Surprise Billing: Ensuring Congress Avoids California’s Unintended Consequences

David H. Aizuss, MD
Immediate Past President
California Medical Association
How Did We Get Here?

• Bad behavior in the market
• Narrow payor networks
• High deductible plans
• Inadequate benefits
How Did We Get Here?

• Political Pressures
  • Emergency services balance billing prohibition
    • Prospect Medical Group, Inc V. Northridge Emergency Medical Group
  • 18 bills introduced during 2000-2015
  • Consumer complaints
California Legislation

• AB 533 – OON Rate: 100% of Medicare in all settings
  • Supporters: Health Committee Chairs, Assembly and Senate leadership, labor unions, health plans, consumer groups and Chamber of Commerce
  • CMA defeated on concurrence

• AB 72 – OON Rate: Greater of 125% of Medicare or payors’ average contracted rate
AB 72 (Effective July 1, 2017)

- Limits billing practices of out-of-network physicians providing non-emergent, covered services at in-network facilities
- Insurers must reimburse at interim rate - greater of 125% of Medicare or insurer's average contracted rate for same service in that region
- PPOs - physicians can avoid billing prohibition by obtaining advanced consent from patient
- Independent dispute resolution process (IDRP) available
AB 72: Unintended Consequences

- Disincentivized contracting
- Low interim rate has shifted too much leverage to insurers
- Predatory payor behavior:
  - Cancelling long-standing contracts
  - Imposing significant rate cuts on hospital-based physicians
  - Refusing to renew contracts
  - Reducing patient access to in-network physicians
  - Could jeopardize emergency on-call system
AB 72: Unintended Consequences

• Accelerating consolidation of independent physicians with hospitals and private equity firms driving up costs

• IDRP not working
  • Arbiter has affirmed insurer’s payment amount in 100% of filings
  • Process is burdensome for physicians
AB 72: IDRP Challenges

• Arbiters lack training and qualifications
• Unfair burden of proof on physician
• No process to allow physician submission of contracted rate
• Lack of training on how to consider evidence
• Failure to consider all relevant information
• 100% of decisions have been in favor of insurer
AB 72: CMA’s Physician Survey

- 88% said AB 72 allowed insurers to shrink physician networks, decreasing patient access in their community.
- 79% said AB 72 negatively impacted the availability of ER and on-call specialists who respond to emergencies.
- 94% have experienced contracting difficulties since AB 72.
- 91% agree that federal bills modeled after AB 72 will accelerate consolidation of independent practices with larger systems.
- 77% agree that federal bills modeled after AB 72 will disproportionately harm rural areas.
Federal Legislation: Surprise Billing

• Political environment similar to California:
  • Narrow networks
  • Consumer complaints: 18% of emergency visits and 16% of in-network hospital stays resulted in at least one out-of-network charge for ERISA plans (Kaiser Family Foundation)
  • ERISA self-insured plans running relentless national ads
  • New player: private equity ran multi million dollar ad campaign
  • Strong bipartisan agreement to eliminate
CMA physician leaders made multiple advocacy trips to DC to warn Congress about negative impacts of AB 72
CMA’s Message to Congress: Avoid AB 72

Any legislative fix must:

- Protect patients from surprise bills
- Resolve disputes via fair baseball arbitration process (not IDR)
- Arbitration criteria to include appropriate rates from an independent database
- Ensure insurers maintain appropriate network of physicians
Unified Support for HR 3502 Ruiz/Roe

• Based on proven, successful New York model
• Protects patients from surprise bills
• Establishes baseball arbitration system to resolve disputes
• Payment criteria includes 80 percentile of billed charges from independent FAIR Health Database
• Few cases to IDR because insurers are incentivized to resolve disputes
• Premiums and costs stable
Future Federal Advocacy

- AMA, CMA, states and national specialties are united
- Stopped bad bills from moving further through Congress
- Slowed the progress to ensure more thoughtful solutions
- Continuing to support Ruiz/Roe framework
Future California Advocacy

• AB 1174 attempts to address payor contracting abuses

• Implementation hearings, IDRP fixes & network audits
Thank You