

The “No Surprises Act” and State Surprise Billing Laws

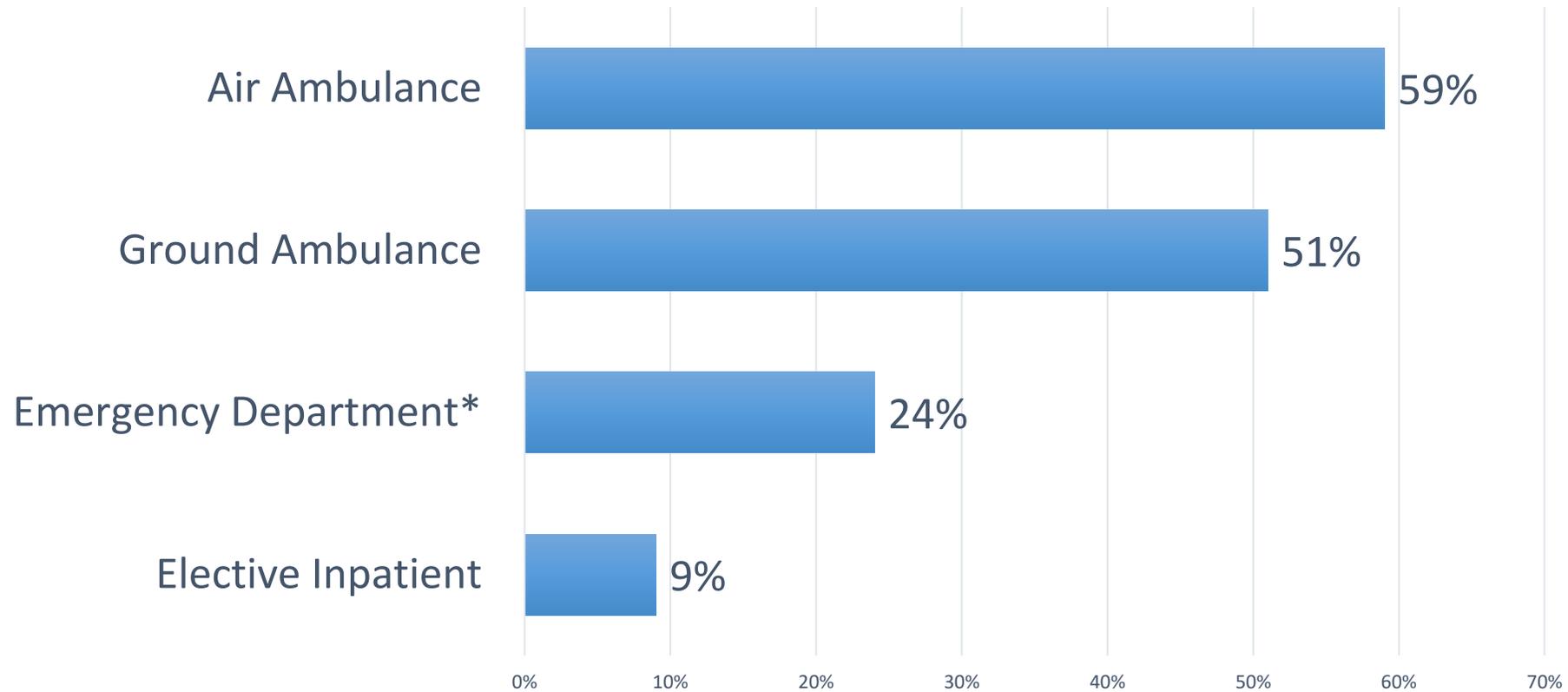
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Surprise Out-of-Network Medical Bills

- Examples:
 - Treatment in the emergency department of an in-network hospital by an out-of-network emergency physician
 - Consulting services of an out-of-network secondary physician during an operation by an in-network surgeon at an in-network hospital
 - Emergency transport by an out-of-network (ground or air) ambulance

Percentage of Visits Leading to a Potential Surprise Out-of-Network Bill



Source: Garmon and Chartock (2017)

