally Unreasonable?

1. Chargemaster prices have no relation to actual input **costs** of delivering care: they are based on benchmarks (*e.g.*, multiples of Medicare price)
2. Basis of negotiation with insurance companies
3. Lack of price disclosure (patient cannot shop)
4. Situational Market Power: In ED setting, patients are under duress making them vulnerable to undisclosed charges



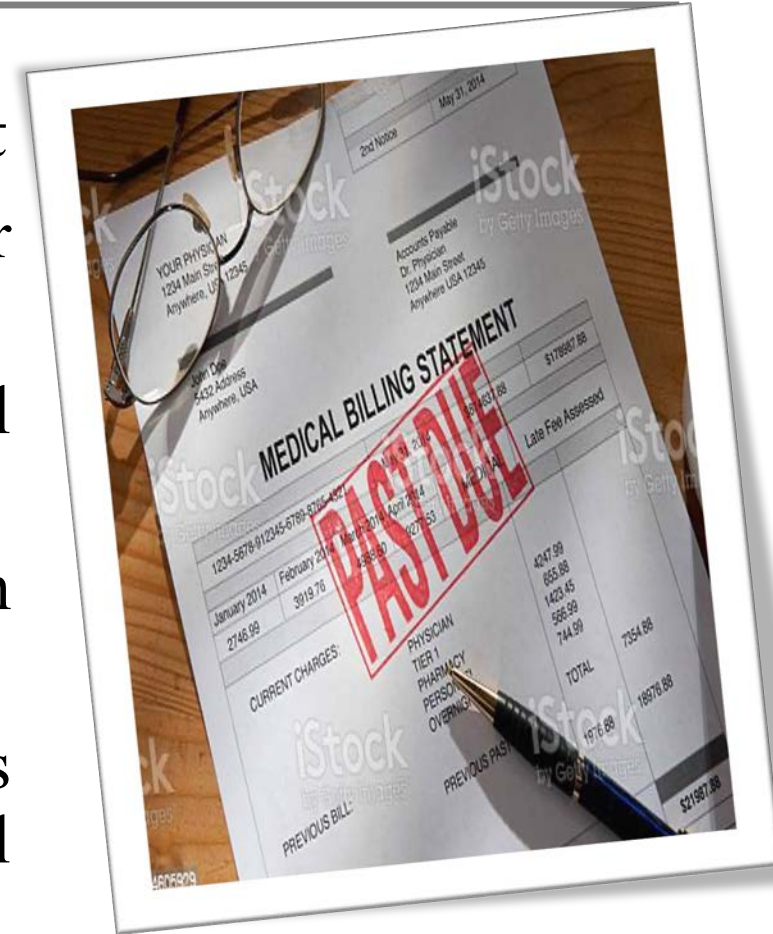
Surprise Billing is Outrageous

- Patients have **no opportunity to choose** their medical providers
 - Some patients are unconscious and an OON specialist simply walks into the room
- Patients have **no access to prices** or a range of prices these medical services cost
 - First find out price when they get the bill
- Patients have **no direct way to find out** if the medical service **providers** are **in-network** because doctors do not identify what physician group they are affiliated with



What are the Consequences of Receiving a Surprise Bill?

- Americans currently have **\$140 Billion** in **medical debt**
- **Medical debt** is the **largest** source of debt for American families
- **Medical expenses** are the **#1 reason** for personal **bankruptcy** in the U.S.
- Having a **surprise OON bill raised** total bill by an average of **\$14,083**
 - *The New York Times* reported that one of its writers received a \$145,000 surprise bill (child hospital stay)



What are the Consequences of Receiving a Surprise Bill?

- Large bills can accrue interest
- Can end up on your credit report
- Debt collectors can hound you
- Wages can be garnished



How Prevalent Has Surprise Billing Been?

- **Millions** of Americans have received surprise bills each year
- Approx. **40%** of patients seeing OON physicians were balance billed
- Approx. **70%** of patients who were balance billed were unaware their provider was OON



Which Types of Medical Service Providers Balance Billed the Most?

