

UNFINISHED BUSINESS: BOLSTERING BALANCE BILLING PROTECTIONS IN MISSISSIPPI



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Executive Summary

When a patient seeks care from a provider or hospital in his or her insurance network, the patient expects the insurer to cover the majority of his or her costs. But many Mississippi patients report receiving large surprise medical bills that charge out-of-network rates for services provided at in-network hospitals, often resulting in thousands of dollars in unforeseen medical bills. Patients incur these costs when they seek treatment at in-network hospitals, but unbeknownst to patients, are treated by independently-contracted doctors who do not participate in the same insurance network. In these cases, while the hospital is in-network, the health care *providers* are not. Balance billing is the practice of these out-of-network providers seeking payment directly from patients. Balance billing is especially prevalent in emergency departments, as 65% of hospitals contract with outside agencies for emergency room doctors, many of whom will send patients out-of-network bills that they could not possibly have foreseen.¹

In 2013, Mississippi passed groundbreaking legislation to prohibit balance billing. However, some providers continue to send balance bills—and state officials need stronger enforcement mechanisms to combat this practice.

Mississippi legislators should update the state’s balance billing law to protect consumers, match current best practices, and incentivize providers and insurers to comply with state law, by:

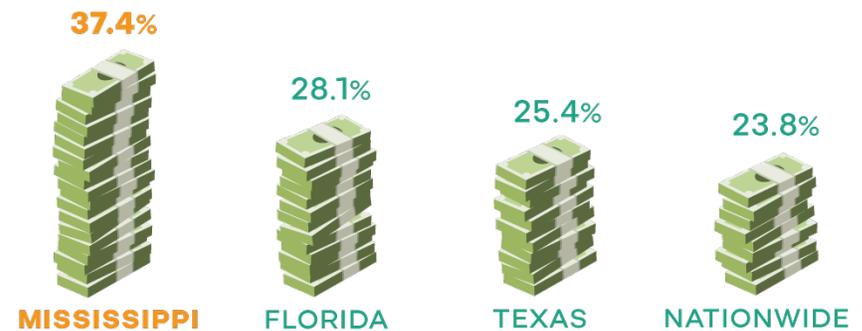
1. Clarifying enforcement authority over balance billing;
2. Prohibiting providers from reporting surprise medical bills to credit agencies; and
3. Establishing transparent, reasonable payment standards for out-of-network providers that operate at in-network facilities along with a clear, fair process for resolving payment disputes between providers and insurers.



Balance Billing in Mississippi

When Michelle Mills' son hurt his nose, she specifically checked to make sure the Flowood hospital she took him to was covered by her insurance network.² But when she got the bill, she was shocked to see the doctor had charged \$1,853—and her insurance carrier had paid just \$38. Surprisingly, the emergency room doctor was not a hospital employee; instead, the doctor worked for a private physician staffing group which contracted with the hospital. Michelle had no way to know this in advance and ended up with a nearly \$2,000 bill.

Mississippi has the highest rate of past-due medical debt in the country.



Alexandra Tilsley et al., *Past-due Medical Debt*, URBAN INST. (Mar. 2016), <http://apps.urban.org/features/medical-debt-in-america/>.

Michelle was a victim of balance billing, and she is not alone. Patients believe that if they go to an in-network hospital, their insurance carrier will cover the cost of care (beyond appropriate cost-sharing like co-payments). But today, 65% of hospitals contract with outside agencies for emergency room doctors who may opt not to participate in the hospital provider network.³ Similarly, some hospitals contract with out-of-network specialists, like anesthesiologists and pathologists.⁴ Thus, many patients are treated by an out-of-network provider at an in-network hospital, often for emergency treatment—and they may receive an unexpected balance bill for care they had no way to know was out-of-network. As hospitals increasingly contract with out-of-network staffing agencies, balance billing has become more common. In 2014, 20% of in-patient admissions from the emergency department led to a surprise medical bill.⁵ Because insurers only pay out-of-network providers a portion of their requested charges, providers may attempt to collect the difference between the charges and the insurer's payment directly from patients by sending them a balance bill, in violation of state law.⁶

How Mississippi Law Protects Consumers From Balance Bills

Mississippi became a national leader on this issue in 2013, when the state passed bipartisan, comprehensive legislation to protect families from surprise medical billing. Mississippi's current statute reads:

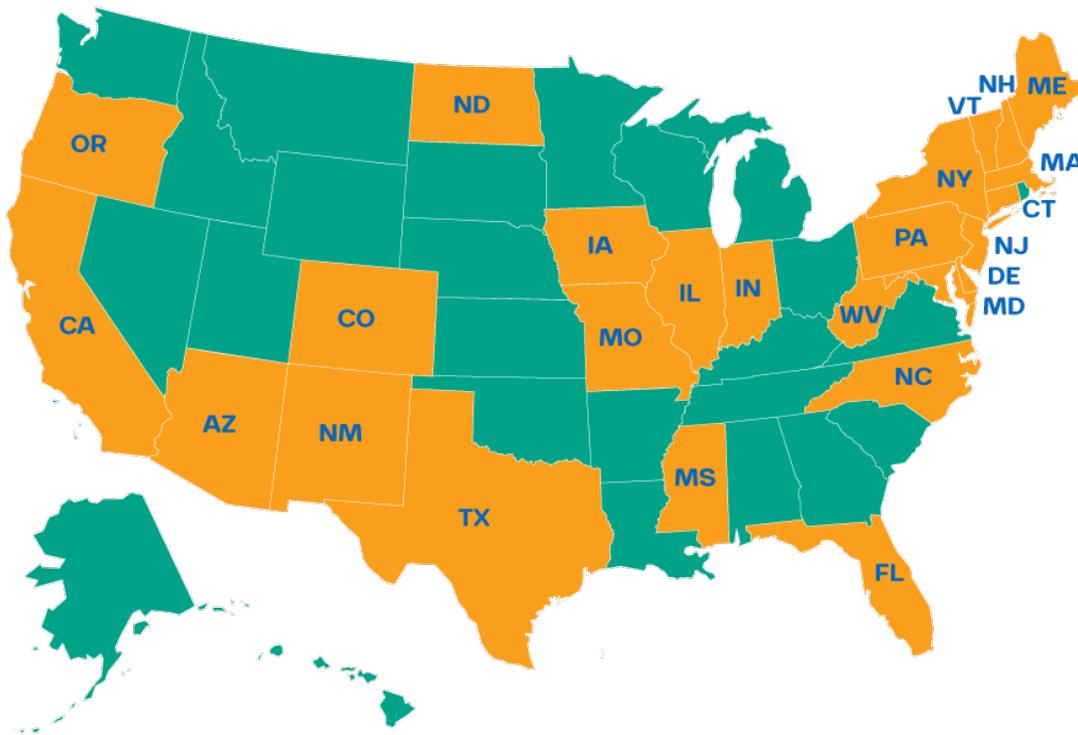
"If the insured provides the insurer with written direction that all or a portion of any indemnities or benefits provided by the policy be paid to a licensed health care provider rendering hospital, nursing, medical or surgical services, then the insurer shall pay directly the licensed health care provider rendering such services. That payment *shall be considered payment in full to the provider, who may not bill or collect from the insured any amount above that payment, other than the deductible, coinsurance, copayment or other charges for equipment or services requested by the insured that are noncovered benefits.*"

MISS. CODE ANN. § 83-9-5 (2014) (emphasis added).

Mississippi led the nation in adopting key best practices to fight balance billing. Mississippi was one of the first states to adopt a hold harmless provision that bars providers from billing patients for any amount above the payment made by the insurer. Hold harmless provisions are now widely recognized as a best practice, with nine

BALANCE BILLING LAWS: A STRONG BIPARTISAN SOLUTION TO MEDICAL DEBT

In recent years, states across the country have passed comprehensive balance billing legislation with strong bipartisan support. Today, at least 25 states protect consumers from balance bills.⁷



states adopting similar laws in the last two years alone.⁸ Mississippi law thus already includes the most critical element of effective legislation to protect patients and limit balance billing. Despite the state's leadership on this issue, Mississippians like Michelle Mills report that they are still receiving balance bills—in violation of state law.⁹ In fact, a January 2019 poll reported that 4 in 10 Mississippians have received or have a family member who received a surprise medical bill.¹⁰

Updating Mississippi's Balance Billing Law

States across the nation—from Florida to Missouri to Iowa—have passed legislation that follows Mississippi's basic framework. However, since 2013, several best practices have emerged to encourage compliance with balance billing laws and ensure that health care professionals receive and carriers provide fair, reasonable payments. These best practices fit neatly within the framework already set by state law, and would streamline and bolster the operation of Mississippi's existing patient protections.

a. Fair Payment Standards and Dispute Resolution Procedures

In the years since Mississippi passed balance billing legislation, many states have adopted payment standards for insurance carriers who reimburse out-of-network providers at in-network hospitals. Under payment standard systems, carriers are required to reasonably compensate out-of-network providers and providers are required to accept that reasonable compensation from insurers.¹¹ Payment standards protect providers by ensuring they can reliably receive reasonable payments for health care services, while also ensuring that carriers cannot be

overcharged by out-of-network providers at in-network facilities. Payment standards reduce instability created by out-of-network billing and incentivize providers to legally seek reliable, reasonable payment from insurers, rather than violating state laws and balance billing patients.

