



Physicians Decry Unintended Consequences of California's Surprise Billing Laws

A new survey of California physicians illustrates serious unintended consequences from California's surprise billing law (AB 72) that will have long term impacts on patient access to care if not corrected. While the California law has protected patients from surprise bills, physicians are reporting serious problems that will substantially increase health care costs by accelerating consolidation in the health care market, jeopardizing the emergency care safety net and restricting patient access to in-network physicians.

Over a period of nine days, 855 physician practices representing thousands of physicians responded to the survey. The vast majority of respondents reported difficulties contracting with insurers since the passage of California's law. As independent physician practices can no longer remain viable without contracts or reasonable reimbursement rates, they have been forced to consolidate with larger hospital systems or private equity groups, which studies have shown can drive up health care costs by as much as 30%. These unintended consequences totally shift the market leverage to already powerful insurance companies at the expense of patients.

Congress is currently modeling federal legislation on California's surprise billing law. While California has succeeded in protecting patients from surprise medical bills, these survey results clearly demonstrate that rest of the law is not working. California's experience should be a warning to state and federal policymakers.

Summary of the Survey Results

- + Physician respondents represent all modes of practice in a broad range of specialties across 52 counties.
- + 94% of physicians agree that the Congressional bills modeled after the California law will economically incentivize insurers to terminate contracts with physicians.
- + 91% of physicians agree that the Congressional proposals modeled after the California law will accelerate consolidation of independent physician practices into larger hospital systems or private equity groups.
- + 88% of physicians said the California law allowed insurers to shrink physician networks, decreasing patient access to in-network physicians in their community.

IMPACT OF SURPRISE BILLING LAWS SURVEY RESULTS

- + 79% of physicians said the California law negatively impacted the availability of emergency and on-call physician specialists who respond to emergencies.
- + 94% of physicians have experienced contracting difficulties since the passage of California's law.
- + More than one third of physician respondents have experienced insurers suddenly terminating contracts, refusing to renew their long-standing contracts, and/or closing their panels and refusing to offer new contracts.
- + 59% reported insurers have insufficient physician networks in their specialty in their county.
- + 62% said their patients experience challenges with timely access to care.
- + 77% agree that the federal legislation will disproportionately harm rural areas.
- + 92% said the law has reduced physician leverage to negotiate fair and reasonable contracts.

FOR SPECIFIC PHYSICIAN STORIES AND COMMENTS, SEE APPENDIX 1.

Background: California Surprise Billing Law

In 2016, California's Legislature enacted AB 72 to protect patients from surprise medical bills when a patient goes to an in-network facility but, as part of the patient's care, receives treatment from a physician that is not contracted with the patient's insurance company. The law became effective in July 2017. It establishes an interim payment rate at the greater of the insurer's average contracted rate or 125% of Medicare rates, as well as an independent dispute resolution (IDR) process.

California's interim payment rates—which are set at the median contracted rate—are similar to those being proposed by the U.S. Senate HELP Committee and the U.S. House Energy Commerce committee. Moreover, the California dispute resolution process has been burdensome and is not working as intended. To date, arbiters have ignored all IDR criteria and have merely chosen to confirm whether the insurer paid the correct interim rate in the law. One hundred percent of the disputes have been decided in favor of the insurers.

Since the passage of California's law, the California Medical Association (CMA) has received complaints from physician groups representing thousands of physicians across the state who have experienced contracting problems, including terminations, non-renewals, significant rate cuts and refusals to enter into new contracts. Physicians have advised CMA that these actions by insurers were out-of-the-ordinary based on historical insurer contracting behavior over the last 10-20 years and that many insurers reported to

physicians that it was the result of AB 72. CMA documented all of these reports in a paper titled, "The Unintended Consequences of California's Surprise Billing Law."

California Physician Survey Results

To obtain additional information, CMA surveyed its physician members with the assistance of its component county medical societies and state specialty societies. Over a period of nine days, 855 physician practices representing thousands of physicians responded to the survey. These physician practices represent a broad range of practice sizes and medical specialties from 52 counties in the state, representing urban, suburban and rural areas.

SURVEY OVERVIEW

Physicians overwhelmingly agree about the negative impacts of Congressional legislation modeled after California's law.

