

# NATIONAL COALITION ON HEALTHCARE

## 2019 STATE LEGISLATIVE SUMMARY



- Polling consistently shows that the cost of health care is voters' **top** health care concern.<sup>1</sup>
- In 2018, NCHC released a report identifying health care cost drivers and possible solutions.<sup>2</sup>
- Our report identified **growing provider market power and lack of competition** in the market for prescription drugs as two important cost drivers.

“

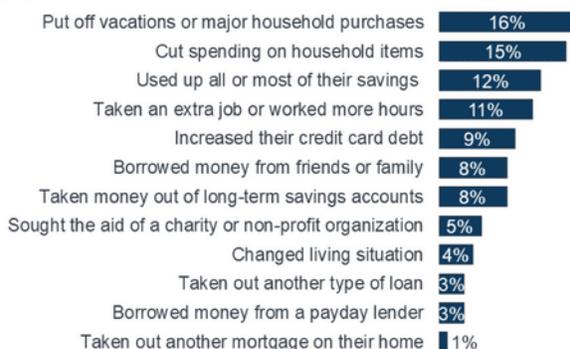
COLLECTIVELY, STATES HAVE BEEN BOLD IN THEIR APPROACH TO HEALTH POLICY, WHILE MAINTAINING A PRAGMATISM AND CREATIVITY TO TEST AFFORDABILITY STRATEGIES.

”

Figure 10

### About One In Six Say They Have Put Off Vacations Or Household Purchases, Cut Spending To Pay Off Medical Bills

Percent who say they or someone else in their household did each of the following in the past 12 months in order to pay medical bills:



NOTE: Asked of the 26% who report problems paying medical bills, percentages based on total.  
SOURCE: KFF Health Tracking Poll (conducted March 13-18, 2019). See topline for full question wording and response options.



# NATIONAL COALITION ON HEALTHCARE

## 2019 STATE LEGISLATIVE SUMMARY

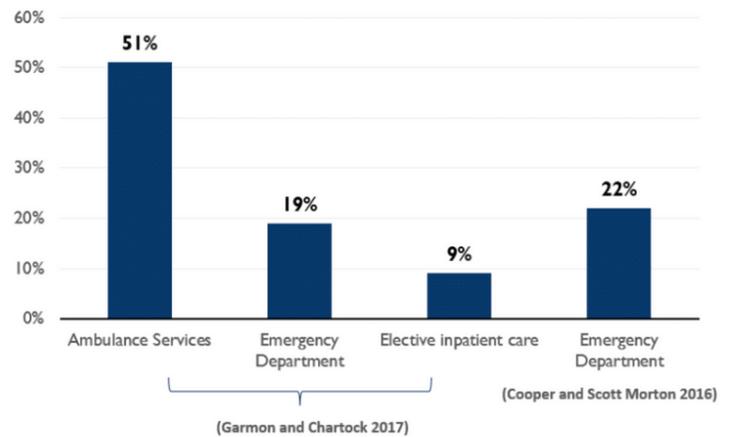


# SURPRISE MEDICAL BILLING

Surprise medical bills occur when insured patients are treated and billed by providers not participating in their health plan's contracted network despite practicing at an in-network facility - usually a hospital. Emergency services or procedures in an "in network" hospital where a patient couldn't reasonably know that the physician might not be in network are the most frequent instances of surprise billing. The Brookings Institution reports that roughly one in five emergency department visits are out-of-network and could result in an out-of-network bill.<sup>3</sup> When they occur, surprise bills can be shockingly large; emergency department physicians charge out-of-network rates far above Medicare or in network rates.

While states have enacted laws in recent years to try to protect patients from surprise medical bills, states do not have jurisdiction to regulate employer-sponsored plans that are covered by a federal law known as ERISA. To protect the tens of millions of workers and families covered by most job-based health plans, action from the federal government is necessary.

**Figure 1. Percentage of Visits Leading to a Potential Surprise Out-of-Network Bill**



Source: Garmon and Chartock 2017; Cooper and Scott Morton 2016

Note: For the Garmon/Chartock figures, 19% represents the % of outpatient ED cases, including those to an OON ED, that could result in a potential surprise balance bill.

