

Nov. 18, 2019

Under New York's surprise billing law, providers gaining upper hand

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A state report on arbitration decisions resulting from New York's surprise billing law shows that providers are now winning price disputes more often than health plans, reversing the trend seen in the law's initial years. The state law has been cited as one potential model for federal surprise billing legislation in Congress, and is generally perceived as favorable for providers.

Under the law, emergency and unanticipated out-of-network providers cannot directly bill patients for uncovered costs. Instead, providers can dispute the insurer's offered price and take the case to an independent arbitrator.

To determine which party is offering the more reasonable price, the law instructs arbitrators to reference a "usual and customary rate" equal to the 80th percentile of charges — which suggests out-of-network providers can reasonably charge more than the average in-network provider.

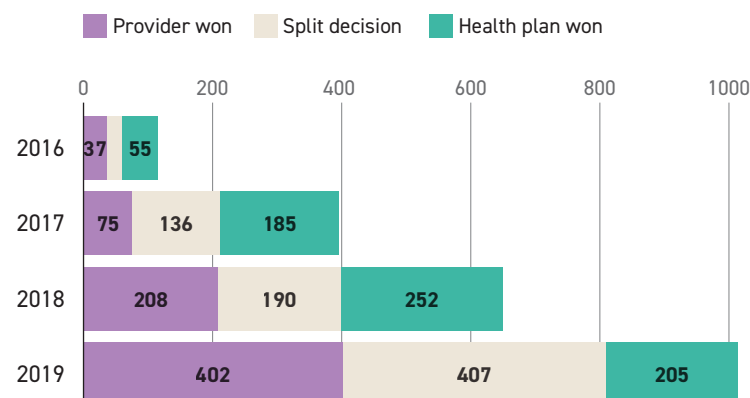
Critics say this formula is a recipe for higher spending in the long run because providers can raise in-network prices by threatening to go out-of-network. Supporters counter that a less generous approach would push some providers out of the market, limiting consumer choice.

Further analysis released by the USC-Brookings Schaeffer Initiative for Health Policy suggests that the law's reference rate is generally adhered to regardless of who wins a case — decisions won by health plans resulted in prices only 11 percent below the 80th percentile price on average.

Sources: New York State Department of Financial Services, "Report on the independent dispute resolution process"; Loren Adler, "Experience with New York's arbitration process for surprise out-of-network bills," USC-Brookings Schaeffer Initiative for Health Policy

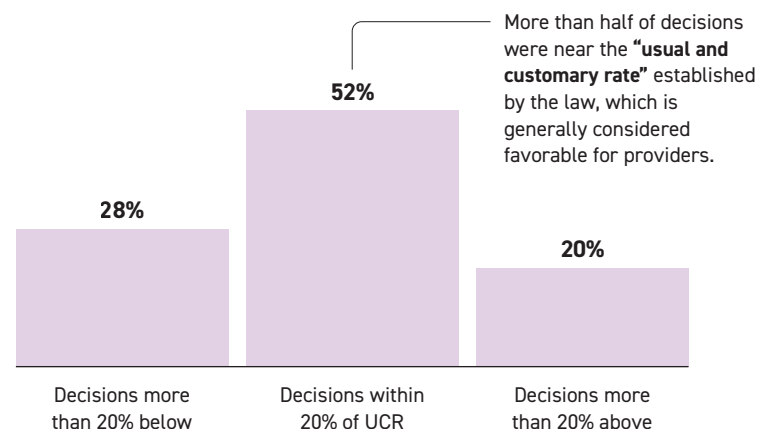
Providers are gradually winning more cases

Number of surprise billing arbitration decisions, by winning party



Most decisions adhere to law's reference rate

Share of arbitration awards above or below the 80th percentile of charges



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