- + In one of the most significant findings of the survey, physician respondents overwhelmingly agree (91%) that the Congressional legislation modeled after the California law will accelerate consolidation of independent physician practices with large hospital systems or private equity groups, increasing health care costs.
- + 86% agree that the Congressional bills modeled after the California law will seriously erode access to in-network physicians, including emergency physicians, surgeons, anesthesiologists and on-call specialists who respond to emergencies.
- + 77% agree that the Congressional bills will disproportionately harm rural areas.
- + 94% agree that the Congressional bills will economically incentivize insurers to terminate contracts with rates higher than their median contracted rate or reduce rates above the median rate as a means of suppressing rates for out-of-network physicians.

Physicians report insufficient provider networks and patient access to care problems.

- + 41% of physician respondents said that since the passage of AB 72 insurers are contracting with fewer hospital-based physicians. Less than 3% of physicians said insurers are contracting with more hospital-based physicians. Forty eight percent reported that they didn't know.

IMPACT OF SURPRISE BILLING LAWS SURVEY RESULTS

- + Patient access to in-network care is not optimal. Almost two thirds (62%) of physicians report that their patients experience challenges with timely access to care or have to travel long distances for specialty care.
- + 59% of physicians reported that there are insurers with insufficient physician networks in their specialty and county.
- + The vast majority of physicians (88%) agree that California's surprise billing laws and low out-of-network interim rates have allowed insurers to shrink physician networks, decreasing patient access to in-network physicians in their community.
- + 79% of physicians agree that California's surprise billing laws and low out-of-network interim payments are negatively impacting the availability of emergency and on-call physicians to respond to emergencies.

California's surprise billing law has tipped the scales overwhelmingly in favor of insurers and has directly incentivized contract terminations and physician rate cuts, making it harder for patients to access in-network physicians

- + The low interim payment rate under California's law has disincentivized insurers from contracting with physicians. Ninety four percent (94%) of physician practice respondents reported difficulties contracting with insurers. The most common contracting challenges include¹:
 - + Insurers refusing to renew current contracts with the practice (31%);
 - + Insurers terminating existing contracts (23%);
 - + Insurers closing their panels and/or refusing to enter into new contracts with the practice (29%);
 - + Insurers offering rates below the cost to provide care (71%), and/or
 - + Insurers substantially reducing rates from the last contract (57%).
- + Physicians overwhelmingly agree (91%) that California's surprise billing law and the low out-of-network interim rates have reduced physician leverage to negotiate fair and reasonable rates.

¹ Respondents allowed to select all that applied. Percentages are weighted.

IMPACT OF SURPRISE BILLING LAWS SURVEY RESULTS

- + Insurers are taking advantage of the low out-of-network interim payment rate under California's law and using it to drive down all in-network payment rates. Almost two thirds of physician respondents (64%) report that insurers have imposed higher rate cuts since the passage of AB 72.
- + 80% of physicians experienced reimbursement cuts up to 30%.
- + 13% experienced reimbursement cuts from 31-50%.
- + 7% experienced reimbursement cuts of more than 50%.
- + Nearly 70% of emergency physician respondents report insurers are not complying with the 2009 California Supreme Court decision in the Prospect case, which prohibits physicians from balance billing patients for out-of-network emergency services but also requires insurers to reimburse at reasonable and customary rates pursuant to the Gould criteria for such out-of-network care. Emergency physicians are not subject to AB 72. Emergency physician respondents reported the following substantial reduction in payment rates, demonstrating that insurers are not paying "reasonable and customary rates" mandated by the Prospect decision. Since the Prospect decision:
 - + 71% of ER physicians experienced rate cuts up to 30%.
 - + 22% of ER physicians experienced reimbursement cuts from 31-50%.
 - + 7% of ER physicians experienced reimbursement cuts more than 50%.

Appendix 1

Physician stories on the unintended consequences their practices have experienced since the passage of California's surprise billing laws (sample).

