

A Texas-Sized Problem:

How to Limit Out-of-Control Surprise Medical Billing

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Even diligent patients who ask all of the right questions can get hit with surprise, out-of-network medical bills. This is especially likely to happen in an emergency, when sick or injured Texans must rush to the nearest emergency room and have no ability to choose the doctors who treat them or confirm they are part of their insurance network.

Surprise out-of-network medical bills, sometimes called “balance bills,” happen when insurers and doctors fighting over prices jointly pass the buck to a patient who received out-of-network care unknowingly. The Texas Legislature, long frustrated by this practice, developed a mediation system for surprise bills in 2009 and improved the system in 2015. When patients are able to access the system, it works well. Disputes are almost always resolved with a phone call between the doctor’s office and insurer, with actual mediation rarely needed.

Unfortunately, very few Texas patients have managed to access the system – only 3,824 since 2009. We estimate that 250,000 Texans who have a mediation-eligible health plan will get a surprise, out-of-network medical bill in a two-year period. In other words, only a very small fraction of Texans with surprise bills get help.

Mediation in Texas is not an automatic consumer protection. Before they can even request mediation, patients must first overcome several hurdles. These include decoding their medical bills, knowing about mediation, and then navigating the mediation system—all while recovering from the illness or injury that sent them to the hospital. Patients who are able to clear these initial hurdles may still be stymied by loopholes that make many surprise bills ineligible for mediation. Patients can only mediate surprise bills from certain doctors, for care provided at certain hospitals, and only if the bill exceeds an arbitrary \$500 threshold.

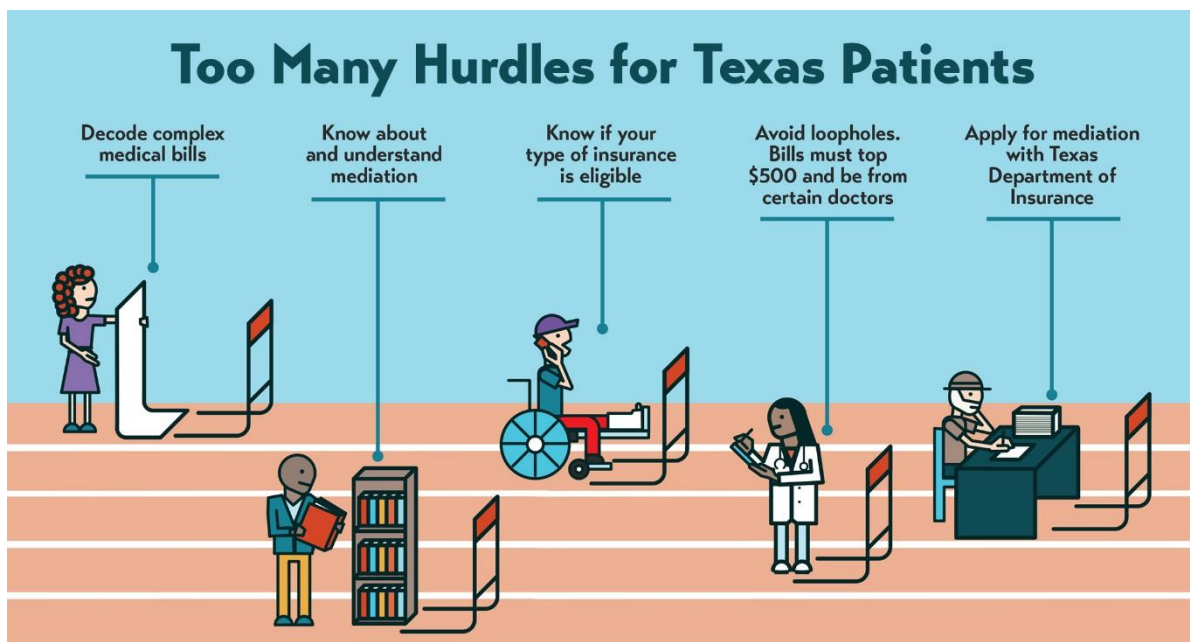
Two recent national studies show that Texas is one of the worst states for surprise medical bills from emergency medical care. CPHP’s analysis of data from Preferred Provider Organization (PPO) plans shows that Texas patients are routinely treated by out-of-network doctors at in-network hospital ERs. A staggering share of hospitals do not have even a single in-network emergency room physician for one or more insurers covering the hospital, guaranteeing that emergency treatment will be performed by out-of-network doctors for many patients. There are more than 300 hospitals in Texas where the hospital itself is in-network, but there is not a single in-network ER doctor available with at least one of the three large insurers examined in this study. On the other end of the spectrum, we found four no-surprise ERs in Texas where the hospital was in-network with all three large insurers in the study and all ER physician billing was also in-network.

In recent years, states including Florida, California, New York, and Illinois have implemented patient-centered policies to address surprise medical bills. They protect patients both from surprise bills and the burdens of navigating a mediation system, while ensuring doctors and insurers can reach a fair price through dispute resolution.

At the end of 2016, both the Texas Senate Business and Commerce Committee and the Texas Department of Insurance recommended expansion of Texas' mediation system, making prospects good for additional improvements during the 2017 legislative session. There are many ways the Legislature can take incremental, yet meaningful, steps to improve patients' access to mediation by reducing the barriers outlined in this report. Ultimately, the best and most complete solution for patients that builds off of our existing surprise bill mediation system would incorporate the following principles:

- **Protect patients from surprise bills if they did not choose or could not avoid out-of-network care.** Especially in emergencies, but also when patients get care at an in-network facility but have no ability to choose an in-network physician, surprise billing should be prohibited. Patients are already responsible for their expected premiums, deductibles, and copayments. They should not be subject to surprise bills beyond those amounts when they unknowingly received care out of network.
- **Ensure doctors and other providers and insurers have a trusted system through which they directly settle out-of-network payment disputes.** Instead of offloading billing disputes onto patients through surprise bills, insurers and providers should settle their disputes directly using Texas' mediation system. Providers and/or insurers should initiate mediation, not patients.
- **Close the loopholes.** All surprise bills stemming from a medical emergency or treatment from an out-of-network provider at an in-network facility should be eligible for mediation with no loopholes. Mediation should cover all providers of emergency care, including facilities like hospitals and free-standing ERs and all physicians practicing at in-network facilities, regardless of their specialty. The arbitrary limit that allows patients to request mediation only for surprise bills that top \$500 should be removed, and access should be equal across all public employee plans.

Surprise billing protections should benefit all patients, not just the few who are able to understand complicated medical bills, determine if a bill is eligible, know about their mediation rights, and navigate the mediation process – all while dealing with the aftermath of a medical emergency or hospitalization.



What is a surprise medical bill?

Insurance companies and doctors or other health care providers often disagree about prices for health care. Doctors and other health care providers want to charge high rates and insurance companies want to pay low rates. The difference between the amount the doctor charges and the amount the insurer pays can be large. When patients receive their health care within their insurer's provider network (in-network care), they don't have to worry about this difference in cost expectations. In-network doctors or other health care providers have agreed in advance with an insurance company about payment rates. With in-network care, patients will owe only their required deductibles, copayments, and coinsurance.

But when patients unknowingly get health care outside of their insurer's network (out-of-network care), patients are at risk for surprise bills. When insurers and out-of-network providers cannot agree on a fair price, too often they jointly off-load the price difference onto the patient. This is a surprise out-of-network medical bill (also called a balance bill, because patients are charged the balance that is in dispute between the doctor and insurer). Surprise bills or balance bills are charged to patients *on top of* their expected, out-of-network deductibles, copayments, and coinsurance.