- **Anesthesiologists** (\$1,219 average charge)
- **Surgical Assistants** who aid in operations, check on patients (\$3,633 average charge)
- **ED Physicians** (generally not hospital employees)
- **Radiologists**
- **Labs** (bloodwork, urine tests)



The Ambulance Quandry

- **Ambulances** have **highest OON billing rate** of any medical specialty, meaning most rides (71%) can **result** in a bill with an **average cost** of **\$450**
 - Some municipality-owned ambulances by law must charge for these services (**have no choice**)
 - Municipalities sometimes take over ambulance services because private companies would charge outrageous amounts
- **Air Ambulance** rides can be **devastating**
 - A patient interviewed by *The New York Times* received a **\$52,112 bill** for **one such ride**



Who is Most Likely to Have Received a Surprise Bill?

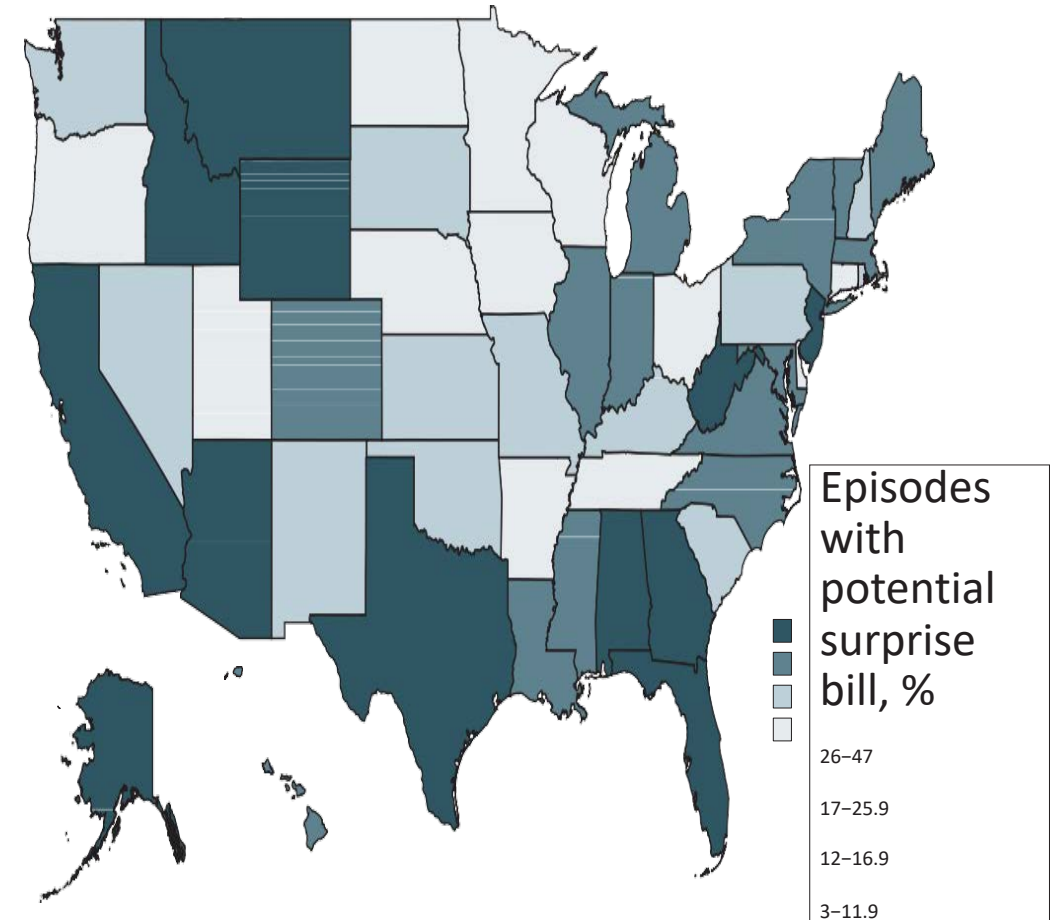
- **Emergency Room – 18%** surprise billed
 - Heart attack patients - **27%** surprise billed
- **Elective Surgery – 20%** surprise billed
 - **Especially with surgical complications**
- In-network hospital stays – **18%** surprise billed
- People with **Affordable Care Act exchange plans**
 - Have **fewer participating doctors**