USC Schaeffer

BROOKINGS

3. <https://www.brookings.edu/wp-content/uploads/2019/02/State-Approaches-to-Mitigate-Surprise-Billing-February-2019.pdf>

# NATIONAL COALITION ON HEALTHCARE

## 2019 STATE LEGISLATIVE SUMMARY



## SURPRISE MEDICAL BILLING

There is a broad consensus that patients should be held harmless from the burden with surprise bills and should only be required to pay their typical in-network cost sharing amount in circumstances where they could not have reasonably been expected to know their provider was out-of-network. In 2019, there have been bipartisan efforts in both houses of Congress to legislate comprehensive protections for patients against surprise bills. The biggest roadblock to enacting protections for people enrolled in employer group plans is how to resolve reimbursement disputes between insurers and providers.

The *Lower Health Care Costs Act of 2019*, introduced by Senate HELP Committee Chairman Lamar Alexander and Ranking Member Patty Murray, may finally break this stalemate, with a regionally-adjusted benchmark payment as the adopted solution.<sup>4</sup> A benchmark payment will save money for patients and payers. However, momentum for an alternative arbitration approach is building on Capitol Hill, as the August recess closes in. In the meantime, states such as Texas, Washington, and Colorado have taken up the mantle on surprise billing protections.<sup>5</sup> In total, at least 25 states have now enacted comprehensive or at least partial protections.<sup>6</sup>



**THE LOWER HEALTH CARE COSTS ACT OF 2019, INTRODUCED BY SENATE HELP COMMITTEE CHAIRMAN LAMAR ALEXANDER AND RANKING MEMBER PATTY MURRAY, MAY FINALLY BREAK THIS STALEMATE, WITH A REGIONALLY-ADJUSTED BENCHMARK PAYMENT AS THE ADOPTED SOLUTION.**



4. <https://www.help.senate.gov/imo/media/doc/Lower%20Health%20Care%20Costs%20Act1.pdf>

5. <https://www.healthsystemtracker.org/brief/an-examination-of-surprise-medical-bills-and-proposals-to-protect-consumers-from-them/#>

6. <https://www.commonwealthfund.org/blog/2019/state-efforts-protect-consumers-balance-billing>

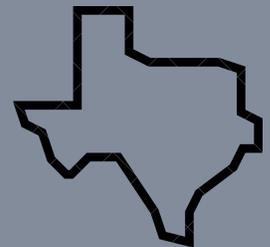
# NATIONAL COALITION ON HEALTHCARE

## 2019 STATE LEGISLATIVE SUMMARY



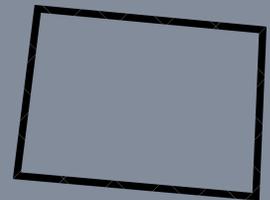
## SURPRISE MEDICAL BILLING

**TX - SB1264<sup>7</sup>:** The bill aims to protect insured patients by limiting their financial exposure to their in-network cost-sharing amount. Previously, Texas patients had to make a mediation request to the state Department of Insurance in order to contest a surprise bill. The new law allows providers and plans to enter into an arbitration process to be concluded in no more than 30 days for electronic claims and no more than 45 days for non-electronic claims. This change should lift the burden from patients while promoting faster, more reasonable rate settlements between out-of-network providers and insurers. It will raise premiums, however, according to the fiscal note prepared by the legislature's fiscal staff.



TEXAS

**CO - HB19-1174<sup>8</sup>:** This bill provides patients with comprehensive protections against surprise billing. Unlike the Texas bill, this legislation establishes a regionally-specific reimbursement amount for disputes between providers and insurers but does not offer resolution in the form of arbitration or mediation as other states have adopted. This legislation was adopted with broad bipartisan support in the Colorado legislature.



