

pulse

What's Inside?

Currently, almost 30 states have enacted some level of surprise billing protection, with other states considering similar legislation.

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In recent years, many states have enacted laws designed to protect consumers from the practice of “surprise billing,” also referred to as “balance billing.” Surprise billing typically occurs when an insured patient receives emergency care from an out-of-network provider or when an insured patient receives elective non-emergency care at an in-network facility but is inadvertently (and often unknowingly) treated by an out-of-network health care provider.

A 2016 Kaiser Family Foundation survey of medical debt found that among individuals who faced out-of-network bills they could not afford to pay, nearly 7 in 10 did not know that the medical professional providing the care in question was an out-of-network provider. These out-of-network providers are not bound by the contractual in-network rate agreements with the consumer’s insurer and, therefore, the consumer may end up having higher out-of-pocket costs for the care they provide.

Many health care providers, particularly in the emergency and urgent-care contexts, use outsourcing agencies

for anesthesiologists, pathologists, radiologists or other specialists. In other cases, a patient may be injured while traveling and need emergency care at an out-of-network hospital, or a patient may end up being transported in an ambulance that is out-of-network. In any of these instances, the patient’s insurer does not have a contract with the out-of-network facility or provider, and therefore may decline to pay some or all of the bill. This results in the out-of-network facility or provider billing the patient for the remaining balance of the bill.

At the time of publication, there is currently no federal law addressing the practice of balance billing, but there are two bills under consideration in Congress: H.R. 5800, the Ban Surprise Billing Act, and H.R. 5826, the Consumer Protections Against Surprise Medical Bills Act.

Both pieces of legislation would ensure that patients do not pay more than what they would normally pay in cost-sharing for in-network providers, but the measures differ in how they determine what insurers will pay out-of-network



providers. There are also reports that members of the Senate are negotiating a proposal on the issue, but legislation has not yet emerged. Also noteworthy, on June 24, 2019, President Donald Trump signed Executive Order 13877, Improving Price and Quality Transparency in American Healthcare to Put Patients First, to ensure transparency by health care facilities in the setting of costs.

Notably, neither the House legislation nor the president’s order appear to have any direct effect on debt collection practices.

State Laws: An Overview

With little federal law currently occupying this space, many states have moved to fill the void. Currently, almost 30 states have enacted some level of surprise billing protection, with other states considering similar legislation.

Cont. What's Inside?

Surprise billing laws vary from state to state, but many of the measures provide protections that apply to both emergency care by out-of-network providers and nonemergency care by out-of-network providers in in-network facilities.

Some of these laws affirmatively prohibit providers from sending balance bills to patients and may also limit a patient's responsibility to in-network cost-sharing amounts. Some laws require providers to seek any additional payments from health insurers and require the provider and the health insurer to negotiate in the event of a payment dispute between the health plan and the provider.

Several of the laws require the use of an independent dispute resolution framework. Other measures may also require providers to make disclosures about a provider's out-of-network status before administering care to the patient.

While most of these laws do not have any specific requirements for debt collectors, it's still important to be aware of these restrictions and to work with medical provider clients to ensure laws have been followed on the front-end, so that bills that may be subject to balance billing restrictions are not inadvertently placed in collections.

New Mexico

New Mexico recently enacted 2019 S.B. 337, the Surprise Billing Protection Act, which became effective January 2020.

The law also requires certain disclosures on health facilities' websites, and requires that "[a]ny written communication, other than a receipt of payment, from a provider or health insurance carrier pertaining to a surprise bill, shall clearly state that the covered person is responsible only for payment of applicable in-network cost-sharing amounts under the covered person's health benefits plan."

Of importance to debt collectors, the bill also requires that "[a] collection agency collecting medical debt from New Mexico residents shall post a notice of consumer rights pursuant to

the Surprise Billing Protection Act on its website."

Frustratingly, state regulators in New Mexico have not yet provided a model disclosure by which collection agencies can satisfy this requirement, leaving agencies to craft their own notices. Some commentators have suggested that debt collectors can comply by simply posting a statement on the website notifying consumers that they have rights under the Surprise Billing Protection Act S.B. 337 and directing consumers to contact the state superintendent of insurance.

However, given the lack of formal guidance, ACA International recommends that members consult with their own legal counsel to determine the appropriate wording and placement of the required website notice of consumer rights. While this law does not provide for a private right of action, it will be enforced by the Superintendent of Insurance.

Texas

Texas has also been active in this area, recently enacting 2019 S.B. 1264, which prohibits a non-network physician, provider "or a person asserting a claim as an agent (emphasis added)" from billing a patient covered out-of-network and receiving emergency care in any amount greater than the patient's responsibility under the patient's health care plan, including applicable copayment, coinsurance, or deductible.

The law also requires a health maintenance organization to provide a written notice of billing prohibitions in each explanation of benefits provided to an enrollee or physician or provider in connection with a health care service that is subject to the prohibitions. Notably, the bill allows the attorney general to bring a civil action against any "individual or entity" believed to be violating a law prohibiting balance billing.