* Inpatient, including out-of-network hospitals



BLOCH

Estimated average charges and payments to separately billing emergency department (ED) physicians for privately insured adults ages 18–64, 2001–16

	Total payments to physicians (\$)	Total out-of-pocket payments to physicians (\$)	Total insurer payments to physicians (\$)	Total charge for physician care (\$)	Payment-to-charge ratio	Share of visits with total charges for physician care paid in full
ED visits with likely surprise medical bills						
Full sample	271	151***	120***	488**	0.65***	0.22***
By total physician charges						
>\$0 to ≤\$50	25***	21***				
>\$50 to ≤\$100	53***	42***				
>\$100 to ≤\$400	161***	90***				
>\$400 to ≤\$1,000	369***	211***				
>\$1,000	753	393***				
All other ED visits						
Full sample	275	15	260	574	0.52	0.09
By total physician charges						
>\$0 to ≤\$50	17	2	15	33	0.50	0.15
>\$50 to ≤\$100	39	3	36	74	0.53	0.13
>\$100 to ≤\$400	136	10	126	247	0.56	0.12
>\$400 to ≤\$1,000	308	18	290	624	0.50	0.06
>\$1,000	879	34	844	1,997	0.45	0.05

Emergency Department (ED) patients with surprise out-of-network bills pay over 10 times more than other ED patients

Source: Biener, Chartock, Garmon, and Trish (2021)



No Surprises Act

- Federal prohibition against surprise out-of-network bills included in Omnibus COVID relief bill of December 2020
- Protects patients from balance bills:
 - Emergencies
 - Elective procedures (w/o prior approval)
 - Air ambulances
- Insurer payment to out-of-network provider subject to “baseball-style” independent dispute resolution (IDR)
- Patients are NOT protected from ground ambulance balance bills
- Protections start 1/1/2022

No Surprises Act IDR Process

- Insurer sends payment to provider within 30 days
 - Payment is not bound by ACA “greatest of three” rule
- If provider is dissatisfied with initial payment, provider can initiate IDR process:
 - 30-day negotiation period, followed by
 - “Baseball-style” final offer arbitration
 - Claims involving same provider/insurer/service can be bundled
 - Losing party pays cost of arbitration
 - Cannot use arbitration for 90 days after hearing for same provider/insurer/service combination

Factors Considered in Arbitration

- Arbiters CANNOT rely on:
 - Charges (including percentiles)
 - Usual, customary, and reasonable (UCR) rates
 - Medicare or Medicaid rates
- Arbiters CAN rely on:
 - Median in-network rate
 - Prior contracted rates between insurer and provider
 - Market shares of either party
 - Patient severity
 - Provider's training, experience, quality, teaching status, and case mix

Additional Air Ambulance Provisions

- In addition to previous factors, air ambulance arbiters can rely on:
 - Vehicle type
 - Population density at pickup location
- Air ambulance providers and insurers must submit cost and claims data to federal government
- Advisory committee on air ambulance quality and safety

NSA and State Laws

- State laws apply only to “fully-insured” state regulated health plans
- NSA applies to all health plans (fully-insured and self-insured) and preempts state laws
- Exceptions:
 - Methods for determining out-of-network payment
 - Provider directories
 - State law is allowed to exceed patient protections in NSA

Remaining Questions

- What about state laws that allow self-funded plans to opt-in? Could self-funded plans choose the payment resolution process (state or federal) that is most favorable?
- What if state's arbitration process is optional/nonbinding? Would NSA preempt state law?
- What happens if a patient residing in one state is treated by an out-of-network provider in another state?
- How will HHS, Labor, and Treasury rulemaking affect IDR process (e.g., how arbiters weigh factors)?