Example Balance Billing Payment Standards



Missouri:

"[T]he health carrier shall offer to pay the health care professional a reasonable reimbursement for unanticipated out-of-network care..." Mo. REV. STAT. § 376.690 (2018).



Florida:

Insurer pays the lesser of "(a) [t]he provider's charges; (b) [t]he usual and customary provider charges for similar services in the community where the services were provided; or (c) [t]he [mutually agreed charge]..." FLA. STAT. § 641.513 (2018).



New Hampshire:

"[F]ees...submitted to an insurance carrier for payment shall be limited to a commercially reasonable value, based on payments for similar services..." N.H. REV. STAT. ANN. § 329:31-b (2018).



Maine:

"A carrier shall reimburse the out-of-network...for health care services rendered at the average network rate under the enrollee's health care plan as payment in full, unless the carrier and out-of-network provider agree otherwise." ME. STAT. tit. 24, § 4303-C (2018).

85%
support
dispute
resolution in
Mississippi



Some states have also specified procedures for resolving disputes between providers and carriers over what constitutes reasonable payments. For example, Missouri's new balance billing law states that if providers and carriers cannot agree to a reimbursement amount through a sixty-day negotiation process, the parties must take the dispute to binding arbitration.¹² Similar legislation in New York lowered the incidence of out-of-network billing by 34%.¹³ In New Hampshire, providers and insurance carriers must make "best efforts" to resolve any disputes. If negotiations are unsuccessful, providers and carriers must resolve the dispute with the insurance commissioner.¹⁴

A similarly tailored fix can help stabilize Mississippi's existing balance billing framework, ensuring that both providers and insurers get a fair shake while leaving consumers out of the mix. This type of solution receives overwhelming support from Mississippi voters, with 85% in support of a state law that would protect patients in Mississippi by requiring providers and insurers to resolve payment disputes between themselves.¹⁵

b. Key Consumer Protections

About one in five Mississippi adults has medical debt in collections, meaning that their past due medical debt has been sold to collection agencies.¹⁶ When medical debt is sold to collection agencies, the debt can harm a person's credit score, making it more difficult to secure a loan to return to school, buy a house, or start a small business. According to a 2014 report by the Consumer Financial Protection Bureau, more than half of all debt on nationwide credit reports arises from medical bills and fifteen million people have *only* medical debt (and no other collection items) on their reports.¹⁷

To address this, states can use legislation and regulations to protect consumers from the collateral consequences of balance billing. For example, Connecticut law prohibits providers from reporting balance bills to credit agencies, preventing these bills from ruining a patient's credit score.¹⁸ This legislation aligns with a nationwide effort to limit the impact of medical debt on patients' credit scores. As a result of a 2015 settlement with a bipartisan group of thirty-one state attorneys general (including attorneys general from Louisiana, Arkansas, Tennessee, and Alabama), the three largest credit reporting agencies in the United States adopted new rules last year, guaranteeing consumers 180 days before medical debt can be added to credit reports.¹⁹ Despite these new protections, Mississippians continue to face surprise balance bills and due to the complexity of the process, may not be adequately equipped to address these bills with providers and insurance companies before the 180-day period expires.

c. Ensuring Compliance with Mississippi's Balance Billing Protections

While Mississippi already has comprehensive balance billing legislation on the books, the statute does not specify how patients can challenge surprise medical bills they receive in violation of the law. Currently, the Mississippi Attorney General's Office facilitates voluntary mediation of balance billing requests—but if a provider refuses to enter mediation, neither the attorney general nor the insurance commissioner has explicit statutory authority to investigate and address disputes.²⁰ To ensure Mississippi's balance billing laws are uniformly respected and complied with, the legislature should consider adding explicit enforcement provisions to the statute, including authority to mandate mediation of disputes. Such a solution would be overwhelmingly supported by Mississippi voters, with 82% of surveyed voters supporting passage of a state law that would give the Attorney General authority to investigate complaints about surprise medical bills and enforce medical billing laws.²¹

Mediation is an effective tool to address balance billing. In 2016, the Texas legislature expanded the state's existing protections to allow patients to send balance bills that total \$500 or more to mediation.²² Once a provider receives notice that a patient has requested mediation, that provider is barred from seeking payment on the balance bill until the mediation ends or the request to mediate is withdrawn.²³ Providers and insurers are then required to mediate the bill via a phone conference managed by the Texas Department of Insurance.²⁴ If the parties do not reach an agreement, the matter may be referred to a judge.²⁵ Over 93% of the nearly 2,000 balance bills settled in 2017 were settled during the initial phone conference stage, without further proceedings.³¹



*In 2017, Texas resolved nearly **\$7,000,000** in balance bills with mandatory mediation.²⁶*

Similar balance billing laws have been widely supported by consumer advocates, health care providers, industry groups, and lawmakers on both sides of the aisle.

