

Protecting Older Adults from Surprise Medical Bills

Berneta L. Haynes, National Consumer Law Center

July 26, 2023

Housekeeping

- All on mute. Use Questions function for substantive questions and for technical concerns.
- Problems getting on the webinar? Send an e-mail to NCLER@acl.hhs.gov.
- Written materials and a recording will be available at NCLER.acl.gov. See also the chat box for this web address.

About NCLER

The National Center on Law and Elder Rights (NCLER) provides the legal services and aging and disability communities with the tools and resources they need to serve older adults with the greatest economic and social needs. A centralized, one-stop shop for legal assistance, NCLER provides Legal Training, Case Consultations, and Technical Assistance on Legal Systems Development. Justice in Aging administers the NCLER through a contract with the Administration for Community Living's Administration on Aging.

About NCLC

Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the U.S.

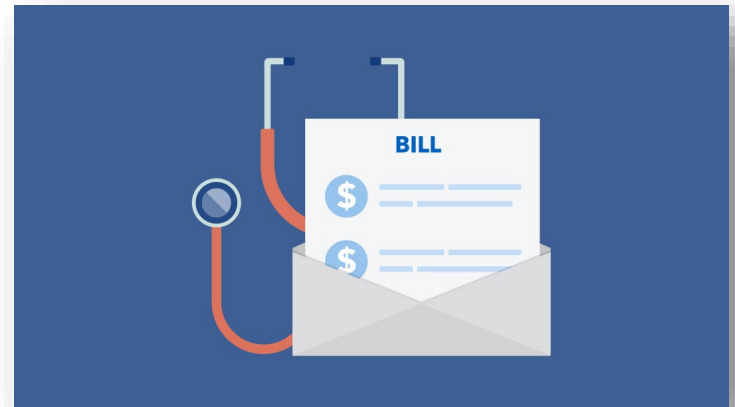
NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitative practices, help financially stressed families build and retain wealth, and advance economic fairness.

Key Lessons

- Medicaid and Medicare have surprise billing protections that prohibit balance billing.
- The federal No Surprises Act (NSA) provides broad protections against balance billing for private commercial insurance plans but does not preempt stronger state laws.
- There are exceptions to the No Surprises Act's protections for patients enrolled in private commercial insurance plans.
- State laws may provide protections against other types of balance billing, including for ground ambulance transport.

The Reality of Medical Debt: Impacts on Credit Reports, etc. (1 of 3)

- Medical debt is the most common collection tradeline reported on consumer credit records.
- Debt collectors contact people about medical debt more than any other type of debt.



See the CFPB's report, [*Medical Debt Burden in the United States*](#), 2022.

The Reality of Medical Debt: Impacts on Credit Reports, etc. (2 of 3)

- Medical debt affects a broad range of people, but certain groups are more affected:
 - Young adults, people with low incomes, and Black and Hispanic people, are disproportionately likely to have medical debt.
 - Veterans and **older adults** are also significantly impacted by medical debt.

The Reality of Medical Debt: Impacts on Credit Reports, etc. (3 of 3)

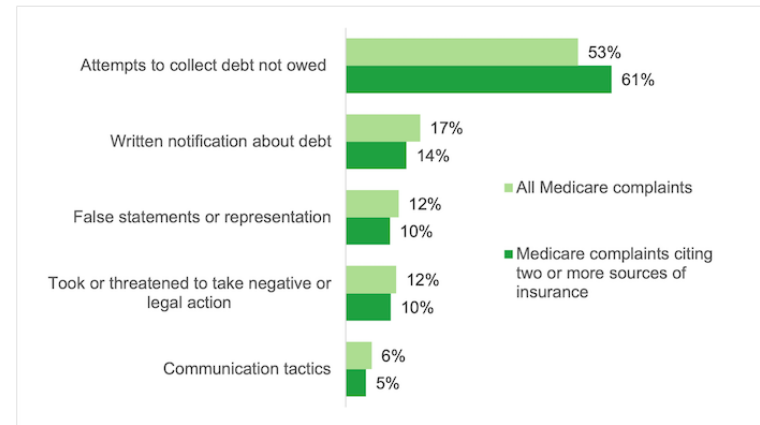
- Medical debt impacts credit scores, affecting ability to obtain employment, housing, loans, and more.
 - Patients often use credit cards and high-risk predatory products to pay medical debt.
 - Patients sometimes take out second mortgages to pay medical debt.
- Medical debt is still the leading reason people file for bankruptcy.