Washington

Washington state has also tackled balance billing with its Balance Billing

Protection Act, which amended existing state law effective Jan. 1, 2020. The act applies only to patients enrolled in Washington state-regulated health plans and provides, in part, that an out-of-network provider or facility may not balance bill an enrollee for emergency services; or nonemergency health care services provided to an enrollee at an in-network hospital or an in-network ambulatory surgical facility if the services provided involve surgical or ancillary care and are provided by an out-of-network provider.

The law further provides that the insurance carrier must hold an insurance enrollee harmless from balance billing when emergency services are provided by an out-of-network hospital in a state that borders Washington state.

2020 Legislative Outlook

States appear to remain interested in legislating surprise billing in 2020.

As states continue to regulate surprise billing, and with a federal law likely on the horizon, ACA—in conjunction with its affiliated state units—will continue to monitor these legislative proposals in order to represent the interests of the accounts receivable management industry and convey any relevant compliance information to ACA members.

Survey Says: ARM Industry Returns \$90.1 Billion to the Economy

ACA International's 2020 State of the Industry Report in partnership with Kaulkin Ginsberg Company provides an overview of important trends related to how the industry benefits consumers, creditors and the overall economy.

ACA International's members and the accounts receivable management industry serve an important role between creditors and consumers, as shown in recent data on collections and account resolutions totaling billions of dollars and significant household savings.

In fact, based on data from 2018, the most up to date publicly available information, the total net debt returned to creditors amounted to nearly \$90.1 billion, according to a 2020 State of the Industry Report created as part of a partnership between ACA and the Kaulkin Ginsberg Company.

The total debt returned represents roughly \$706 in savings per household.

"ACA is dedicated to helping its members succeed, and this report shows its members are dedicated to helping creditors and consumers succeed," said ACA CEO Mark Neeb. "The ARM industry's success in helping to restore the credit-based economy, providing jobs, and supporting communities across the U.S. through volunteering and company sponsored activities is shown in this report. For example, ARM employees offered roughly 524,000 hours of their time to volunteering—including 229,800 hours for company-sponsored activities."

ACA is excited to release results of the report based on a survey of ARM companies administered by Kaulkin Ginsberg in 2019; the U.S. Census Bureau's 2016 County Business Patterns Survey, nonemployer statistics, and statistics on U.S. business data series; and Ernst & Young's November 2017, July 2014, and January 2012 reports on debt collection commissioned by ACA, titled "The Impact of Third-Party Debt Collection on the US National and State Economies."

Additional key industry estimates and

figures derived from the data sources listed above include:

- Creditors placed roughly 1.6 billion accounts with ARM firms. The aggregate value was nearly \$923.1 billion, representing an average account balance of \$574.
- ARM firms collected nearly \$102.6 billion in debt, with a recovery rate of 11.1% of value.
- The ARM industry employed around 124,400 people—including payroll employees and owners. Total compensation, which combines aggregate payroll, amounted to almost \$5 billion.
- ARM firms contributed an estimated \$108.3 million to charity
- ARM companies and their employees paid roughly \$1.1 billion in federal taxes and \$105.9 million in state and local taxes.

The report is available as a resource to members as part of ACA's commitment to advancing the industry through advocacy, research and education.

View the complete report here: <https://www.acainternational.org/kaulkin-ginsberg> and read more data from the report in Data Watch.

NEWS & NOTES

Senators Propose COVID-19 Medical Debt Collection Relief Act

The COVID-19 Medical Debt Collection Relief Act, sponsored by U.S. Sens. Chris Van Hollen, D-Md., and Chris Murphy, D-Conn., would, according to a news release: "Suspend all extraordinary collection actions by health care providers for all medical debt (e.g. wage garnishment, bank account seizure) during the covered period (i.e. from Feb. 1, 2020 until the later of the end of the public health emergency or 18 months after enactment of this bill)." More information: <https://bit.ly/3090Dxp>

Survey: The Impact of COVID-19 on Employer Health Insurance

A survey from The Commonwealth Fund on U.S. adults who lost their job or were furloughed since February due to COVID-19 report shows the impact of job loss on health insurance, according to a news release on the survey. More information: <https://bit.ly/3gWmmhU>

We Want To Hear From You

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For more health care collections news, visit ACA's Health Care Collections page at www.acainternational.org/pulse.



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datawatch

Early Out vs. Bad Debt Collections

Debt consists of receivables that are fewer than 90 days delinquent. For these accounts, debtors are given the chance to resolve their tardiness before the account in question slips into default. Bad debt refers to receivables that are aged 90 or more days. The proportion of total debt collected that was early out in 2019 was 31.2 %. Bad debt accounted for 68.8 % of total debt collected.

Source: 2020 State of the Industry Report. Kaulkin Ginsberg, ACA International, American Hospital Association, Census Bureau, Department of the Treasury, Federal Deposit Insurance Corporation, Federal Reserve Bank of New York, National Credit Union Administration, various IBISWorld reports, and various annual financial reports.