Surprise bills happen when insurers and doctors fighting over prices jointly pass the buck to a patient who received out-of-network care unknowingly.

What is a **SURPRISE MEDICAL BILL?**



When patients unknowingly get care from a doctor or other provider who is not in their insurer's network, they can get hit with surprise medical bills. This is especially likely to happen in an emergency, when patients have no ability to choose the doctors who treat them or ensure they are part of their insurance network.

When patients get out-of-network care unknowingly

In emergencies

Most Texans will end up in an emergency room at some point, and when there, will generally have no ability to ensure their care is in-network. In an emergency, patients often lack the time or ability to determine if a hospital is in-network. Also, in emergencies, patients generally get no choice in providers. Patients don't get to pick what ambulance shows up when they call 9-1-1, which ER the ambulance goes to, or which doctor at the ER provides care.

ER trips generally result in at least two medical bills—one from the facility (hospital or free-standing ER) and another from physician(s) who provided treatment (such as emergency room physicians and radiologists). Patients may unknowingly get care in an out-of-network facility, if for example, the closest ER that a patient is rushed to does not participate in the patient's insurance network. In these cases, patients may get a surprise bill from the facility.

In other cases, patients in an emergency will get to an in-network hospital, but still receive out-of-network care. Patients have a reasonable expectation that if they go to an in-network hospital, all of their care within the hospital will also be in-network. But most patients don't know that, in many cases, the doctors who practice *at* a hospital are not employees *of* the hospital. Hospitals and other facilities commonly contract with groups of doctors or individual physicians to provide services like anesthesiology, emergency department physician services, neonatology, pathology, and radiology. These contracted doctors do not necessarily participate in the same insurance plans as the hospital. In fact, for some specialties like emergency room physicians and anesthesiologists, it is relatively common for doctors to be out-of-network even though the hospital is in-network (see Figure 2). In these cases, patients may get a surprise bill from one or more doctors.

Going to an in-network hospital and leaving with out-of-network bills is understandably surprising and frustrating for patients. Hospital-based care is delivered and billed for under a different model than most consumer services. Imagine going out to eat and receiving unexpected bills from the host, waiter, cook, and dishwasher, some of whom were willing to negotiate discounts or accept coupons, while others were not. This is essentially what happens at a hospital. Even though the care is provided under one roof, the insurance network arrangements and billing are separate for many services.

Non-emergency care at in-network facilities

Patients can also get out-of-network care in non-emergencies that is unanticipated and unavoidable. Even the most diligent patients who do their research and ask all of the right questions sometime get surprise medical bills. In these cases, surprise bills often come from providers that patients do not get to choose, like anesthesiologists and radiologists, or from providers that patients do not even know will be involved in their care, like assistant surgeons. Often, even a patient's attending physician does not know in advance and has no real choice over which facility-based physicians will assist with a procedure.

For example, prior to a colonoscopy, a patient may be able to confirm that her gastroenterologist is in-network, as well as the surgical center where the procedure will take place. But even when they inquire about who else will provide care, patients often cannot get specific information on which anesthesiologist or pathologist may be involved in a procedure. Media reports show many examples of surprise bills coming from non-emergency health care where out-of-network services were unanticipated and unavoidable, including care from [assistant surgeons](#), [anesthesiologists](#), [technicians who deliver newborn hearing screenings](#), [consulting pediatricians](#), [neonatologists](#), [pain specialists](#), [pathologists and labs](#), [doctors in an intensive care unit](#), and [surgeons](#).

Surprise Bill Mediation in Texas

No one thinks surprise bills stemming from unexpected out-of-network care are fair to patients, including the Texas Legislature. The Texas Legislature created a mediation program for surprise medical bills for patients with Preferred Provider Organization (PPO) plans, the most common type of private insurance.ⁱ Mediation is a misnomer, because actual mediation is almost never used. What the Legislature did in practice was to simply require doctors and insurers to pick up the phone and try to agree on a fair price instead of pushing the disputed charges off onto the patient.

When Texans use the system, it works—doctors and insurers almost always clear up the pricing dispute during the informal phone call that takes place before mediation is scheduled. To date, 92 percent of all mediation requests are settled through a simple phone call between the insurer and doctor.ⁱⁱ Only eight percent of requests have been referred to the State Office of Administrative Hearings for mediation, and even some of those disputes are likely resolved before mediation occurs.

The big problem with Texas’ mediation system is that relatively few patients benefit from it. Unnecessary barriers limit patients’ access to mediation. Since the program launched in 2009, it has been used by only 3,824 patients.ⁱⁱⁱ Based on the available data, we estimate that about 250,000 Texans who have a mediation-eligible health plan get a surprise, out-of-network medical bill over a two-year period (see Methodology section).^{iv} In other words, the 3,824 Texans who’ve been helped by mediation amount to a small fraction of all the Texans who could be helped if the Legislature addressed the barriers to mediation described below.

*About 250,000 Texans with a mediation-eligible health plan
get a surprise, out-of-network bill in a two year period.
Only a small fraction have managed to access mediation.*

Barriers Limit Access to Mediation

It sounds easy enough—patients who’ve received an eligible surprise bill can apply for mediation. But this oversimplification masks many unacknowledged steps patients must take and awareness patients must possess before they can file for mediation. Together, these precursors to mediation create a virtual obstacle course that significantly limits access. The hurdles patients must clear fall into the following five categories, discussed in detail below:

- Decoding complex medical bills
- Knowing mediation rights exist, and understanding them
- Determining if your health plan is eligible
- Determining if your bill avoids loopholes
- Applying for mediation with the Texas Department of Insurance

These present burdens for the most savvy consumer, but create even tougher barriers for patients just discharged from the hospital or recovering from medical emergencies. Patients who have had strokes or heart attacks, for example, often have ongoing, health challenges that will limit their capacity to decode medical bills and navigate complex systems. They also often get a deluge of medical bills, not just one or two, making the task of analyzing bills and identifying eligible surprise bills overwhelming.

The good news is that there is a fix. Other states have systems to resolve surprise bills and help insurers and doctors reach fair prices that do not place burdens on patients. These solutions are discussed in later in the Recommendations section.

Decoding medical bills

One of the biggest barriers to mediation is that patients must decode their medical bills as a first step. Balance bills do not come clearly labeled as such. Patients must be able to glean from a medical bill and the separate payment statement from the insurer (called an Explanation of Benefits, or EOB) whether care was provided

out-of-network, what portion is being covered by insurance, what the patient owes for cost-sharing like deductibles and copayments, and whether the patient is being “balance billed” for additional amounts that exceed the required cost-sharing. Anyone who has tried to do this knows that it is challenging and requires fluency with both medical billing and insurance benefits.

Figuring out whether a medical bill is eligible for mediation is challenging. It requires fluency with both medical billing and insurance benefits.

Patients find the whole medical billing system confusing and frustrating. Medical bills and EOBs are notoriously indecipherable and full of jargon. They arrive separately, possibly months apart, and are often hard to reconcile. These documents are confounding for so many patients that AARP recently teamed up with the U.S. Department of Health and Human Services to sponsor a “[design and innovation challenge](#)” to build an understandable medical bill.