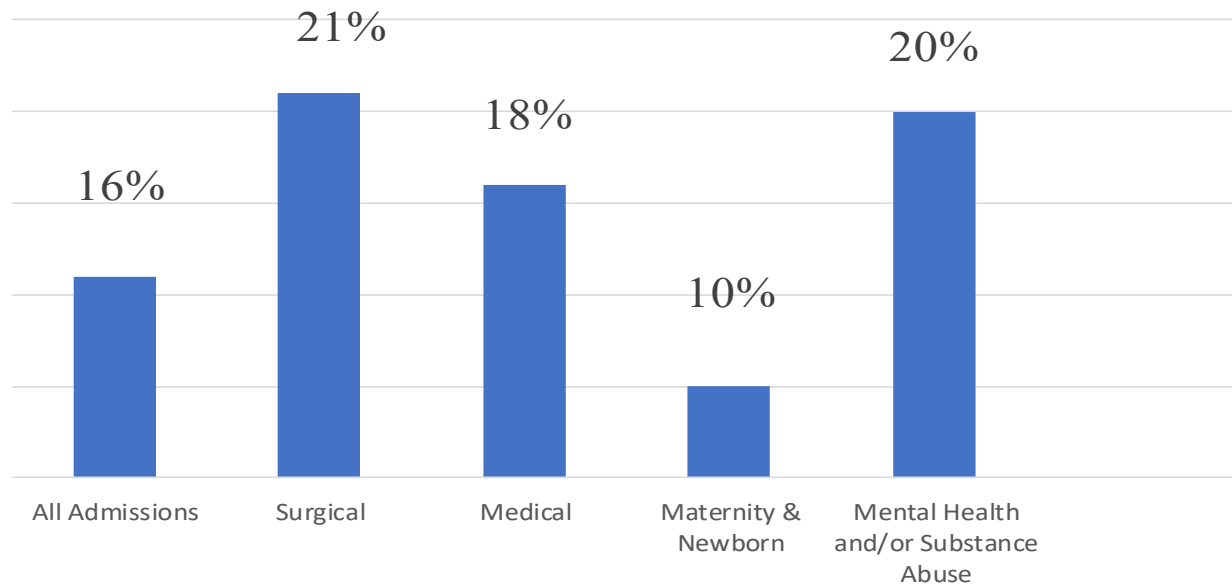
Who is Most Likely to Have Received a Surprise Bill?

What state you live in

- **Alaska highest: 46%**
surprise billed
- **Nebraska lowest: 3%**
surprise billed
- **Georgia: 26-47%** (highest quartile)



Patients with Surgical and Mental Health Admissions May Be at a Higher Risk of Surprise Medical Bills