The Reality of Medical Debt: Impacts on Credit Reports, etc.

- Medical debt collections have a disparate impact on older adults, according to CFPB:
 - Nearly 70% of older adults with medical debt are insured.
 - Older adults face increased risk of errors and inaccurate bills because they are more likely to have chronic conditions and to have multiple insurance plans.

FIGURE 3

Issues reported in medical debt collection complaints related to Medicare, January 2020 - December 2022



Source: CFPB Consumer Complaints

The Reality of Medical Debt: Surprise Medical Bills

Unexpected or surprise medical bills from out-of-network providers are a source of medical debt that can send many people, especially older adults on fixed incomes, into a spiral of debt.

Surprise medical bills (or “balance billing”) occur when a patient receives a bill from a provider that is not in the patient’s insurance network. Typically, this happens when a patient receives emergency services or has a scheduled procedure at a hospital or ambulatory surgical facility.

Medicaid and Medicare Protections

Medicaid and Medicare have surprise billing protections that prohibit balance billing.

- Health care providers cannot collect additional amounts from Medicaid/Medicare patients for a covered benefit to make up for the difference between their rates/charges and Medicaid/Medicare rates.
- Patients who have both Medicaid and Medicare cannot be balance billed for any difference between the lower Medicaid reimbursement rate and the higher Medicare reimbursement rate.
- Learn more: [Justice in Aging: Improper Billing of Duals Toolkit](#)

No Surprises Act Protections (1 of 3)

- The NSA bans most unexpected or surprise medical bills from out-of-network providers.
 - Approved in 2020, the law went into effect in January 2022.
 - The primary goal is to protect patients by taking them out of the middle of billing disputes between insurers and healthcare providers.
- Did you know?
 - Bills for air ambulance services are on average anywhere from \$36,000 to more than \$40,000 and typically out-of-network, meaning most or all of the burden to pay falls entirely on the patients.
 - Source: [GAO](#)

No Surprises Act Protections (2 of 3)

The law protects patients by prohibiting:

- Surprise billing for emergency services, including air ambulance services (but not ground ambulance services).
- High out-of-network cost-sharing for emergency and non-emergency services.
- Out-of-network charges for ancillary care (like an anesthesiologist or assistant surgeon) at an in-network facility in all circumstances.
- Other out-of-network charges without advance notice.

Source: 42 U.S.C. § 300gg-111

No Surprises Act Protections (3 of 3)

Who pays the bill if there's a dispute about cost?

Not the patient! Insurers and providers must negotiate over the amount to be paid. If they can't come to an agreement, they can settle the bill through an independent dispute resolution process.

The NSA's protections apply to:

Private commercial health insurers that offer group or individual health insurance coverage, grandfathered or transitional plans, state government employee plans, and self-funded group plans.

The NSA's protections do not apply to:

Beneficiaries or enrollees in Medicare, Medicare Advantage, and Medicaid.

No Surprises Act: Exceptions (1 of 2)

There are exceptions to the No Surprises Act's protections for patients enrolled in private commercial insurance plans.

- A patient can knowingly and voluntarily agree to be balance billed for out-of-network services but only if the patient gives prior written consent to waive their rights under the NSA.
- However, NSA protections cannot be waived for:
 - Emergency services
 - Unexpected urgent medical needs that arise from non-emergency care
 - Specialty services related to emergency care (e.g. anesthesiology, pathology, etc.)
 - Diagnostic services such as lab services and radiology
 - Post-stabilization services where the notice and consent requirements aren't met

No Surprises Act: Exceptions (2 of 2)

There are exceptions to “good faith estimate” required under the No Surprises Act.