Knowing about and understanding mediation rights

Another of the biggest barriers to mediation is lack of awareness by patients that it even exists. State statute requires hospital-based doctor’s bills to include a mediation notice. Insurer EOBs are required only to generally warn about possible balance billing and provide TDI’s phone number.^v Based on the very limited use of mediation by patients, it is clear that these disclosures do not work.

The current disclosures are likely ineffective because they are tacked on to documents that consumers find, at best, confusing and, at worst, indecipherable. Consumers struggle to understand even the most basic information on medical bills and EOBs –how much they owe and what insurance is going to pay. Consumers who get confused or frustrated just trying to determine what they owe may not keep reading down to the fine print that contains a mediation notice. Or if they get to the notice, but are already confused or overwhelmed by the information on the bill/EOB, they may not be able to understand and act on the information in the mediation notice.

This barrier has big implications for improving access to mediation. If consumers cannot easily understand and act on a notice tacked onto a medical bill or EOB because those documents themselves are so confusing and overwhelming, simply making the mediation-related notice within these documents more prominent (bigger text, different placement, different color, etc.) may not have the effect of better informing consumers. If someone is speaking a foreign language that you don’t know, it doesn’t become more understandable if they shout.

Current mediation notices are not working. Simply making them more prominent may not help much. If someone is speaking a foreign language that you don’t know, it doesn’t become more understandable if they shout.

The wording of existing notices may also make disclosure ineffective. If current disclosures use terms of art like “balance bill” and “mediation,” patients may not understand the notice or how mediation would benefit them.^{vi} Standardized and simple notice language that has no jargon or terms of art could help increase awareness and understanding of mediation.

Determining if your plan is eligible

Only people covered by certain types of insurance can access mediation—fully insured preferred provider organization (PPO) plans and coverage through the Employees Retirement System of Texas (ERS) HealthSelect plan. Together, about 3.6 million Texas have these types of plans. Many more people are covered by plans that are not eligible for mediation, which include self-funded ERISA plans, indemnity plans, HMOs, Medicare, and Medicaid.^{vii} Several of these distinctions between insurance plans are highly technical and not understood by the average consumer. The average consumer would be unlikely to know, for example, whether their plan is fully insured or self-funded (see the Methodology section for an explanation of these terms).

Avoiding loopholes

Only certain surprise bills are eligible for mediation in Texas today because of many loopholes in our state law. The Texas Legislature should close all of the loopholes in mediation to ensure that patients have protection from surprise bills after an emergency or treatment at an in-network facility, with no exceptions. The following are examples of loopholes that lock out Texas patients today:

- **Only certain ERs count.** Today, a surprise bill is eligible for mediation only if care was provided at an in-network hospital. Patients are locked out of mediation, even if the closest emergency room was in an out-of-network hospital or a free-standing ER. There are about 300 free-standing emergency rooms in Texas where patients get no surprise billing protections.^{viii} All patients who've had an emergency should have access to mediation, regardless of which ER they go to.
- **Only certain providers count.** Patients can't challenge surprise bills from ambulances, hospitals and other facilities, hospitalists, and many other types of providers from whom patients can unknowingly get out-of-network care. Today, a surprise bill is only eligible for mediation if it is from a radiologist, anesthesiologist, pathologist, emergency department physician, neonatologist, or assistant surgeon.
- **Only certain amounts count.** Texas imposes an arbitrary dollar cut-off on medical bills that can go to mediation. Patients are locked out if their bill is less than \$500, even if they receive several surprise medical bills that add up to much more than \$500. Even unexpected bills under \$500 can threaten a family's financial security. The U.S. Federal Reserve found that 46 percent of U.S. adults can not readily cover an emergency expense of \$400.^{ix}
- **Only certain public employer insurance plans count.** State employees covered through the Employee Retiree System of Texas can go to mediation; however public employees covered under similar plans authorized under state law are ineligible. The legislature should extend mediation protections to Texas public employees covered through the Teacher Retirement System, the University of Texas System, and the Texas A&M System.

Nearly half of U.S. adults are unable or ill-prepared to cover \$400 in emergency expenses. Current law contains an arbitrary cut-off that lets patient mediate only surprise bills that top \$500.

Applying for mediation through the Texas Department of Insurance

The actions most patients take when they get a surprise bill are unlikely to help them learn about and request mediation. A *Consumer Reports* survey of Texans with private insurance found that, of respondents who had

received surprise medical bills and tried to resolve them, 58 percent called the doctor's office and 44 percent called their insurer (consumers could report taking multiple actions).^x Under current law, patients cannot request mediation through calls to their health plan or doctor. They probably won't even be told that mediation exists during these calls.

Patients can only request mediation through TDI. (The mediation request form is available in English and Spanish on TDI's website and can be mailed upon request through TDI's toll-free number.) Unfortunately, public knowledge about the agency appears low. Only one percent of surveyed Texans reported contacting a state agency after getting a surprise bill and only 11 percent reported knowing which state agency in Texas handles complaints related to health insurance.^{xi}

Patients generally call their insurer and/or doctor after getting a surprise bill, but under current law, cannot request mediation on these calls. Patients can only request mediation through the Texas Department of Insurance. Public awareness of the agency is low.

Other states that have set up a dispute resolution system for surprise bills do not require the patient to request or navigate mediation. It is unnecessary and burdensome to make patients navigate a complex system and submit paperwork simply to get a doctor and insurer with a billing dispute to pick up the phone and try to work it out. In other states, doctors and insurers can directly access dispute resolution and settle matters themselves.

Surprise Billing Is Common

A 2015 survey from *Consumer Reports* found that 1 in 14 privately insured adult Texans (or seven percent) reported getting a surprise, out-of-network bill *in the last two years*.^{xii} A separate nationally representative survey from the Commonwealth Fund in 2016 found that 21 percent of non-elderly adults have, *at some time*, received a surprise, out-of-network bill.^{xiii} The first survey asks just about surprise bills received in the last two years, while the second survey asks about surprise bills received ever, which may account for the difference in their findings. Despite the slight difference in what they measure, both surveys show that surprise, out-of-network billing is common and affects a significant share of patients with private insurance.

A recent report on surprise medical bills from the Brookings Institution and USC Schaeffer Center concluded that:

There is no serious dispute among observers or stakeholders that surprise medical billing happens to a significant extent. There are numerous case reports in academic literature, widespread media accounts, and other credible sources, such as the New York Times, the Wall Street Journal, Time magazine and Consumers Union. In addition, a number of research studies more systematically document the dimensions of this problem.^{xiv}

Unanticipated Out-of-Network Care is Common In Texas

In Texas, we have more data publicly available on the out-of-network billing by hospital-based physicians than in most, if not all, other states. Texas Department of Insurance regulations require insurers with PPO plans to post two key pieces of data on their websites for each in-network hospital:

1. the percentage of dollars billed as out-of-network by anesthesiologists, emergency room physicians, neonatologists, pathologists, and radiologists; and
2. whether the hospital is has no in-network providers for anesthesiology, emergency department, neonatology, pathology, and radiology services.^{xv}

Unlike the survey results above, these two data points do not directly measure how often patients get surprise medical bills. They do, however, illustrate the likelihood of a patient receiving out-of-network services within an in-network hospital, leaving the patient vulnerable to a surprise bill. CPPP first pulled these data from insurer websites and analyzed them in a [2014 report](#). We pulled data from the websites of three of Texas' largest insurers—Blue Cross Blue Shield of Texas, UnitedHealthcare, and Humana—again in 2016 to provide the updated and expanded snapshot below (see the Methodology section for more information).

