

Calif. 'Surprise Billing' Law Could Jeopardize Access To Care

By **Daron Toooh, Chris Fritz and Michael Heil** (June 13, 2019, 2:28 PM EDT)

Current legislation pending in California, Assembly Bill 1611, aims to prevent patients from receiving “surprise” bills from out-of-network hospitals after the patients receive emergency and post-emergency services. AB 1611 has momentum, having passed out of California’s state Assembly in late May. It’s now before the state Senate.

California hospitals actually prefer receiving payments directly from health plans, and support limiting patient liability as well as removing patients from the middle of disputes between hospitals and health plans regarding payment issues.

The problem with the current proposed legislation is that it creates a default rate that removes the incentive for commercial health plans to negotiate with hospitals to be part of their network. If health plans are able to receive preferential rates by keeping hospitals out of network, they have no incentive to negotiate contracts with hospitals. This could threaten the financial viability of some hospitals and cause other hospitals to drastically reduce the care that they are able to provide to their communities.

First a few facts. In 1995, there were approximately 400 hospitals in California. Despite the large increase in the population in the state, there are now approximately 300 in operation. There have been nine hospital closures since 2018 in the United States, two of which are in California: Community Medical Center Long Beach and Coalinga Regional Medical Center.

Rural communities have been hit particularly hard. In the Central Valley and north of Sacramento, more than a dozen hospitals have closed since 2000. According to the American Hospital Association, 25-35% of hospitals are operating at a loss at any given time.

By comparison, insurance companies are reaping considerable profits. According to a 2018 report by the Council of Economic Advisors, health insurer profitability in the individual market has risen due to substantial premium increases, government premium tax credits that pay for those premium increases, and the large, government-funded, Medicaid expansion. Since the implementation



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of the Affordable Care Act on Jan. 1, 2014, health insurance stocks outperformed the Standard & Poor's 500 Index by 106 percent.

Medicare and Medi-Cal payments do not cover the costs of care. According to a study published by West Health Policy Center, Medicare pays hospitals an average of 79% of their costs. In some counties, the amounts are a much lower. In Alameda, San Francisco, Santa Clara, Santa Barbara, Contra Costa and San Luis Obispo counties, Medicare pays approximately 55% of a hospital's costs. In 2016, California hospitals suffered \$12 billion in losses from government payers.

Therefore, unless the federal and state governments are willing to substantially increase Medicare and Medi-Cal payments — which is unlikely — hospitals have to rely on private insurance payments to help maintain access to care and remain financially viable. Any reduction in commercial reimbursement could jeopardize the financial viability of many hospitals and would likely result in less access for patients especially in low-income and rural areas.

The current form of the proposed legislation states that health plans only have to pay hospitals the lower of the reasonable value of the services or the average contracted rate paid by the health plan. This legislation will encourage health plans to terminate their more generous contracts, and only keep their lowest-rate contracts. Hospitals will be unable to negotiate for higher payments as health plans can simply force hospitals to accept the lowest contract rates.

Hospitals are willing to invest in expensive technology, and provide sophisticated tertiary services — such as stroke, heart attack and cancer services — if they have contracts with health plans that encourage their members to obtain their health care services at the hospital. If health plans are incentivized by the current legislation to cancel all but a few of their low-paying contracts, many hospitals may be less willing to invest in the health care services that their community needs.

Would health plans that are able to negotiate low rates with hospitals accept similar legislation requiring them to pay the higher rates that other health plans pay? Of course not. Why do California legislators want to penalize hospitals in favor of private insurance companies? This bill is nothing but a handout to insurance companies that are already extremely profitable. And worse yet, won't do anything to lower the cost of premiums or patient responsibility for care.

Finally, this legislation does nothing to address the role of employer self-funded plans governed under the federal Employee Retirement Income Security Act, which often limits providers' ability to recover payment. Specifically, the practice of anti-assignment clauses in contracts with employers precludes providers from directly seeking legal action for nonpayment.

There is general agreement that patients should not have to shoulder the cost of medical bills when they receive emergency and post-emergency services at out-of-network hospitals. Legislation to fix that problem is appropriate. Legislation that will put the financial viability of hospitals at risk will benefit no one.

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