- + One of our largest payors, cancelled our contract and demanded 40% reduction in-order to re-contract. Another sent renewal contract then when we signed and returned, they wrote back saying they decided to not renew after-all because they wanted to renegotiate a 30% lower contract, a third payor just flat out cancelled a contract that had been in place for 10 plus years, a fourth payor had agreed to modest cost of living increase for contract we had had for over 10 years with no increase, then as soon as ab 72 passed told us eye to eye in person that we would not see a raise in our life time because of ab 72.
- + Allcare was contracting with hospital and surgeons. However, they were not willing to reimburse anesthesiologists in good faith. This only leads to insurance companies dictating reimbursement that are not linked to market rates. Rural hospitals have to subsidize the difference in order to get emergency anesthesia coverage. There is no leverage for small groups to negotiate with behemoth insurance companies. This is the reason for consolidation of anesthesia groups. The insurance companies are paying four times the market rate when they are cornered by big consolidated anesthesia groups. Second hospital are not able to recruit and retain anesthesiologists. The cost shifting to hospital is breaking a thin bottom line that is needed for hospitals to survive. Only going to bankrupt vulnerable rural hospitals.
- + In the last 3 years the Sacramento area has seen a shortage of anesthesiologists. Of 10 practices I'm familiar with only 2 are fully staffed. Any disincentive to practice in California will only make the physician shortage problem worse. The Surprise Billing acts are making this problem worse.
- + My practice has been seeing decreasing reimbursements. Some payors are not contracting with us. This has led my anesthesiology group to pay less to the new members of our group and have difficulty retaining them.
- + When talking with payors, they use AB72 as a weapon and a verb... "we will AB 72 you."
- + Since the passage of this bill our group has seen reimbursements shrink and insurance companies have tremendously more leverage negotiating contracts.

IMPACT OF SURPRISE BILLING LAWS SURVEY RESULTS

- + We are losing physicians on our emergency call panels, placing a greater burden on those who remain, who are often paid miserably low rates for high risk emergency care. I am considering leaving the state.
- + Considering departing emergency medicine for urgent care, cash only clinical setting.
- + We are at a pediatric hospital which has a high percentage of underserved population. We contracted with health plans to provide care, they have cancelled our contracts, because they realized they can pay us less. Now we are having a hard time recruiting physicians to take care of this population.
- + Insurers are using this bill to reduce physician rates and will not enter in good faith negotiations. We have rates that have been in place for 10 years and the insurers come to us and requested a 30% reduction in current rates. The current rates in place are far below market. AB 72 puts insurers in a position where fair and good faith negotiation has ceased to exist. All power is in their hands and they are unfairly using the current law to negatively impact physicians. Ultimately the people who are most harmed by this are the patients. Access will be narrowed, prices will go up and it will be very harmful to health care as a whole.
- + Doctors retiring early
- + I'm a plastic surgeon specializing in breast reconstruction. Breast surgeons I work with have requested I contract with two private medical ins groups (IPA) because they can't get the current in network plastic surgeons to see and schedule reconstruction cases in cancer patients in a timely manner. However, neither IPA would even respond my application to join them.
- + We have experienced payors specifically citing AB-72 as a reason for their unwillingness to negotiate fair and reasonable contracts with our group. We have had other payors refuse to meet or discuss contracts up for renewal.
- + Our large anesthesia group has insurers who simply stopped communicating and stopped paying. Then they let contracts expire and continue to avoid our calls for discussion. Frustrating. Their patients keep showing up.
- + Recruiting to the Central Valley in CA is very difficult. This will make it impossible! There simply won't be enough providers and quality will suffer.

