

## MORNING CONSULT

# Congress, Don't Harm Patients With The Wrong Surprise Medical Bills Solution

By [Dustin Corcoran](#) & [Phil Schuh](#) July 2, 2019

Former Supreme Court Justice Louis Brandeis said in the early 1930s that states are laboratories of democracy that can experiment with various policies without harming the rest of the country. Now that more than 10 states have enacted laws to end surprise medical bills, Congress is discussing various policies that work toward the same goal.

Everyone agrees patients need to be held harmless from surprise medical bills to prevent financial hardship. What hasn't been resolved is how the anticipated federal law will direct insurers and physicians to resolve billing disputes and enter into fair contracts. As Congress continues to consider this question, the experiences of California and New York offer important lessons that can ensure patients don't inadvertently lose access to essential medical services in an emergency as they gain important new financial protections from surprise bills.

California's law instituted a government-mandated benchmark to resolve disputes, championed by the health insurance industry. Instead of promoting fairness, the benchmark has become an artificial ceiling.

It fails to consider the actual cost of medical services and has emboldened insurers to avoid entering into contracts with doctors, meaning even more physicians will remain outside of insurers' networks. Experience has shown this creates a huge hardship for patients and is precisely what surprise medical bills legislation is supposed to solve.

With more doctors forced out of network, patients will encounter more difficulty finding an in-network doctor. When they seek care out of network, it will substantially increase their deductibles and out-of-pocket costs.

Importantly, fewer hospital-based physicians, such as surgeons, obstetricians and anesthesiologists, will be able to serve patients in emergencies, a direct result of empowering insurance companies to decide how disputes should be settled. It's not an exaggeration to assume that California's approach will eventually destroy access to emergency and "on-call" safety net physicians.

The difference between life and death in some emergencies is a matter of minutes. Patients need to know that the right physician specialist will be there to treat them.

Contrast this cautionary tale with the overwhelmingly positive results attributed to New York's surprise medical bills law. It should be the basis for federal legislation because consumers are no longer financially responsible for payment; complaints have plummeted; premiums have grown more slowly in New York than the rest of the country; physicians' out-of-network charges are down 13 percent; and out-of-network billing is down 34 percent, according to a recent Georgetown University analysis. In other words, New York has prevented the serious problems that arise in a marketplace, like California's, that's unduly dominated by insurers.

Most importantly, the New York law ensures patients can continue to see the doctors they need in an emergency because arbitration is deterring disputes from ever reaching that point. When they do, outcomes are grounded in fair, transparent and independent data, in stark contrast to California's arbitrary, insurer-championed approach that's adding to the ranks of out-of-network doctors and diminishing access to essential emergency physicians.

As Congress continues to debate federal legislation to end surprise medical bills, the approach it ultimately adopts to resolve insurer-physician disputes could be the difference between a health care system where insurance coverage includes an adequate number of in-network physicians to protect patients and a system that empowers even bigger, more powerful insurance companies to encourage health care consolidation that decreases access to doctors and raises prices.

As leaders of two of the nation's largest medical societies, we know from experience that federal surprise medical bills legislation needs to look like New York's law, which is why Congress should support the House of Representatives' bipartisan Protecting Patients from Surprise Medical Bills Act introduced by Reps. Raul Ruiz, MD (D-Calif.), and Phil Roe, M.D. (R-Tenn.). The Senate Health, Education, Labor and Pensions Committee's legislation, which uses the so-called "median in-network" rate, another government-mandated benchmark, is far too much like California's law, which experience shows has been devastating for patients and physicians.

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