Key Findings

- **Texas patients are routinely treated by out-of-network doctors at in-network hospital ERs, likely making surprise emergency medical bills common.** Emergency room physicians at in-network hospitals bill a significant portion of their services out-of-network, ranging from 42 percent to 70 percent of dollars billed out-of-network, on average, across the three insurers as shown in Table 1.
- **A staggering share of in-network hospitals do not have even a single in-network emergency room physician available, guaranteeing that all emergency treatment will be performed by out-of-network doctors.** The share of in-network hospitals with no in-network emergency room physicians ranged from 18 to 63 percent, as shown in Table 1. There are more than 300 hospitals in Texas where the hospital itself is in-network, but there is not a single in-network ER doctor available with at least one of the three insurers in this study (see Figure 1).
- **Of the five hospital-based provider types for which insurers must report PPO out-of-network service data—anesthesiologists, emergency room physicians, neonatologists, pathologists, and radiologists—patients appear much more likely to get surprise, out-of-network bills from emergency room physicians.** Across all three insurers in the study, the share of out-of-network billing by ER physicians was at least 2.5 times greater than the shares by the other hospital-based physician types. The share of out-of-network billing at in-network hospitals by different hospital-based physician types is shown in Figure 2. In-network hospitals are also more likely to entirely lack any in-network emergency room physicians compared to the other hospital-based physician types, as shown in Figure 3.
- **There are some hospital ERs in Texas where surprise billing appears rare.** The 23 hospitals in Table 2 are in-network with all three insurers in the study, and had less than 10 percent of ER physician charges billed as out-of-network. Four of the hospitals in the state—hospitals in Friona, Spearman, Stamford, and Wellington—are in-network with all three insurers in the study and for each insurer have 100 percent of ER physician services billed in-network. In other words, there are only four “no-surprise ERs” in the state, at least for the three insurers examined in this study.
- **There are more hospital ERs where surprise billing appears to be a virtual guarantee.** The 40 hospitals in Table 3 are in-network with all three of the insurers in the study, but 95 percent or more of the dollars billed by emergency physicians at the hospital are out-of-network for all three insurers. In other words, a large share of patients with PPOs who use the ERs in the hospitals listed in Table 3 were, during the time periods reflected by the data, almost certain to be treated by out-of-network ER physicians, and as a result, vulnerable to a surprise medical bill.

Table 1: Out-of-network Emergency Room Physician Services at In-network Hospitals

Insurer	Share of Surprise, Out-of-Network ER Billing Average percentage of dollars for emergency room physician services billed out-of-network at in-network hospitals	Share of Hospitals with Guaranteed Surprise, Out-of-Network ER Care Percentage of in-network hospitals with no in-network emergency room physicians
Blue Cross Blue Shield	42%	18%
Humana	51%	63%
UnitedHealthcare	70%	40%

CPPP analysis of data posted online by Blue Cross Blue Shield of Texas, UnitedHealthcare, and Humana. Time frames vary by insurer, see Methodology for source detail. Data reflect billing and providers associated only with in-network hospitals that offer emergency room services, as indicated by insurers. Average share of out-of-network billing calculated as the mean percentage of dollars billed out-of-network by each in-network hospital.

Surprise Billing is Worse in Texas

Two recent national reports show that surprise bills stemming from emergency medical care are more common in Texas than most other states.

One study published in *Health Affairs*, found that nationally, 20 percent of patients admitted to a hospital through the emergency room were likely to get a surprise medical bill.^{xvi} In Texas, the rate was much higher at 34 percent. Texas is one of only five states with rates at or above 30 percent (the others were Alaska, Florida, New Jersey, and New York). Texas also fared poorly when looking at the likelihood of a surprise bill following an outpatient ER trip (as opposed to one that led to a hospital admission). Nationally, 14 percent of outpatient ER visits were likely to result in a surprise bill, while in Texas, it was 27 percent. Texas is one of just 4 states where the rate was 20 percent or higher (the other states were Alaska, Florida, and New York).

A separate study published in the *New England Journal of Medicine* found that nationally, 22 percent of emergency room visits involve care by a doctor who is out-of-network, putting the patient at risk of a surprise medical bill.^{xvii} In much of Texas, the problem is worse. The study highlights McAllen, Texas and the surrounding area as one of the worst in the nation with 89 percent of emergency room visits likely to result in a surprise bill.

What Other States Are Doing

Texas may have led the way as the first state to put a dispute resolution system in place for patients with surprise bills in 2009. Since then, several states have built upon and expanded the use of dispute resolution between insurers and out-of-network doctors in ways that better protect patients. Most notably, a growing number of states have created comprehensive and patient-centered systems with strong bipartisan support to

address surprise bills without placing burdens on patients, including Florida, California, New York, and Illinois. Laws in each of these four states share key features that Texas still lacks:

- **Patients are responsible for expected costs, with no surprises.** When patients go to in-network hospitals but are unknowingly treated by out-of-network doctors, patients are only responsible for their deductibles and copayments, as if the care had been in-network. Patients are not subject to additional surprise out-of-network fees.
- **Patients are no longer “caught in the middle” of billing fights.** When out-of-network doctors or other medical providers and insurers can’t agree on a fair price, the two parties can *directly* access dispute resolution to sort out the problem. Patients do not have to know about and apply for help for dispute resolution between the provider and insurer to occur.

Recommendations

Committees of jurisdiction in both the Texas House and Senate studied surprise billing and Texas’ mediation system in the 2016 interim, signaling their recognition of the need for more work on this issue. At the end of 2016, both the Senate Business and Commerce Committee and the Texas Department of Insurance recommended expansion of Texas’ mediation system, making prospects good for additional improvements during the 2017 session.^{xviii}

Texas has a good foundation in place with its existing mediation system, but changes are needed to ensure that patients can reliably access the help intended by the legislature. There are many ways the 2017 Legislature can take incremental, yet meaningful, steps to improve patients’ access to mediation by reducing the barriers outlined in this report. Ultimately, the best and most complete solution for patients that builds off of our existing surprise bill mediation system would incorporate the following principles:

The 2017 Legislature can take incremental, yet meaningful, steps to improve access to mediation by reducing the barriers patients face.

Protect patients from surprise bills if they did not choose or could not avoid out-of-network care. In emergencies and when patients receive care at an in-network facility but have no ability to choose an in-network physician, surprise billing should be prohibited. Patients are already responsible for their expected premiums, deductibles, and copayments. They should not be subject to surprise bills beyond those amounts when they unknowingly receive care out of network.