Growing, Bipartisan Support

In the last three years, at least fourteen states have passed balance billing legislation. For example, Florida's law, which bans the balance billing of patients, sets a payment standard for reimbursing nonparticipating providers, and establishes a dispute resolution mechanism, passed the state Senate unanimously and the state House of Representatives 118-1.²⁷



Health Care Providers and Insurers

Similar legislation has garnered support from providers and insurers, including the Missouri State Medical Association, the Florida Medical Association, the Florida Association of Health Plans, the Texas Medical Association, Blue Cross and Blue Shield of Texas, the Texas Association of Health Plans, and the Texas Hospital Association.²⁸



Consumer Advocates

Legislation to fight balance billing has been widely supported by both state and national patient advocates, including the Mississippi Health Advocacy Program, the Consumers Union, the Commonwealth Fund, National Alliance on Mental Illness (NAMI) Texas, and various state chapters of the American Cancer Society, the AARP, and the MS Society.²⁹



Small Businesses

Business leaders have supported similar legislation to protect their employees from balance billing because reforms can help limit premium increases that burden small businesses. Examples include the Florida chapter of the National Federation of Independent Business, the Texas Association of Business, and the New Jersey Business & Industry Association.³⁰

Some states have vested clear balance billing enforcement authority with their state insurance commissioners. For example, Colorado law authorizes the state insurance commissioner to conduct a systemic review of an insurance carrier or out-of-network provider's billing practices, which may include a review of a carrier's reimbursement rate for out-of-network providers, a provider's compliance with state law limiting balance billing, and network adequacy.³² The statute authorizes the insurance commissioner to begin a review upon receipt of one or more complaints. New Jersey law explicitly vests the state commissioner of the Department of Banking and Insurance with authority to impose fines on providers or carriers who violate the state's balance billing laws (which closely resemble Mississippi's).³³

Other states entrust enforcement to state attorneys general. For example, the Missouri Attorney General investigates consumer complaints about balance billing and the Health Education and Advocacy Unit of the Maryland Attorney General's Office addresses balance billing and network adequacy standards.³⁴ The New York State Attorney General's Office reports that balance billing is one of the most common complaints filed with its Health Care Bureau, which resolves balance bills through both informal patient advocacy and formal enforcement action against providers violating state law.³⁵

By explicitly vesting enforcement authority with an agency, Mississippi's legislature can ensure the state identifies and addresses bad actors who violate the state's balance billing law.

Conclusion: A Legislative Proposal to Strengthen Mississippi's Balance Billing Protections

Mississippi's existing balance billing law already contains essential provisions needed to protect patients, but news reports indicate that some providers are failing to comply with the law and enforcement is a challenge. The Mississippi legislature should update MISS. CODE ANN. § 83-9-5 to improve compliance, provide clarity on the enforcement process, and incorporate best practices that have emerged since the state first passed the law in 2013.

Specifically, the legislature should:

1. Clarify enforcement authority over balance billing;

To ensure that Mississippi consumers are protected from balance billing, the legislature should clearly vest state officials with the authority to investigate complaints alleging violations of MISS. CODE ANN. § 83-9-5 (2014); to mediate disputes that arise under the statute; upon receipt of one or more complaints, to examine providers' and carriers' compliance with state law; and to clarify jurisdiction over providers and facilities that violate state balance billing law.

2. Promote compliance to the existing law, by prohibiting providers from reporting these bills to credit agencies; and

The state legislature should make reporting a person's failure to pay a balance bill to any credit agency an unfair trade practice for all health care providers and insurers.

3. Establish a process for resolving payment disputes.

MISS. CODE ANN. § 83-9-5 (2014) should be amended to require that, where an insurer provides payment to a provider, the health carrier "shall offer to pay the health care professional a reasonable reimbursement for unanticipated out-of-network care at in-network facilities." The Code should further specify that, if providers and carriers disagree over what constitutes reasonable reimbursement, they must mediate the dispute with each other and should not involve the consumer. If providers and carriers cannot reach agreement within sixty days, they should be required to resolve the dispute through binding arbitration.

In 2013, Mississippi became one of the first states to prohibit balance billing. However, since then, the state has fallen behind in adequately protecting consumers from this unfair practice. Mississippi legislators and state officials should adopt the best practices that have emerged, and through the recommendations outlined in this report, ensure that the protections are enforceable, comprehensive, and effective.

ENDNOTES

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- ¹¹ See e.g., MO. REV. STAT. § 376.690 (2018); FLA. STAT. § 641.513 (2018); N.H. REV. STAT. ANN. § 329:31 (2018); ME. STAT. tit. 24 § 4303-C (2018).
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