

Balance Billing – Is a Federal Solution Finally in Sight? And is it Right?

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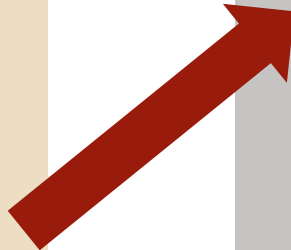
Oklahoma City, OK

What is a Surprise Medical Bill?

**In-Network
Hospital**



**In-Network
Surgeon**



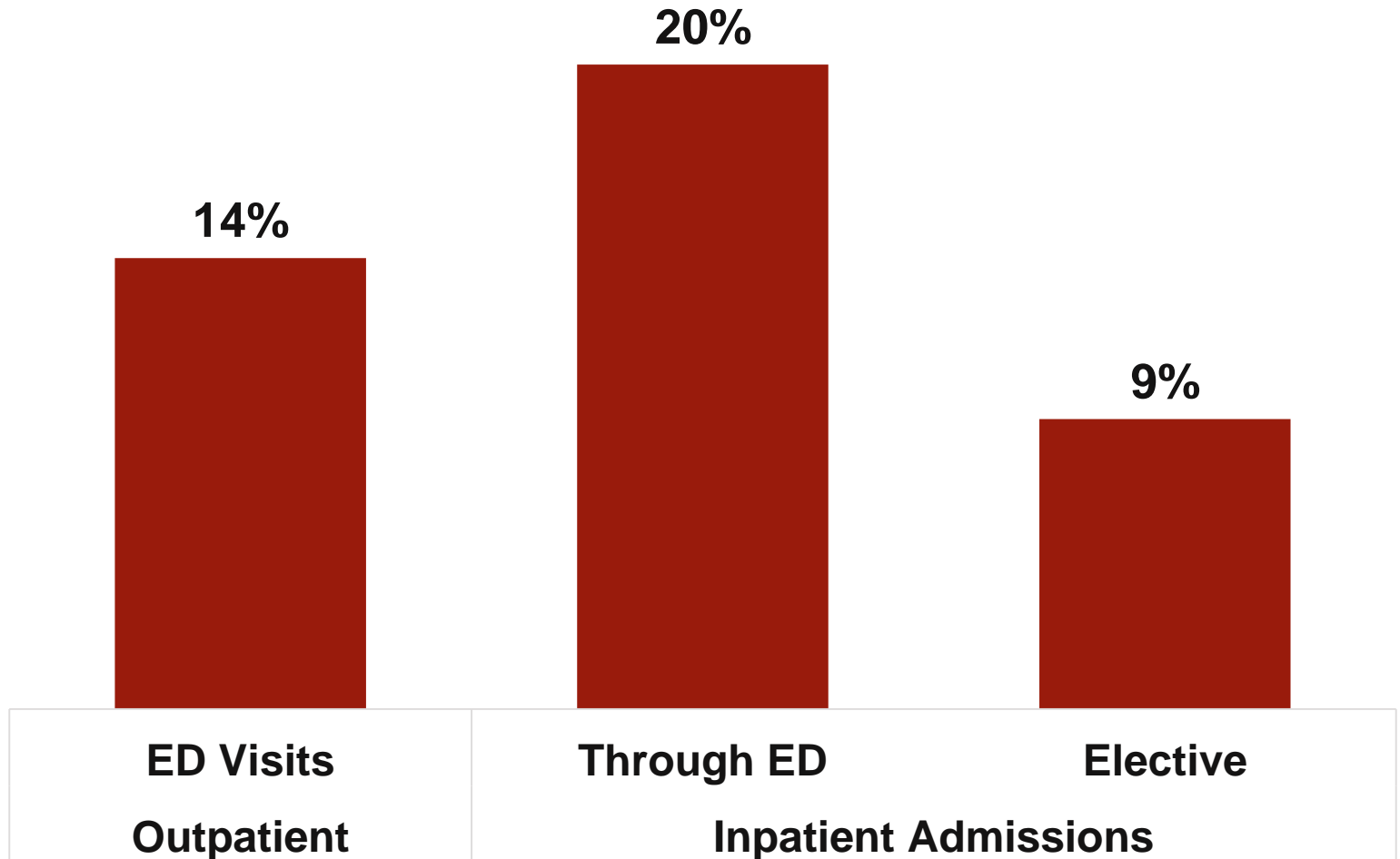
**Out-of-Network
Anesthesiologist**

What is a Surprise Medical Bill?