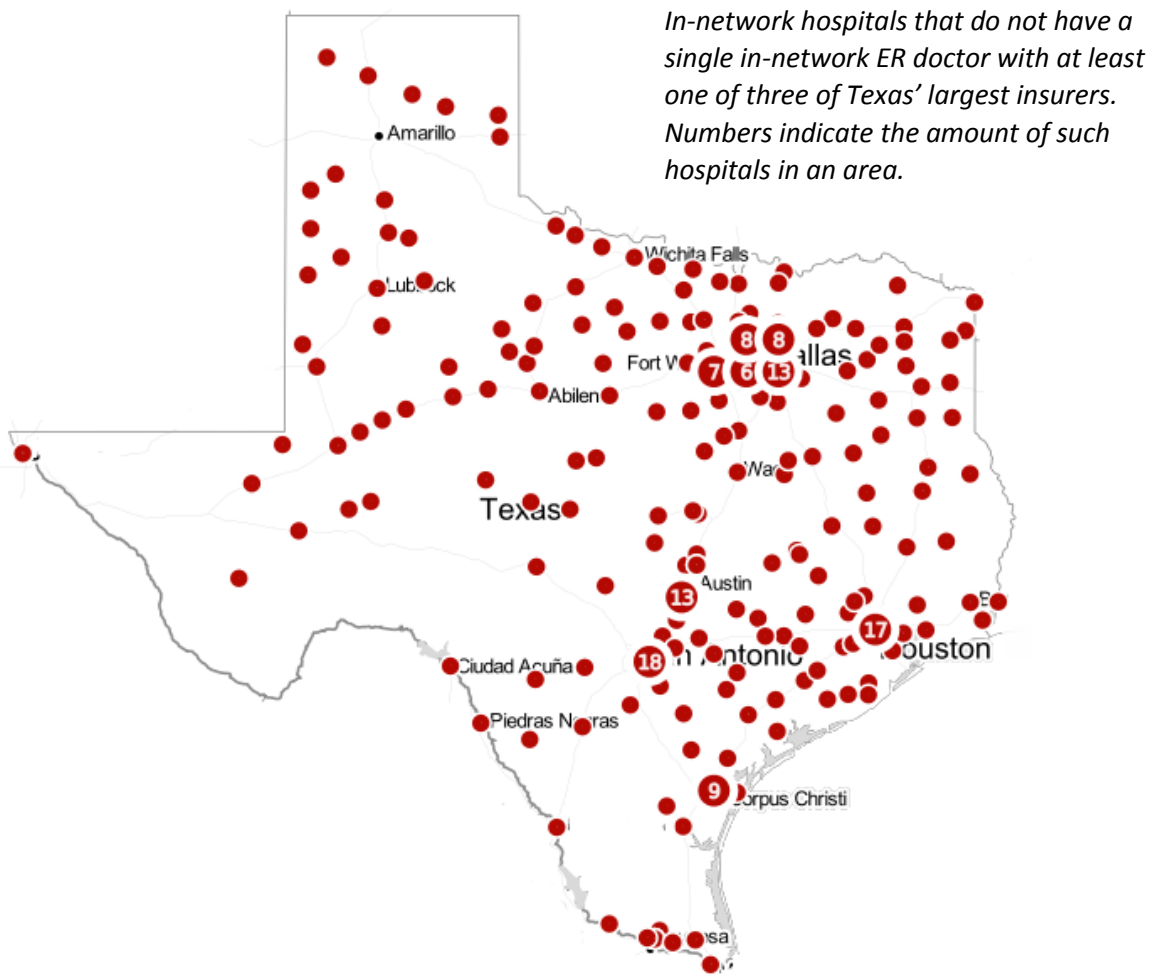
Ensure providers and insurers have a trusted system through which they directly settle out-of-network payment disputes. Instead of offloading billing disputes onto patients through surprise bills, insurers and providers should settle their disputes directly using Texas’ mediation system. Providers and/or insurers should initiate mediation, not patients.

Close the loopholes. All surprise bills stemming from a medical emergency or treatment from an out-of-network provider at an in-network facility should be eligible for mediation with no loopholes.

- All providers of emergency care, including facilities like hospitals and free-standing ERs should be subject to mediation.

- All physicians practicing at in-network facilities, regardless of their specialty, should be subject to mediation, unless they provide an accurate billing estimate and get informed consent to provide out-of-network services 24 hours in advance of treatment.
- No arbitrary dollar amounts. Remove the barrier that allows mediation only for surprise bills that top \$500.
- Equal access for public employee plans. Public employees covered under the Teacher Retirement System of Texas (TRS), and UT and A&M system health coverage should have the same access to mediation as state employees with coverage through Employee Retirement System of Texas (ERS).

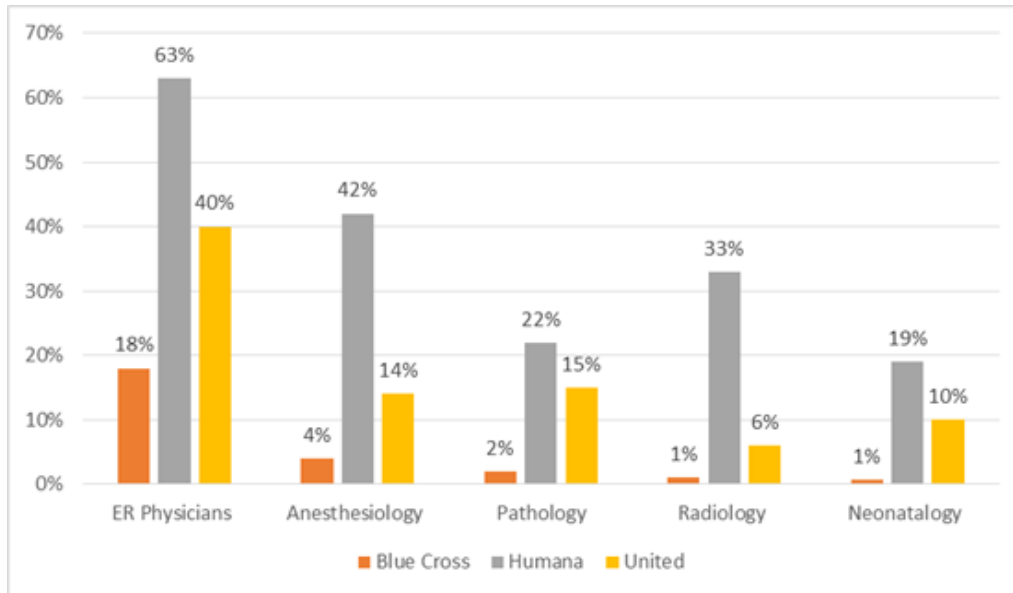
Figure 1: ERs statewide with no in-network ER physicians, for at least one major insurer



CPPP analysis of data posted online by Blue Cross Blue Shield of Texas, UnitedHealthcare, and Humana. Time frames vary by insurer; see Methodology for this and other source detail. Data are for providers at in-network hospitals that offer emergency room services, as reported by insurers.

Figure 2: Out-of-network ER Physician Services Are Common at In-network Hospitals

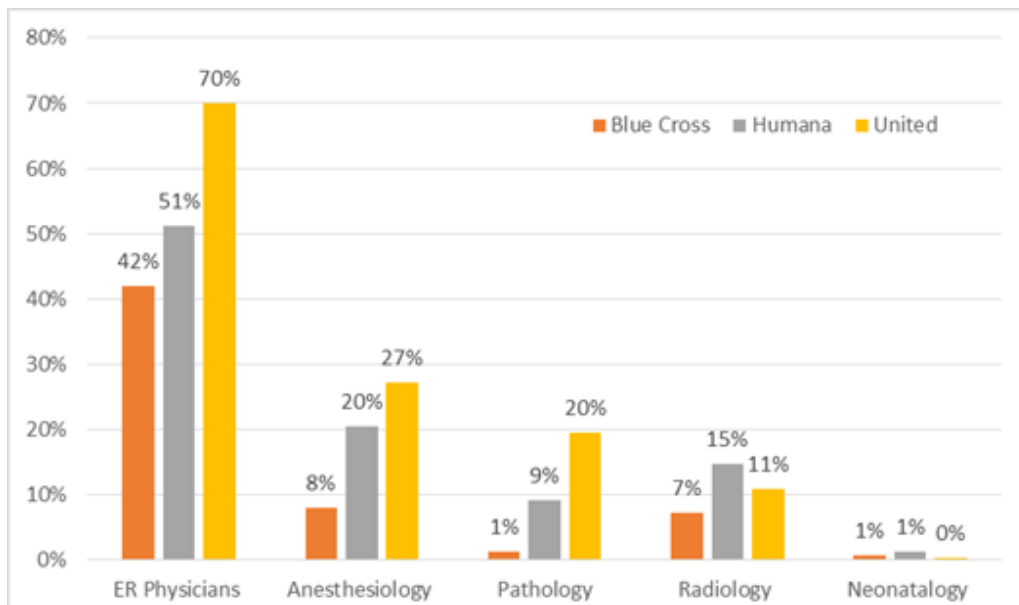
Average Percentage of Dollars Billed Out-of-Network at In-Network Hospitals by Physician Specialty



CPPP analysis of data posted online by Blue Cross Blue Shield of Texas, UnitedHealthcare, and Humana. Time frames vary by insurer; see Methodology for source detail. Data reflect billing associated only with in-network hospitals that offer the relevant category of hospital-based service, as reported by insurers.