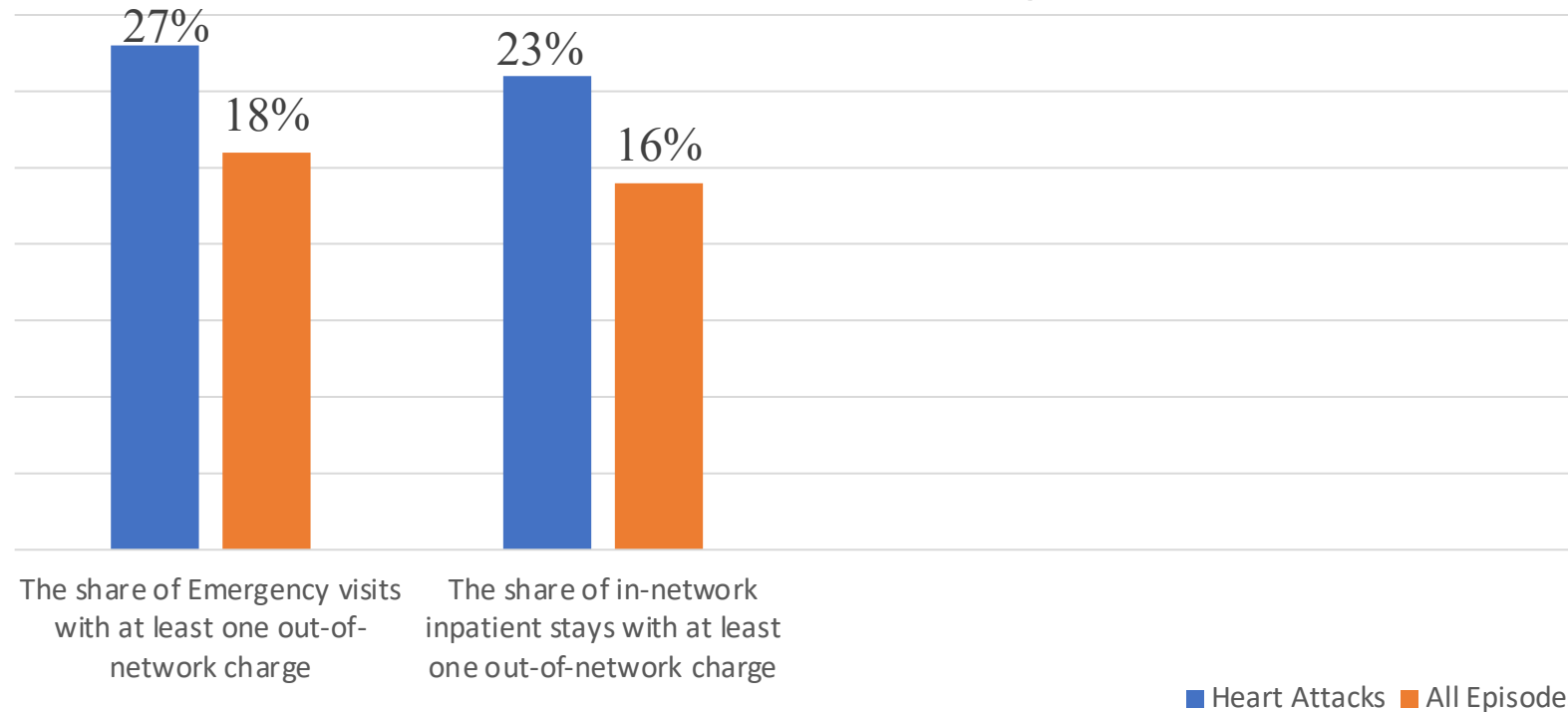
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Heart Attack Patients Have a Greater Risk of Surprise Medical Bills

Among people with large employer coverage, share of visits that lead to out-of-network charges, 2017



Why Has Surprise Billing Occurred?

- **Competition among healthcare industry players: hospitals, doctors, insurance companies** over split of **revenues** generated each year from patient illness - **\$3.6 trillion in 2018**
 - Hospitals/Physicians being squeezed by insurance companies



-
- Question: Is there anything being done to fix this problem?
 - Answer: Yes!



State Surprise Bill Laws

- To date **33** states have implemented legislation or regulations to address surprise bills
- These state laws vary in scope of the protections and the method of determining a reasonable price for the **OOB** services rendered
 - Some provide arbitration system for patients to use



No Surprises Act: The Game Changer

- The **No Surprises Act (“NSA”)** was **passed** by Congress and became effective as of **January 1, 2022**
- Result of **bipartisan** legislation passed during the Trump administration and fine-tuned by the Biden administration
- **Delayed** by years of lobbying and ads run by **Medical Ass’ns** and **Private Equity companies** trying to kill the legislation (e.g., KKR, Blackstone)



What Does the No Surprises Act Cover?

- **Patients** are only **liable** for **INN cost-sharing co-pays, deductibles, not balance bills**
- Insurance plans must now reimburse OON service providers directly, not through patient
 - Service provider has option of taking insurance co. to baseball-style arbitration (IDR Process)
- Applies to **Providers** (physicians, billing practitioners) and **Facilities** (hospitals, freestanding EDs, Urgent Care Centers)



What Does the No Surprises Act Cover?

