

## During COVID-19 Health and Financial Crises, States Should Act Now to Protect Families from Surprise Medical Bills

As our nation confronts a public health and economic threat greater than any we've seen in a century, every family is struggling to understand and manage the devastating and far-ranging effects of COVID-19. During this crisis, families need unfettered access to health care services. With unemployment higher than it's been in decades, and with widespread economic uncertainty, the financial security of America's families is of paramount importance.

Unanticipated health care costs, such as surprise medical bills, financially devastate families and have a terrible chilling effect on families' willingness and ability to seek screening and treatment during the pandemic. During this time of increased financial insecurity, Americans should not have to fear the costs or manage the financial impact of receiving surprise bills for putting their own health, and that of family members and all in our nation, first.

Despite some limited action on the part of the U.S. Congress and Trump Administration, **protections against most surprise medical bills during or after the COVID pandemic are almost nonexistent.** This is despite the fact that many **experts believe**

*During this time of increased financial insecurity, Americans should not have to fear the financial impact of receiving surprise bills for putting their own health first.*

**that surprise billing during the pandemic is even more likely,** as families are pushed to out-of-network facilities for health emergencies or routine care because hospitals are focused on treating COVID-19 patients<sup>1</sup> or hire out-of-network providers to meet increased need for health services.<sup>2</sup>

Although the Families First Coronavirus Response Act passed in March 2020 ensures patients are not liable for the cost of the COVID-19 test, families may still receive surprise medical bills for services related to testing, such as other tests to rule out COVID-19, ground ambulance fees, or out-of-network lab or facilities fees. The Administration also has provided some limited protections for patients receiving care for COVID-19, but these apply only to patients who are known (presumptively or through testing) to have COVID-19 and who are receiving care from certain hospitals.<sup>3</sup> **For all other families accessing care for health care emergencies or other needed health care services, surprise medical bills remain legal and likely.**

*Despite some limited action on the part of the U.S. Congress and Trump Administration, protections against most surprise medical bills during or after the COVID pandemic are almost nonexistent.*

In the absence of comprehensive federal action on this issue, states are seeking to protect their residents from surprise medical bills during one of the greatest health care and economic threats that our nation has faced.

## State Surprise Billing Protections

Several states have recently enacted surprise billing protections or issued guidance regarding surprise billing as part of their emergency response to COVID-19.<sup>4</sup> We highlighted the response of three states—Connecticut, Massachusetts, and Ohio—and the District of Columbia to offer an idea of the various approaches states are taking to protect consumers during the pandemic.

### Connecticut<sup>5</sup>

Governor Ned Lamont issued an executive order in early April providing billing protections for uninsured patients and for insured patients receiving out-of-network services.

#### COVID-19–specific protections

Hospitals treating uninsured patients may not:

- » Collect more than the Medicare rate for services for treatment and management of COVID-19.
- » Collect a facility fee higher than the Medicare rate for services related to treatment and management of COVID-19.

- » Bill uninsured patients until clarification is provided by further executive orders regarding distribution of federal funding to cover such services.

#### General protections

Insurers are banned from balance billing for out-of-network emergency services.

### District of Columbia<sup>6</sup>

The District of Columbia Department of Insurance, Securities and Banking issued an order on March 20 offering protections for consumers from COVID-19–related costs, along with a general reminder regarding current district policy on coverage of emergency services.

#### COVID-19–specific protections

- » Out-of-network charges, including cost sharing and balance billing, must be covered for COVID-19 screening, testing and treatment.
- » Out-of-network providers and facilities are requested to accept an in-network reimbursement rate as full and final payment and to hold harmless patients who have received services related to COVID-19 screening, testing, and treatment.

#### General protections

Current district policy requires coverage of emergency services at in-network levels regardless of the status of the emergency provider.

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## **Massachusetts<sup>7</sup>**

The Massachusetts Department of Insurance issued a regulatory bulletin on April 9 regarding COVID-19 care for acute care hospitals and providers.

### **COVID-19–specific protections**

- » If the carrier has a contract with the provider, medically necessary services should be reimbursed at the provider’s contracted rate.
- » If the carrier does not have a contract with the provider, medically necessary services should be reimbursed at a rate equal to 135% of the rate paid by Medicare for those services in the provider’s geographic region.
- » Providers are not allowed to balance bill above the amount they receive for reimbursement.

## **Ohio<sup>8</sup>**

The Ohio Department of Insurance issued a regulatory bulletin on March 20 to limit consumers’ out-of-network costs for COVID-19 testing and treatment and general emergency services.