Figure 3: Many In-network ERs Have No In-network Physicians Available

Percentage of In-network Hospitals with No In-network Provider Type by Physician Specialty



CPPP analysis of data posted online by Blue Cross Blue Shield of Texas, UnitedHealthcare, and Humana. Time frames vary by insurer; see Methodology for source detail. Data reflect providers associated only with in-network hospitals that offer the relevant category of hospital-based service, as reported by insurers.

Table 2: Texas Hospitals Where Surprise Emergency Billing Appears Rare (Low Percentage of Out-of-network ER Doctor Billing)

Hospitals listed are in-network with all three insurers in the study, and for each insurer has 10 percent or less of ER physician services billed out-of-network. The four hospitals with an asterisk () have 0 percent of ER physician billing out-of-network for all three insurers.*

Hospital Name	City
BAPTIST ST ANTHONY'S HOSPITAL	AMARILLO
DEL SOL MEDICAL CENTER A CAMPUS OF LPDS HEALTHCARE	EL PASO
TEXAS HEALTH PRESBYTERIAN HOSPITAL FLOWER MOUND	FLOWER MOUND
COOK CHILDRENS MEDICAL CENTER	FORT WORTH
* PARMER MEDICAL CENTER	FRIONA
LAKE GRANBURY MEDICAL CENTER	GRANBURY
MEMORIAL HERMANN MEMORIAL CITY MEDICAL CENTER	HOUSTON
CHRISTUS MOTHER FRANCES HOSPITAL - JACKSONVILLE	JACKSONVILLE
COVENANT MEDICAL CENTER - LAKESIDE	LUBBOCK
MULESHOE AREA MEDICAL CENTER	MULESHOE
SHANNON WEST TEXAS MEMORIAL HOSPITAL	SAN ANGELO
BAPTIST MEDICAL CENTER	SAN ANTONIO
METHODIST HOSPITAL	SAN ANTONIO
METHODIST STONE OAK HOSPITAL	SAN ANTONIO
MISSION TRAIL BAPTIST HOSPITAL	SAN ANTONIO
NORTH CENTRAL BAPTIST HOSPITAL	SAN ANTONIO
NORTHEAST BAPTIST HOSPITAL	SAN ANTONIO
ST LUKE'S BAPTIST HOSPITAL	SAN ANTONIO
* HANSFORD COUNTY HOSPITAL	SPEARMAN
* STAMFORD MEMORIAL HOSPITAL	STAMFORD
MEMORIAL HERMANN SUGAR LAND	SUGAR LAND
* COLLINGSWORTH GENERAL HOSPITAL	WELLINGTON
CHRISTUS MOTHER FRANCES HOSPITAL - WINNSBORO	WINNSBORO

CPPP analysis of data posted online by Blue Cross Blue Shield of Texas, UnitedHealthcare, and Humana. Time frames vary by insurer; see Methodology for source detail. Data reflect billing associated only with in-network hospitals that offer emergency room services, as reported by insurers.

Table 3: Hospitals Where Surprise Emergency Billing Appears Nearly Guaranteed (Percentage of Out-of-network ER Doctor Billing of 95% or More)

Hospitals listed are in-network with all three insurers in the study, and for each insurer has 95 percent or more of ER physician services billed out-of-network.

Hospital Name	City
ABILENE REGIONAL MEDICAL CENTER	ABILENE
METHODIST HOSPITAL FOR SURGERY	ADDISON
BIG BEND REGIONAL MEDICAL CENTER	ALPINE
CARE REGIONAL MEDICAL CENTER	ARANSAS PASS
VALLEY REGIONAL MEDICAL CENTER	BROWNSVILLE
BROWNWOOD REGIONAL MEDICAL CENTER	BROWNWOOD
TEXAS HEALTH HUGULEY HOSPITAL	BURLESON
COLLEGE STATION MEDICAL CENTER	COLLEGE STATION
THE CORPUS CHRISTI MEDICAL CENTER - BAY AREA	CORPUS CHRISTI
BAYLOR SCOTT & WHITE MEDICAL CENTER - WHITE ROCK	DALLAS
DALLAS MEDICAL CENTER	DALLAS
METHODIST DALLAS MEDICAL CENTER	DALLAS
WISE HEALTH SYSTEM	DECATUR
VAL VERDE REGIONAL MEDICAL CENTER	DEL RIO
FORT DUNCAN REGIONAL MEDICAL CENTER	EAGLE PASS
ENNIS REGIONAL MEDICAL CENTER	ENNIS
HILL COUNTRY MEMORIAL HOSPITAL	FREDERICKSBURG
GLEN ROSE MEDICAL CENTER	GLEN ROSE
HARLINGEN MEDICAL CENTER	HARLINGEN
ST JOSEPH MEDICAL CENTER	HOUSTON
BAYLOR MEDICAL CENTER - IRVING	IRVING
SOUTH TEXAS REGIONAL MEDICAL CENTER	JOURDANTON
LAREDO MEDICAL CENTER	LAREDO
MEMORIAL MEDICAL CENTER OF EAST TEXAS	LUFKIN
RIO GRANDE REGIONAL HOSPITAL	MCALLEN
DALLAS REGIONAL MEDICAL CENTER	MESQUITE
MIDLAND MEMORIAL HOSPITAL	MIDLAND
HOUSTON METHODIST ST JOHN HOSPITAL	NASSAU BAY
MEDICAL CENTER HOSPITAL	ODESSA
BAPTIST ORANGE HOSPITAL	ORANGE
PAMPA REGIONAL MEDICAL CENTER	PAMPA
THE MEDICAL CENTER OF SOUTHEAST TEXAS	PORT ARTHUR
OAKBEND MEDICAL CENTER	RICHMOND
STARR COUNTY MEMORIAL HOSPITAL	RIO GRANDE CITY
SOUTHWEST GENERAL HOSPITAL	SAN ANTONIO
HOUSTON METHODIST SUGAR LAND HOSPITAL	SUGAR LAND
CHRISTUS ST. MICHAEL HEALTH SYSTEM	TEXARKANA
TOMBALL REGIONAL MEDICAL CENTER	TOMBALL
CITIZENS MEDICAL CENTER	VICTORIA
WEATHERFORD REGIONAL MEDICAL CENTER	WEATHERFORD

Methodology

Texans enrolled in mediation-eligible health plans

According to the U.S. Census Bureau, more than 16 million Texans have private health insurance (i.e., not Medicaid, CHIP or Medicare).^{xi} Most Texans with private health insurance have “self-funded ERISA” plans. These plans are regulated at the federal level, and generally, state consumer protection laws like surprise billing mediation do not apply to these plans. The Texas Legislature and Texas Department of Insurance have purview over “fully insured” plans that cover a smaller share of the population. The Texas Department of Insurance estimates that about two-thirds of Texans with private insurance have self-funded coverage and one-third have fully-insured coverage.^x

The only health plan types that are eligible for mediation are fully insured PPOs and the self-funded Employee Retirement System of Texas (ERS) HealthSelect plan. Self-funded plans (other than ERS HealthSelect), Medicare and Medicaid are not subject to Texas’ surprise billing mediation.