IMPACT OF SURPRISE BILLING LAWS SURVEY RESULTS

- + Since 2016, two of our commercial contracts had reduced their rates up to 46% and 1 of them wouldn't renegotiate the reimbursement rate at all. We terminated that contract and have now lost about 15% of our business due to it.
- + Payors have actually told me that "since we don't see any active out-of-network billing from your office there's no reason for us to contract with you or provide competitive rates". If payors want to ensure that their members have access to an in-network provider, then those same payors should set up call panels of in-network physicians.
- + Blue Cross and others refuse to negotiate contracts. 125% Medicare take or leave it while reducing networks. We have to see their patients in ED (EMTALA) but they really won't negotiate a contract and they pay us whatever they want and dare us to take them to DMHC (not helpful) or court (expensive). New law would reduce our leverage even more. And hospital coercively pressuring us to contract at 125% Medicare rates and even put it in their version of our new contract (illegal). If we don't contract eventually, they will likely force us into their "Foundation" and make us employees.
- + If this trend continues, we will not be able to recruit and retain physicians to our Anesthesia practice in the Silicon Valley.
- + Large payors have refused to negotiate reasonable rate increases, and a smaller payor has terminated its contract altogether in reliance on the lower rate they will be able to pay under AB72.
- + Anthem Blue Cross unilaterally, and without the appropriate notification required by law, reduced reimbursement rates for Pathology across all billing codes from 50-70%. Some codes now pay as little as \$1.00 for services requiring formalin bottles, transport, gross evaluation, and a formal report. They are uninterested in negotiating payment rates. There are no other Pathology providers in this area, although there are plenty listed on their website. These 'other' providers include all of the pathologists in our non-contracted group, listed individually, and practices 60-100 miles from here.
- + I am the President of a 63-person anesthesia group in Southern California. Most payers simply refuse to negotiate new contracts. And the majority of offers we get are for massive pay cuts - 50+ % reductions. This bill has been a nightmare for our practice.
- + Blue Cross has refused to negotiate as has United after passage of California's surprise billing law. They stood to benefit the most from the way this law was structured, not patients. Insurance companies have no reason to negotiate now because of this law.

IMPACT OF SURPRISE BILLING LAWS SURVEY RESULTS

- + Insurers are using this as leverage in negotiating lower reimbursement rates for anesthesia care. They are, in effect, daring us to go out of network to negotiate lower rates.
- + Payors have become hostile and antagonistic, almost taunting us with ab72. What used to be professional businesslike discussions have become insurers laughing at the physicians.
- + United and Blue Cross will not negotiate with us!!!!
- + Large payor proposed rates at a substantially lower level and essentially refused to negotiate, stating they would terminate our contract if we did not sign.
- + Currently looking at anesthesiology positions out of California as are many of my colleagues.
- + Many insurers have canceled long standing contracts to renegotiate for 10,20,30% lower reimbursement rates.
- + Payors have cited AB72 with take it or leave it contract terms that are less than half our rates prior to AB72 and less than the cost of providing care. Combined with the low Medi-Cal rates our practice is on the verge of collapse.
- + Payers now already engaging in “take it or leave it” negotiations. Some have reported that they want us to terminate our contracts.
- + These discussions almost always involve the payers citing the surprise billing laws and even the legislative discussions on this topic in DC.
- + A major payor cancelled us without cause and basically gave us a take it or leave it 25% cut offer from an already lower end contract we had with them. We are in danger of losing our business entirely if this continues. Its all unintended consequences from a bill hoping to protect consumers which the payors figured out they can abuse for profits!!
- + Payers cancelled our long-standing contract which had not had an increase rate in 9 years. They offered a 20% reduction in reimbursement and threatened to just use AB 72 against our group to further reduce reimbursements.
- + Due to lower reimbursement and higher competing rates from locums companies, our practice has been unable to recruit physicians and has had to stop providing services at the local hospital.
- + Huge Anthem payment cut likely not just coincidence.

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- + I am routinely unable to refer patients to outpatient specialty services in a timely manner outing their health at risk or at times forced to admit to the hospital to obtain needed work ups which drive up costs as inpatient is always more expensive than outpatient.
- + One payer we attempted to contract with simply refused saying they don't need to contract with new providers because state law pretty much makes every provider accept what they offer. Several players refused to consider negotiating updated rates which had been in place for several years. Assuming a take the old terms or leave it attitude, citing that they were in a process of adjusting their rates to reflect the impact of recent state legislation.
- + Payors have refused to negotiate contracts with us, have proposed steep cuts to our reimbursement, PPO networks have shrunk while Medicare has increased. Payors are daring us to go out of network in order to drop our rates to the regional average.
- + Payors threaten cancellation and refuse to negotiate at end of contract.
- + Payor would not even return our calls when we tried to contract with them prior to AB 72 going into effect.
- + Blue Cross refuses to renew my current contract and gave me a take it or leave it offer at a lower rate. They know that if I refuse then I have to accept their self-determined rates.
- + AB 72 was used to strong arm our group to a substantially lower rate with threat of cancellation and Medicare rates, which are usually 1/2rd of commercial.

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