COLORADO

7. <https://capitol.texas.gov/tlodocs/86R/billtext/html/SB01264I.htm>

8. <https://leg.colorado.gov/bills/hb19-1174>

# NATIONAL COALITION ON HEALTHCARE

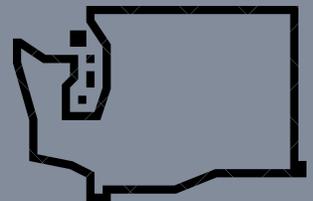
## 2019 STATE LEGISLATIVE SUMMARY



# SURPRISE MEDICAL BILLING

**WA - HB 1065**<sup>9</sup>: This bill will protect patients from surprise out-of-network bills. According to this law, insurers and providers must give consumers notice of their right to not be balance billed in emergency circumstances or when a facility is in-network and the hospital based provider is not. The patient will be protected from balance billing, and the insurer must compensate the out-of-network provider a “commercially reasonable” amount wherein either party can request arbitration if an agreement cannot be reached. The law requires the Insurance Commissioner to establish a dataset to facilitate the determination of commercially reasonable rates.

As with the Texas legislation, the Washington fiscal staff expect that state employee health plan to experience higher costs as a result of the arbitration mechanism, but were unable to make a dollar estimate. In 2018, the plan paid over \$7 million in out-of-network claims.



WASHINGTON

9. <http://lawfilesexternal.leg.wa.gov/biennium/2019-20/Pdf/Bills/House%20Passed%20Legislature/1065-S2.PL.pdf>

# NATIONAL COALITION ON HEALTHCARE

## 2019 STATE LEGISLATIVE SUMMARY



## STATE PUBLIC OPTION/MEDICAID BUY IN

In an effort to offer more affordable coverage options, nearly twenty states considered public options or Medicaid buy-ins during their 2019 legislative sessions.



### WASHINGTON<sup>10</sup>

**SB 5526:** authorizes the state to contract with private insurers to offer more affordable, regulated plans on the state ACA marketplace starting 2021.



### COLORADO

Bipartisan bill passed to study and develop a public option plan to be considered in the upcoming Fall legislative session and that would launch in 2021.



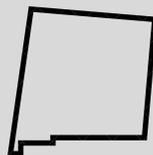
### DELAWARE

2018 study committee recommended a reinsurance program to lower premiums in its ACA marketplace instead of a public option.



### CONNECTICUT<sup>11</sup>

The "Connecticut Option" had been proposed but was abandoned when Cigna reportedly threatened to leave the state if it had been adopted.



### NEW MEXICO

Authorized a study of Medicaid buy-in options in 2017 and may pursue legislation if the cost-estimates return positive results.



### NEVADA

Passed a Medicaid buy-in program in 2017 that was vetoed; proponents are looking at the idea again under a new governor.

10. <https://app.leg.wa.gov/bills/summary?BillNumber=5526&Year=2019>

11. <https://ctmirror.org/2019/05/29/public-option-hits-rocks-key-components-stripped-from-bill/>

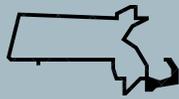
# NATIONAL COALITION ON HEALTHCARE

## 2019 STATE LEGISLATIVE SUMMARY



## STATE REFERENCE PRICING PROPOSALS

States are attempting to manage costs by linking provider rates to medicare rates. States are also using price transparency initiatives to generate more competition.



### MASSACHUSETTS

Established health care cost benchmarks which measure and monitor per capita aggregate spending growth on health care in a given state.



### NORTH CAROLINA<sup>13</sup>

Building a provider network that will be paid between 180-196% of Medicare rates. The Clear Pricing Project seeks to bring price transparency for enrollees and taxpayers.

## COST AND PRICE TRANSPARENCY



### FLORIDA<sup>14</sup>

**CS/HB 1113:** Patient Savings Act allows health insurers and HMOs to create a shared saving incentive program with consumers.



### COLORADO<sup>15</sup>

**HB1001** requires hospitals to report their annual spending including uncompensated care in an effort to curb healthcare prices.