-**Air ambulance** transports

- Does **not** apply to **ground ambulance** transports (although **11** states have laws preventing ambulance surprise bills)

-**ED** patients cannot be balance billed

-In **non-ED context**, if Facility is INN you can not be balance billed **unless** you are given **notice** and you **consent** to pay it



CONSENT TO TREAT FORM

7. Financial Responsibility It is agreed and understood that regardless of any and all assigned benefits/monies, I, as the designated responsible party, am responsible for the total charges for services rendered, and I further agree that all amounts are due upon request and are payable to the hospital and any practitioner providing me care and agree to pay for any and all charges and expenses incurred or to be incurred. I understand that the practitioners providing me care may be out-of-network on my health or insurance plans although the hospital may be in my insurance network. I understand my insurance may not cover some services provided to me. I am responsible for asking about and understanding my insurance coverage and selecting my healthcare providers and facilities. Only my insurance carriers can confirm the nature and extent of my coverage and which providers will be paid in-network. I acknowledge that I may receive from these practitioners separate bills according to prices set by those practitioners and coverage policies under those plans. It is further agreed and understood that should this account become delinquent and it becomes necessary for the account to be referred to any attorney or collection agency for collection or suit, I, as the designated responsible party, shall pay all charges for reasonable attorneys' fees and collection expenses. I agree that if this account results in a credit balance, the credit amount will be applied to any outstanding accounts, either current or bad debt. Further, I hereby consent to credit bureau inquiries for any and all permissible purposes.

You are responsible for any incurred charges for services rendered and the Practitioners providing care may be out of network although the hospital may be in network with your health plan and you will receive separate bills from them.



What Does the No Surprises Act Cover?

- Cannot be forced to sign a consent form
- Form should list other doctors who will accept your insurance
- What an acceptable consent form will look like to constitute a waiver of patients' rights still being worked out



No Surprises Act



- The NSA requires OON providers and facilities to make **good faith estimates** of charges for items and services that are scheduled **3 days in advance** when requested by an individual (like knee replacements, c-sections and colonoscopies)
- **Uninsured** patients may start a **dispute resolution process** with a medical service provider or facility if they receive a bill that is at least **\$400 more** than the good faith estimate
- HHS has not yet created regulations regarding these estimates for **insured** individuals.



How is the NSA Being Enforced?



- **State** is primary enforcer. It has 3 enforcement options:
 - A. State enforces the NSA **alone** through state insurance regulators
 - B. State can rely **entirely** on **federal government** to enforce the law
 - C. State can enforce the law in **collaboration** with the federal government
 - **3/4** of States have elected to enforce the NSA through **state-federal partnerships**
- CMS (fed agency) takes enforcement actions where States either fall short or lack the authority to enforce various elements of the law
- To date, enforcement has been **light** to **non-existent**



Are Surprise/Balance Bills a Thing of the Past?

Answer: Not completely.

- Ground ambulances
- Willingly going to an OON Provider or OON Facility
- Non-emergency services in INN Facility where patient signs consent form agreeing to pay balance bill
- Bills when your physician sends you to OON lab
- **Warning:** mistakes occurring due to unfamiliarity with the new law



Are Surprise/Balance Bills a Thing of the Past?



- Medical Provider lawsuits:
 - ED Physicians/Surgeons: challenge to **constitutionality** of NSA rejected by EDNY Court; **patient protections** have been upheld
 - American Medical Ass'n and American Hospital Ass'n:
 - * Successfully knocked out regulations relating to the **arbitration procedure** between **providers** and **insurers** created by fed gov't for not being consistent with the NSA
 - New government rule subsequently issued also being challenged in Texas federal court over how the arbitration should be conducted



How Can You Avoid Getting a Surprise Bill?

- Never get sick or injured
- For **elective procedures** ask ahead of time whether **every** provider who treats you will be in-network to your insurance plan
 - Never ask if your physician “**accepts**” your insurance (can be OON and insurance will pay). Ask if they are “**in-network**” to your insurance
 - Only go to INN facility
- **Never ever** sign a consent to treat form with a financial responsibility provision



What Happens if You Receive(d) a Surprise Bill?

- Don't pay it (probably unlawful now; only 10% of older surprise bills actually got collected)
- Demand your health insurance pay more – can appeal
- State arbitration procedures
- Class action lawsuit?



Session Recap:

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Questions?



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