Research on Effects of State Laws

- Cooper, Scott-Morton, and Shekita (2020):
 - New York's surprise billing law led to reduction in out-of-network bills and 15% reduction in in-network prices
- Adler (2019):
 - Mean arbitration award in New York exceeded 80th percentile of charges
- Adler et al. (2019):
 - California's surprise billing law led to drop in out-of-network claims
- Chartock et al. (2021):
 - New Jersey's arbitration awards clustered around 80th percentile of charges
- Corlette et al. (2021):
 - New Jersey's and Texas's IDRs handled thousands of arbitration cases in first year; Colorado's and Washington's IDRs rarely used
 - NJ/TX: arbiter relies on provider charges

References

- Loren Adler, “Experience with New York’s Arbitration Process for Surprise out-of-Network Bills,” *Brookings* (blog), October 24, 2019, <https://www.brookings.edu/blog/usc-brookings-schaeffer-on-health-policy/2019/10/24/experience-with-new-yorks-arbitration-process-for-surprise-out-of-network-bills/>.
- Loren Adler, Erin Duffy, Bich Ly, and Erin Trish, “California Saw Reduction in Out-of-Network Care from Affected Specialties after 2017 Surprise Billing Law,” *Brookings* (blog), September 26, 2019, <https://www.brookings.edu/blog/usc-brookings-schaeffer-on-health-policy/2019/09/26/california-saw-reduction-in-out-of-network-care-from-affected-specialties-after-2017-surprise-billing-law/>.
- Adam I. Biener et al., “Emergency Physicians Recover A Higher Share Of Charges From Out-Of-Network Care Than From In-Network Care,” *Health Affairs* 40, no. 4 (April 1, 2021): 622–28, <https://doi.org/10.1377/hlthaff.2020.01471>.
- Benjamin L. Chartock et al., “Arbitration Over Out-Of-Network Medical Bills: Evidence From New Jersey Payment Disputes,” *Health Affairs* 40, no. 1 (January 1, 2021): 130–37, <https://doi.org/10.1377/hlthaff.2020.00217>.
- Sabrina Corlette et al., “Taking the Disputes Out of Dispute Resolution: Lessons from State Balance Billing Laws,” RWJF, March 15, 2021, <https://www.rwjf.org/en/library/research/2021/03/taking-the-disputes-out-of-dispute-resolution--lessons-from-state-balance-billing-laws.html>.
- Zack Cooper, Fiona Scott Morton, and Nathan Shekita, “Surprise! Out-of-Network Billing for Emergency Care in the United States,” *Journal of Political Economy* 128, no. 9 (March 2, 2020): 3626–77, <https://doi.org/10.1086/708819>.
- Christopher Garmon and Benjamin Chartock, “One In Five Inpatient Emergency Department Cases May Lead To Surprise Bills,” *Health Affairs* 36, no. 1 (January 1, 2017): 177–81, <https://doi.org/10.1377/hlthaff.2016.0970>.

Additional Resources on NSA

- Loren Adler, Matthew Fiedler, Paul Ginsburg, Mark Hall, Benedic Ippolito, and Erin Trish, “Understanding the No Surprises Act,” *Brookings* (blog), February 4, 2021, <https://www.brookings.edu/blog/usc-brookings-schaeffer-on-health-policy/2021/02/04/understanding-the-no-surprises-act/>.
- Karan R. Chhabra, Erin Fuse Brown, and Andrew M. Ryan, “No More Surprises — New Legislation on Out-of-Network Billing,” *New England Journal of Medicine*, (March 17, 2021): <https://doi.org/10.1056/NEJMp2035905>.
- Kaiser Family Foundation, “Surprise Medical Bills: New Protections for Consumers Take Effect in 2022,” *KFF* (blog), February 4, 2021, <https://www.kff.org/private-insurance/fact-sheet/surprise-medical-bills-new-protections-for-consumers-take-effect-in-2022/>.
- JoAnn Volk and Sabrina Corlette, “The No Surprises Act: Implications for States,” <https://www.shvs.org/the-no-surprises-act-implications-for-states/>.
- Center on Health Insurance Reforms, “The No Surprises Act and Preemption of State Balance Billing Protections,” Georgetown University Health Policy Institute, April 1, 2021, https://surprisemedicalbills.chir.georgetown.edu/wp-content/uploads/Preemption-and-No-Surprises-Act_April-2021.pdf
- Jack Hoadley, Katie Keith, and Kevin Lucia, “Unpacking The No Surprises Act: An Opportunity To Protect Millions” *Health Affairs Blog*, <https://www.healthaffairs.org/doi/10.1377/hblog20201217.247010/full/>.