### OREGON<sup>16</sup>

**HB889:** modeled on Massachusetts healthcare benchmark, will measure and monitor healthcare spending gross.

13. <https://www.shpnc.org/state-health-plan-clear-pricing-project>

14. <https://app.leg.wa.gov/bills/bills/summary?BillNumber=5526&Year=2019>

15. [https://leg.colorado.gov/sites/default/files/documents/2019A/bills/2019a\\_1001\\_enr.pdf](https://leg.colorado.gov/sites/default/files/documents/2019A/bills/2019a_1001_enr.pdf)

16. <https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureDocument/HB2266>

# NATIONAL COALITION ON HEALTHCARE

## 2019 STATE LEGISLATIVE SUMMARY



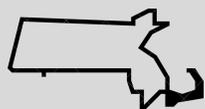
## PRESCRIPTION DRUGS

The steady rise in the cost of prescription drugs has become a bipartisan concern for policymakers at all levels of government. In 2015, Americans spent over \$1,000 per capita for prescription drugs - over 70 percent more per person than other developed countries. Despite Medicare coverage for prescription drugs, beneficiaries face high out-of-pocket costs.<sup>18,19</sup> As a result, policymakers have seized the opportunity of potential bipartisan compromise. The Trump administration has offered multiple proposals and taken executive action, but has made little progress in enacting new rules to lower prices. Congressional leaders have also been working on bipartisan legislation to lower the cost of some prescription drugs. Some progress is being made, but no major legislation has as yet been enacted. In the meantime, some states have passed laws to either reform or shed light on the role of pharmacy benefit managers (PBM's), to examine importing drugs from foreign countries, or to increase transparency and assert their negotiating power to limit prices.



MARYLAND<sup>20</sup>

- Create the first state Prescription Drug Affordability Board (PDAB).<sup>21</sup>
- The Board will report to the General Assembly and make recommendations, including the setting of upper limits on prices.



MASSACHUSETTS

- The Massachusetts Health Policy Commission recommended reforms to PBM contracts in Medicaid.<sup>22</sup>
- The recently enacted state budget includes language to give state health leaders more authority to negotiate drug prices for the MassHealth Medicaid program.<sup>23</sup>

18. <https://www.healthsystemtracker.org/indicator/spending/national-spending-services/>

19. <https://www.kff.org/medicare/issue-brief/how-many-medicare-part-d-enrollees-had-high-out-of-pocket-drug-costs-in-2017/>

20. <http://mgaleg.maryland.gov/2019RS/bills/hb/hb0768e.pdf>

21. <https://nashp.org/maryland-passes-nations-first-prescription-drug-affordability-board-legislation/>

22. <https://www.mass.gov/news/new-hpc-analysis-highlights-need-for-transparency-in-drug-pricing-practices-of-pharmacy>

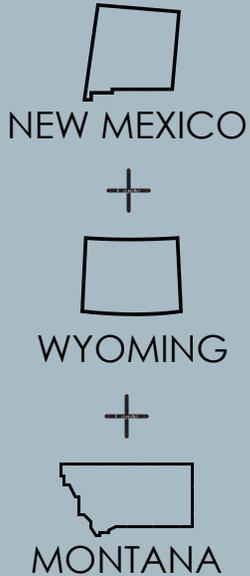
23. <https://www.wbur.org/news/2019/07/22/massachusetts-fiscal-year-2020-budget-agreement>

# NATIONAL COALITION ON HEALTHCARE

## 2019 STATE LEGISLATIVE SUMMARY



# PRESCRIPTION DRUGS



- Prohibit “gag clauses” in contracts between PBM’s and pharmacies that restrict price information to patients and limit transparency between actors.
- Spread pricing - The PBM practice of retaining the difference between what they charge a payer and the amount they reimburse a pharmacy - has also generated interest at the state level.<sup>24</sup>



- Passed drug importation bills, which must be approved by the US Department of Health and Human Services (HHS).<sup>25,26</sup>
- These bills offer residents the ability to import drugs from Canada, where prices are significantly lower
- President Trump has indicated interest in these proposals, but regulators at the Food and Drug Administration (FDA) have raised safety concerns.
- Florida’s bill would create the Canadian Drug Importation Program to bring down costs for state-funded programs like Medicaid.<sup>27</sup>

24. <http://www.ncsl.org/research/health/pbm-state-legislation.aspx>

25. <https://www.commonwealthfund.org/blog/2019/states-are-using-drug-importation-lower-costs-and-provide-safe-access-drugs>

26. <https://www.aarp.org/politics-society/advocacy/info-2019/import-prescription-drugs.html>

27. <https://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=65571&SessionId=87>