

SPARE PATIENTS THE PAIN OF SURPRISE BILLS

ADOPT THE RUIZ-ROE FRAMEWORK

Spurred by rapidly increasing out-of-pocket costs and rapidly shrinking insurance networks, Americans' anger over surprise medical bills is boiling over. Families, justifiably, are demanding relief. Washington, thankfully, is poised to act. Competing solutions abound. Congress must choose the right medicine.

If indeed, the American states are the laboratories of democracy, the evidence is clear. The New York model, as embodied in the Protecting People from Surprise Medical Bills Act, by Reps. Raul Ruiz (D-Calif.) and Phil Roe, MD (R-Tenn.), is an experiment that worked. California's approach, emulated by the No Surprises Act and others, is a failure.

The nearly 53,000 members of the Texas Medical Association (TMA) strongly urge Congress to enact federal surprise billing legislation that adheres to four key principles:

- **Take the patient "out of the middle"** of out-of-network billing disputes between insurance companies and physicians, hospitals, and providers.
- Adopt a **baseball-style arbitration** dispute resolution system that does not give an unfair advantage to either side.
- Allow market forces acting through arbitration, **not government price controls**, to determine fair compensation for medical care delivered out-of-network.
- Require health insurance companies to offer **measurably adequate networks** of physicians, hospitals, and providers.

THE GOOD NEWS ABOUT THE NEW YORK/ RUIZ-ROE FRAMEWORK

The state of New York's arbitration system has been in place since 2015. It uses an efficient, baseball-style dispute resolution system where an independent arbitrator chooses between the health plan's payment offer and the physician or provider's fee. The arbitrator's decision must consider clear factors such as the complexity of the case, the experience of the physician, and the rate that physicians charge for that service in that geographic area. The loser pays the costs of arbitration. This approach requires insurers to offer physician networks that are adequate to meet patients' medical needs.

New York's plan is working well for patients, physicians, hospitals, providers, and insurers.

"Insurer, provider, and consumer stakeholders generally agree that the implementation of New York's Surprise Billing law went smoothly, was relatively fair to all parties, and is working as intended to protect consumers from a significant source of financial hardship," according to a May 2019 report by the Georgetown University Health Policy Institute Center on Health Insurance Reforms. "State officials report a 'dramatic' decline in consumer complaints about balance billing."

In addition, a May 2018 study by health economists at Yale University found:

- A 34% drop in out-of-network billing in New York since the law was in effect, and
- A 13% average reduction in physician payments since the law was enacted.

An October 2018 presentation to the New York State Health Foundation revealed the balanced outcome the arbitration process has produced: 52% of the disputed bills were decided in favor of the insurer, and 48% in favor of the physician or provider.



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THE BAD NEWS ABOUT THE CALIFORNIA/NO SURPRISES ACT FRAMEWORK

The troubling price-control aspects of the No Surprises Act and other pieces of legislation mirror the 2016 surprise billing law passed in California. While that law seemingly protected patients from surprise medical bills, its approach to the problem exacerbated many deep-seated problems in our health care delivery system.

Under the California law, physicians are paid based on a “median in-network rate” determined solely by the insurance company or 125% of Medicare. This incentivizes health plans to reduce rates paid to in-network physicians or simply terminate long-standing contracts with medical practices. It also reduces incentives for the plans to maintain adequate physician networks.

Since the law took effect, the California Department of Managed Care has reported a 48% increase in patient complaints about access to care. As California physicians, those closest to the problem, have noted, “Patient access to physicians is diminishing, and patient out-of-pocket costs will increase. California premiums continue to rise.”

The California approach is another example of the hazards of government price fixing. Through Medicare and Medicaid, the government already establishes payments to physicians, hospitals, and providers for care provided to more than 35% of the U.S. population. As has been noted many times, these rates are set arbitrarily and fall below the actual cost of providing care. Extending government price controls to out-of-network services – especially using an unfair and inadequate rate such as the median in-network payment – further threatens the viability of our practices and our patients’ access to the care they need.

WHY TEXAS CHOSE BASEBALL-STYLE ARBITRATION

Since 2009, Texas has been a leader in devising and implementing patient protections for surprise bills. In its recently concluded 2019 session, the Texas Legislature passed a bill that takes the patient out of the middle of surprise medical bills. After extensive negotiation and evaluation of multiple approaches, bipartisan majorities in both our Senate and House of Representatives agreed that baseball-style arbitration would be the best and fairest way to remove the patient from the balance billing process while allowing both the physician and the health plan to make the case for their charge or payment. Texas lawmakers adopted a plan largely inspired by the New York experience and rejected one modeled after the California approach. Although legislation has been passed, rules have not yet been adopted, and we have no history to show how well the process will work.

In conclusion, TMA encourages Congress to adopt a model that is proven effective in protecting patients from surprise medical bills and has resulted in better networks for health insurance consumers.

**TAKE PATIENTS OUT OF THE MIDDLE • BASEBALL-STYLE ARBITRATION
NO GOVERNMENT PRICE CONTROLS • ENSURE ADEQUATE NETWORKS**

401 West 15th Street
Austin, TX 78701-1680
(512) 370-1300
texmed.org

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