### **COVID-19–specific protections**

- » COVID-19 testing and treatment must be covered without preauthorization and at the same cost sharing level as if provided in-network.

### **General protections**

- » Insurers must cover emergency services at the highest amount negotiated with in-network providers, the amount calculated using the same method the plan generally uses to determine payments for out-of-network services, or the amount that would be paid under Medicare.
- » Insurers providing coverage in Ohio are banned from balance billing for out-of-network emergency services.

While New York<sup>9</sup> and California<sup>10</sup> already have laws against balance billing, Both states recently distributed bulletins reminding providers of the illegality of issuing surprise medical bills for COVID-19 services.

## Recommendations for States

As states continue to pursue innovative approaches to address the far-reaching effects of COVID-19, policymakers should look to the examples provided in this paper for best practices, such as:

- » Ensuring COVID-19 screening, testing, and treatment provided by an out-of-network provider or facility are billed at in-network levels.
- » Setting benchmark provider rates.
- » Providing protections for the uninsured.
- » Banning balance billing for all out-of-network emergency services.

Moving forward, state policymakers should consider not only providing comprehensive protections for patients seeking screening, testing, and treatment for COVID-19 and emergency services, but also ending surprise billing for all services during this time. **Ending surprise billing is integral to ensuring that families do not face further financial burdens and can prioritize seeking necessary care at this critical time.**

## Endnotes

<sup>1</sup> Rosenthal, Elisabeth and Emmarie Huetteman, “Analysis: He Got Tested for Coronavirus. Then Came the Flood of Medical Bills,” *Kaiser Health News*, April 1, 2020. <https://khn.org/news/covid19-coronavirus-test-surprise-medical-bill/>

<sup>2</sup> Katelyn Burns, “Governors Plead with Other States for More Health Care Workers to Fight Coronavirus,” *Vox*, March 31, 2020. <https://www.vox.com/policy-and-politics/2020/3/31/21201281/coronavirus-staffing-shortage-governors-health-care-workers-help>

<sup>3</sup> U.S. Health and Human Services, *Terms and Conditions for Provider Relief Fund Distributions*, HHS.gov. <https://www.hhs.gov/coronavirus/cares-act-provider-relief-fund/terms-conditions/index.html>

<sup>4</sup> Jack Hoadley, Maanasa Kona, and Kevin Lucia, “States Can Prevent Surprise Bills for Patients Seeking Coronavirus Care,” *To the Point* (blog), Commonwealth Fund, Apr. 29, 2020. <https://doi.org/10.26099/7s2k-1d77>

<sup>5</sup> State of Connecticut, *Protection of Public Health and Safety During COVID-19 Pandemic and Response—Protections From Civil Liability for Healthcare Providers and Billing Protections for Patients*, Executive Order No. 7U. <https://portal.ct.gov/-/media/Office-of-the-Governor/Executive-Orders/Lamont-Executive-Orders/Executive-Order-No-7U.pdf>

<sup>6</sup> Government of the District of Columbia Department of Insurance, Securities and Banking, *Response to COVID-19 Public Health Emergency*, Commissioner’s Order 01-2020. <https://disb.dc.gov/sites/default/files/u65602/Order-re-Emergency-Response-to-COVID-19-03.20.2020-sec.pdf>

<sup>7</sup> Commonwealth of Massachusetts Office of Consumer Affairs and Business Regulation Division of Insurance, *Coverage for COVID-19 Treatment and Out-of-Network Emergency and Inpatient Reimbursement During the COVID-19 Health Crisis*, Bulletin 2020-13. <https://www.mass.gov/doc/bulletin-2020-13-coverage-for-covid-19-treatment-and-out-of-network-emergency-and-inpatient/download>.

<sup>8</sup> Ohio Department of Insurance, *COVID-19 Testing and Treatment: Out-of-Network Coverage*, Bulletin 2020-05. <https://iop-odi-content.s3.amazonaws.com/static/Legal/Bulletins/Documents/2020-05.pdf>

<sup>9</sup> New York State Department of Financial Services, *Preparedness for Coronavirus (COVID-19)*, Insurance Circular Letter No. 3 (2020). [https://www.dfs.ny.gov/industry\\_guidance/circular\\_letters/cl2020\\_03](https://www.dfs.ny.gov/industry_guidance/circular_letters/cl2020_03)

<sup>10</sup> California Department of Insurance, *COVID-19 Screening and Testing*, Bulletin. <https://www.insurance.ca.gov/0250-insurers/0300-insurers/0200-bulletins/bulletin-notices-commiss-opinion/upload/COVID-19-Screening-and-Testing.pdf>

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