- **Patient is seen by an out-of-network provider**
- **Provider bills full charges rather than contracted rates**
- **Health plan pays provider based on out-of-network benefit, if any**
- **Provider sends patient a “balance bill” for the difference between charges and what the health plan paid**
- **Often called a “surprise bill” when the patient had no choice (e.g., emergency; ancillary physicians)**

Surprise Medical Bills are Common

Share of Episodes Likely to Result in a Surprise Medical Bill (2014)



Vox

He went to an in-network emergency room. He still ended up with a \$7,924 bill.

You can't avoid surprise medical bills even with a "PhD in surprise billing."

By Sarah Kliff | sarah@vox.com | May 23, 2018, 6:00am EDT

npr

YOUR HEALTH

How A Urine Test After Back Surgery Triggered A \$17,850 Bill

February 16, 2018 · 5:01 AM ET
Heard on Morning Edition

KHN
KAISER HEALTH NEWS

BILL OF THE MONTH

A Jolt To The Jugular! You're Insured But Still Owe \$109K For Your Heart Attack

- **Generally, providers face an incentive to contract with insurers**
 - **Insurers use financial incentives to steer patients to in-network providers**
 - **Providers willing to accept a contracted rate less than billed charges in exchange for a larger volume of patients**
 - **But, for some types of providers, these market dynamics may not apply**
 - **For emergency and ancillary physicians, patient volume largely unrelated to network status**
- **Suggests a need for policy intervention**

A Comprehensive Policy Solution for Surprise Medical Bills Requires a Multi-Faceted Approach

- **Limiting patient cost-sharing to the amount they would owe to an in-network provider**
 - **Prohibiting providers from balance billing patients**
 - **Setting a payment standard regarding what insurers owe providers in these situations**
- **Many states have taken action to protect consumers, especially in recent years, but current laws do not apply to the self-insured market due to ERISA preemption**

Two Current Federal Senate Proposals Would Address Surprise Medical Bills

- **“Protecting Patients from Surprise Medical Bills Act”**
 - Bennet (D-CO), Carper (D-DE), Cassidy (R-LA), Grassley (R-IA), McCaskill (D-MO), Young (R-IN)
- **“No More Surprise Medical Bills Act of 2018”**
 - Hassan (D-NH), Shaheen (D-NH)
- **Both proposals would protect patients from surprise medical bills by prohibiting balance billing and limiting patient cost-sharing to in-network rates for:**
 - Out-of-network emergency care
 - Out-of-network care delivered at an in-network facility

But They Differ in Their Approach to Determining the Out-of-Network Provider Payment Rate

- **Protecting Patients from Surprise Medical Bills Act (Bipartisan Discussion Draft):**
 - Rate determined by state (or locality) in which the service was performed
 - If state doesn't elect payment methodology, then federal default is greater of:
 - Median in-network contracted rate
 - 125% of average allowed amount
- **No More Surprise Medical Bills Act (Hassan):**
 - Sets up binding arbitration process to determine appropriate payment rates
 - Arbiter would be instructed to consider Medicare and negotiated network rates (but not charges) when making their determination
 - Permits states to establish own arbitration process or elect a defined payment standard ($\leq 125\%$ Medicare) instead

Tradeoffs in Different Approaches to Determining an Out-of-Network Rate

- **A payment standard is needed, but determining the right rate is challenging**
- **Rate setting can provide more certainty, but is both practically and politically challenging**
 - **125% of average allowed amounts is arguably too high and would create poor incentives**
 - **References to billed charges should be avoided**
- **Arbitration provides more flexibility, but adds costs and policymakers still need to specify guidance on what reference rates to consider**
- **An alternative policy approach requiring the hospital to contract with insurers for all ancillary physician services and, in turn, pay physicians would be more market-oriented, but is a considerable change from the status quo**

Would These Federal Proposals Solve the Problem if Enacted?

- **In large part, yes:**
 - **Would provide strong consumer protections**
- **But, some improvements still to be made:**
 - **Determination of appropriate provider payment rates**
 - **Ambulance services not currently covered**
 - **Some tweaks to notice and consent provisions needed**
- **Is federal intervention appropriate here?**
 - **Practically, federal law is needed to protect self-insured under current common policies**
 - **This would be a targeted market correction, not the federal takeover of insurance regulation generally**
 - **There is precedent for Congress to step in when it sees the need**
 - **State flexibility is likely**

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