The Texas Association of Health Plans’ December 2015 survey of health plans found that there were approximately 4,489,000 Texans in fully insured plans as of July 2015, and of those, 70.7 percent are in PPOs (about 3,174,000 people).^{xi} Using these numbers from TAHP produces a more conservative (i.e. lower) rough estimate of the potential scope of balance bills that could be mediation-eligible, because (1) TAHP’s enrollment survey does not include insurers that have smaller market shares (the survey excluded insurers with between 2 and 4 percent of commercial enrollees), and (2) TAHP’s count of 4.5 million Texans in the fully insured market is lower than the Texas Department of Insurance’s rough estimate of 5.6 million Texans with the same type of insurance.

As of August 2015, there were 436,000 state employees and dependents enrolled in the self-funded HealthSelect plan administered by ERS, which is also subject to mediation.^{xii}

Together, there are about 3.6 million Texans enrolled in plans that are subject to mediation, either in fully insured PPOs (3,174,000 people), or in ERS’ HealthSelect plan (436,000 people).

Share of insured consumers who receive surprise medical bills

Two national surveys provide information on the frequency of surprise balance billing.

Consumer Reports National Research Center conducted an online survey about surprise medical bills in March 2015.^{xiii} CRNRC surveyed a nationally representative sample of adults with private insurance plans and also surveyed additional consumers in four states, including Texas, producing Texas-specific data. Texas and national data were statistically weighted so that survey respondents were demographically and geographically representative of the state and nation. The survey found that, in the prior two years, 35% of Texans reported getting a medical bill where the health plan paid much less than expected or nothing (a higher rate than the national average and rates from the other states, Ohio, Florida, and California). Of the 35% of Texans who reported being surprised by how little was covered, 20% of them reported that they were charged an out-of-network rate when they-thought the provider was in-network (again, a higher rate than the national average and the rates from the other states). In other words, the survey found that in the last two years, 7% of Texans received a surprise medical bill where they were charged an out-of-network rate when they thought the care they received was in-network (compared to 4.2% nationally, 4.6% in Ohio, and 4.1% in both Florida and California).

A nationally representative survey from the Commonwealth Fund in 2016 found that 21% of non-elderly adults have, at some time, received care at a hospital that they thought was in-network and later received a surprise bill from an out-of-network physician working at the hospital.^{xxiv} The survey found that the rate for surprise medical bills was similar regardless of whether consumers had job-based insurance or had coverage through the Health Insurance Marketplace, despite the prevalence of “narrow network” plans in the Marketplace. The study authors concluded that “the proliferation of narrow network plans does not appear to be creating more problems with so-called surprise medical bills.”

Both surveys provide a valuable snapshot of how frequently consumers are faced with surprise medical bills; however, they ask slightly different questions and measure slightly different things. The data we chose to use from the Consumer Reports survey is Texas-specific, and the Commonwealth Fund data is not. The Consumer Reports survey asks consumers only about surprise medical bills received in the last two years, while the Commonwealth Fund asks about surprise bills ever received. Also, the Commonwealth Fund more narrowly asks about care received at a hospital believed to be in-network, and the Consumer Reports survey asks more broadly about any surprise out-of-network care.

How many Texans get surprise bills who could use mediation (i.e., their insurers are subject to state regulation)?

Assuming the 7% rate from the Texas sample of the Consumer Reports survey holds over the 3.6 million Texans with mediation-eligible plans, we’d expect that *in a two-year period*, about 250,000 Texans with mediation-eligible insurance plans would receive a surprise, out-of-network medical bill for care they thought was in-network.

Assuming the 21% rate from the national Commonwealth Fund survey holds over the 3.6 million Texas with mediation-eligible plans, we’d expect that 760,000 Texans with mediation-eligible insurance plans would report *having ever* received a surprise bill from an out-of-network hospital-based physician.

Regardless of the exact number of Texans who get surprise bills, both of these back-of-the-envelope estimates point clearly to one conclusion—today mediation serves only a tiny fraction of Texans who get surprise bills and could be helped by mediation if the Legislature fixes the program.

Texas’ surprise medical bill mediation program was implemented in September 2009. As December 31, 2016, about 7 years after the program began, TDI reports that mediation has been used by only 3,824 Texans.^{xxv} It appears as if the vast majority of Texas patients who get surprise medical bills and who could be helped through a state-level mediation program fail to benefit at all.

(It is important to note that many more than 250,000 Texans actually get surprise medical bills, but most of them could not be helped by a state-level mediation program because they have federally regulated self-insured (ERISA) plans. Altogether, more than 16 million Texans have private health insurance. The illustrations above look only at the number of surprise medical bills that may be expected in the much smaller population of Texans (3.6 million people) who have fully insured PPO plans and ERS’ HealthSelect, and thus can be subject to mediation through state law.)

Frequency of unanticipated out-of-network health care in Texas

CPPP pulled data posted by insurers on their websites in June 2016. CPPP attempted to get data from the four largest accident and health insurers in Texas: Blue Cross Blue Shield of Texas, UnitedHealthcare, Aetna, and Humana; but ultimately we were unable to get complete and reliable data for Aetna. The age of each insurer’s data varies, as do the time periods covered by the data. Here are the specifics for each plan:

- Blue Cross Blue Shield of Texas: data available at www.bcbstx.com/onlinedirectory/hospital_based_physicians.htm. We accessed BCBS's data for the Blue Choice PPO in July 2016. The documents posted were dated July 2016 and the out-of-network total dollar amounts billed reflected the time period from August 1, 2014 through July 31, 2015.
- UnitedHealthcare: data available at https://www.providerlookuponline.com/UHC/po7/pdfs/EPO_Texas_Hospital_English.pdf. We accessed United's data in July 2016. The documents posted were dated November 2014. United's posted data does not include a timeframe for the out-of-network billing amounts.
- Humana: data available at <http://apps.humana.com/marketing/documents.asp?file=1870245>. We accessed United's data in July 2016. The documents posted were dated April 2016 and the out-of-network total dollar amounts billed reflected the time period from January 1, 2015 through December 31, 2015.
- Aetna: partial data available at http://www.aetna.com/docfind/cms/assets/pdf/TX_NonContracted_Prldr_Rprt.pdf. Aetna identifies which hospitals completely lack in-network hospital-based provider types through its online provider look-up search results. This makes the information more available to consumers, but does not allow for a statistical analysis of the information. Aetna was unable to provide CPPP with the data in an alternate format. Aetna posts data on out-of-network billing online, but does not include data for each of the five required provider types at each hospital. Data were available for less than half of network hospitals for three provider types. We determined that the available data appeared too incomplete to be reliable. Aetna was unable to provide complete data to CPPP.