- Providers do not have to list a diagnosis code if the diagnosis is unknown or there is no relevant code;
- The estimate can be limited to the initial visit and does not have to include costs of future visits;
- Providers are not required to furnish an estimate to walk-in patients; and
- Providers are not required to furnish an estimate to patients who were insured when an appointment was scheduled but who became self-pay or uninsured by the time of the appointment.

States Surprises Billing Protections

States are responsible for implementing the NSA and can increase protections.

- Washington passed legislation to align the state's [Balance Billing Protection Act](#) with the NSA.
 - [HB 1688](#), introduced and passed in 2022, protects consumers from balance billing for a broader set of health services. The bill prohibits insurers and providers from asking patients to waive these protections.
- Maryland has created its [own complaint system](#) and introduced implementation/enforcement legislation.
 - [SB 180](#), introduced and passed in 2022, ensures conformity with the NSA and authorize Maryland Insurance Commissioner to enforce the Act.

State Surprise Billing Protections

State laws may provide protections against other types of balance billing, including for ground ambulance transport.

- [33 states](#) have laws providing some degree of protection against surprise medical bills.
- A few of these state laws cover ground ambulance services (i.e. Colorado, Delaware, Ohio, West Virginia, New York, Maryland, and Vermont).

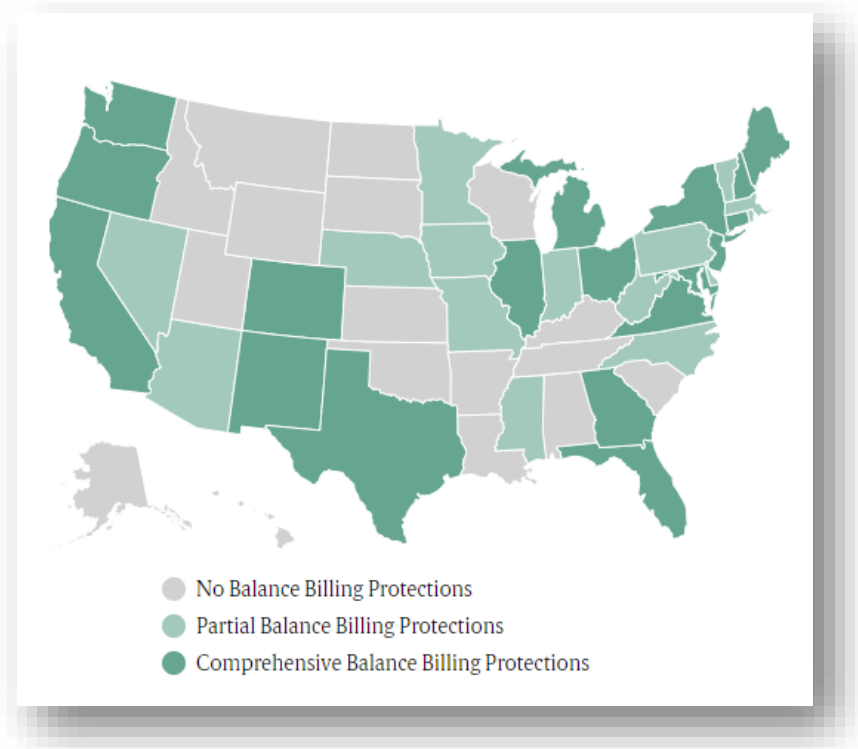


Image Source: [The Commonwealth Fund](#)

Additional Resources

- [Know Your Rights: The No Surprises Act](#) (CMS)
 - [Submit a complaint](#)
- [No Surprises Act: How we are protecting people from the side effects of surprise medical bills](#) (CFPB)
- [Surviving Debt, Chapter 11](#) (NCLC)
- Collection Actions, 9.3.7, 5th ed. 2020 (NCLC)
- [State Balance Billing Protections](#) (The Commonwealth Fund)
- [Legal services database](#) (Legal Services Corporation)

Questions?

Visit Our Website: ncler.acl.gov

NATIONAL
CENTER ON
**LAW &
ELDER
RIGHTS**

Search for resources

Read practice tips

Sign up for the email list

Request a case consultation

Learn about upcoming trainings

ncler.acl.gov



Case Consultations

Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at ConsultNCLER@acl.hhs.gov.