CPPP's analysis of the average dollars billed out-of-network and the share of hospitals without an in-network provider by provider type consider only the hospitals that offer those services, as reported by insurers. For example, hospitals that do not offer neonatology according to the insurer's data are not included in the calculation of share of hospitals without an in-network neonatology provider. The average share of out-of-network billing is calculated as the mean percentage of dollars billed out-of-network at each network hospital offering the respective service.

We standardized the use of hospital names across insurers, using the names under which hospitals were registered with the Department of State Health Services as of July 7, 2016.^{xxvi}

Learn more about Surprise Medical Billing: bit.ly/surprisemed

Former CPPP intern Danielle Kailing assisted with the data analysis in this report. For more information or to request an interview, please contact Oliver Bernstein at bernstein@cppp.org or 512.823.2875.

About CPPP

The Center for Public Policy Priorities is an independent public policy organization that uses research, analysis and advocacy to promote solutions that enable Texans of all backgrounds to reach their full potential. Learn more at CPPP.org.

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- ⁱ Created by House Bill 2256 in 2009 (R-Hancock) and expanded by Senate Bill 481 in 2015 (R-Hancock).
- ⁱⁱ Texas Department of Insurance, data on mediation requests received from September 1, 2009 through December 31, 2016.
- ⁱⁱⁱ Texas Department of Insurance, data on mediation requests received from September 1, 2009 through December 31, 2016.
- ^{iv} The total number of Texas patients who receive a surprise, out-of-network medical bills is significantly higher than 250,000 in two years. For this report, we are just looking at Texans with plans that are regulated at the state-level and can therefore be subject to a state mediation program. TDI estimates that about one-third of Texans with private insurance have state-regulated plans and two-thirds have federally regulated self-funded or ERISA plans. A federal solution is needed to protect the much larger number of Texas with federally regulated plans who are getting surprise medical bills.
- ^v TIC 1456.004(c) and TIC 1456.003. State regulations require a specific mediation notice only on EOBs from ERS, 28 TAC §21.5020.
- ^{vi} The most specific notice requirement in law applies to hospital-based physician and requires a balance bill to have “a conspicuous, plain-language explanation of the mandatory mediation process available under Chapter 1467.” Notices health plans place on EOBs are not required to be conspicuous or plain language, and are not required to inform patients about mediation.
- ^{vii} People with HMOs, Medicare, and Medicaid have separate and stronger protections against balance billing in other state or federal laws. Federal Medicaid statute currently prohibits balance billing for Medicaid enrollees who are “full beneficiaries.” See CPPP’s [earlier surprise billing report](#) for a discussion of Texas HMO protections.
- ^{viii} Count of total free-standing ERs in Texas from Department of State Health Services written testimony to the Senate Business and Commerce Committee, May 4, 2016.
- ^{ix} Board of Governors of the Federal Reserve System, *Report of the Economic Well-Being of U.S. Households in 2015*, May 2016, <https://www.federalreserve.gov/2015-report-economic-well-being-us-households-201605.pdf>. The survey found that 46 percent of U.S. adults could not readily cover an emergency that cost \$400 or they would cover it by selling something or borrowing money.
- ^x Consumer Reports National Research Center, *Surprise Medical Bills Survey, 2015 Nationally Representative Online Survey*, May 2015, <http://consumersunion.org/wp-content/uploads/2015/05/CY-2015-SURPRISE-MEDICAL-BILLS-SURVEY-REPORT-PUBLIC.pdf>.
- ^{xi} Consumer Reports National Research Center, *Surprise Medical Bills Survey*.
- ^{xii} Consumer Reports National Research Center, *Surprise Medical Bills Survey*.
- ^{xiii} M. Z. Gunja, S. R. Collins, M. M. Doty, and S. Beutel, *Americans’ Experiences with ACA Marketplace Coverage: Affordability and Provider Network Satisfaction*, The Commonwealth Fund, July 2016, <http://www.commonwealthfund.org/publications/issue-briefs/2016/jul/affordability-and-network-satisfaction/#9>.
- ^{xiv} M. A. Hall, P. B. Ginsburg, S. M. Lieberman, L. Adler, C. Brandt, and M. Darling, *Solving Surprise Medical Bills*, Brookings Institution and USC Shaffer Center, October 13, 2016, <https://www.brookings.edu/wp-content/uploads/2016/10/sbb1.pdf>.
- ^{xv} 28 TAC 3.3705(l)(2) and 28 TAC 3.3705(l)(8)
- ^{xvi} Christopher Garmon and Benjamin Chartock, “One In Five Inpatient Emergency Department Cases May Lead To Surprise Bills,” *Health Affairs*, 2017 Jan 1;36(1):177-181. Published online December 14, 2016, <http://content.healthaffairs.org/content/early/2016/12/13/hlthaff.2016.0970.abstract>; and Sabriya Rice, “Medical billing is a national problem that’s even a bigger headache in Texas,” *Dallas Morning News*, January 20, 2017, <http://www.dallasnews.com/business/health-care/2017/01/20/medical-billing-surprise-bigger-texas>.
- ^{xvii} Zack Cooper and Fiona Scott Morton, “Out-of-Network Emergency-Physician Bills — An Unwelcome Surprise,” *The New England Journal of Medicine*, November 17, 2016: 375:1915-1918, text available via NEJM Catalyst at <http://catalyst.nejm.org/out-of-network-physicians-emergency-billing/>; and Margot Sanger-Katz and Reed Abelson, “Surprise! Insurance Paid the E.R. but Not the Doctor,” *New York Times*, November 16, 2016, <https://www.nytimes.com/2016/11/17/upshot/first-comes-the-emergency-then-comes-the-surprise-out-of-network-bill.html>.
- ^{xviii} Senate Committee on Business and Commerce, Report to the 85th Legislature, November 2016, <http://www.lrl.state.tx.us/scanned/interim/84/B963.pdf>, and Texas Department of Insurance, Biennial Report to the 85th Legislature, December 2016, <http://www.tdi.texas.gov/reports/documents/2016biennialreport.pdf>.
- ^{xix} U. S. Census Bureau, 2015 American Community Survey, Tables for Health Insurance Coverage HI-05, September 2016, <http://www.census.gov/data/tables/time-series/demo/health-insurance/acs-hi.html>.
- ^{xx} Texas Department of Insurance, Written Testimony to the Senate Committee on Business and Commerce, May 4, 2016.
- ^{xxi} Texas Association of Health Plans, *Trends in the Commercial Health Insurance Market 2013-2015*, <http://tahp.org/wp-content/uploads/2016/11/TAHP-Resource-Guide-Trends-in-Commercial-Health-Coverage-April-2016.pdf>.
- ^{xxii} Sunset Advisory Commission, Staff Report on the Employee Retirement System of Texas, April 2016, (HealthSelect enrollment, page 19), https://www.sunset.texas.gov/public/uploads/files/reports/Employees%20Retirement%20System%20of%20Texas%20Staff%20Report_4-29-16_0.pdf
- ^{xxiii} Consumer Reports National Research Center, *Surprise Medical Bills Survey*.
- ^{xxiv} M. Z. Gunja, S. R. Collins, M. M. Doty, and S. Beutel, *Americans’ Experiences with ACA Marketplace Coverage: Affordability and Provider Network Satisfaction*.
- ^{xxv} Texas Department of Insurance, data on mediation requests received from September 1, 2009 through December 31, 2016.
- ^{xxvi} Texas Department of State Health Services, Directory of General and Special Hospitals, dated July 7, 2016, <https://www.dshs.texas.gov/facilities/find-a-licensee.aspx>.