

HEALTH ADVOCACY

CASE STUDY

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Protecting Consumers from Surprise Out-of-Network Bills: How Advocates in New York Addressed the Problem

SUMMARY

A recent legislative victory in New York provides consumers with the strongest protections in the nation against surprise, out-of-network medical bills. This case study reviews the reasons why consumers receive these bills, summarizes the consumer protections passed in New York, and describes the advocacy strategy that lead to the legislation. This brief relies heavily on interviews with key advocates – Chuck Bell of Consumers Union, Elisabeth Benjamin of Community Service Society of New York, and Heidi Siegfried of New Yorkers for Accessibly Health Coverage and Center for Independence of the Disabled, NY. You can find more resources on our website: consumersunion.org/surprise-medical-bills/

High bills from out-of-network medical providers are a long-standing problem. As health care costs rise, and insurers take steps to rein in premium growth such as narrowing their provider networks, consumers around the country are increasingly finding themselves stuck with unexpected or unavoidable bills from out-of-network providers. These bills can be extremely high, as many consumers have skimpy out-of-network coverage, if any.

The experience of “Dana” illustrates this consumer issue.¹ She was billed by an out-of-network anesthesiologist for a planned surgery authorized by her insurance. Dana was unaware that the anesthesiologist was out-of-network until she received her bill. Then she discovered that, despite her effort to do her homework and use an in-network hospital and surgeon, she had been treated by an out-of-network provider and would be held financially liable for the cost.

¹ *New Yorkers Speak Out About Surprise Medical Bills: Consumer Stories About Medical Bill Shock*, Consumers Union, March 24, 2013.

<http://stopsurprisemedicalbills.files.wordpress.com/2014/05/surprise-bills-consumer-stories.pdf>.

In response to this consumer issue, in March of 2014, New York passed the strongest consumer protection provisions in the nation to shield consumers like Dana from out-of-network surprise medical bills. Thanks in part to the efforts of consumer advocates, New York is first state to hold consumers harmless and employ arbitration between doctors and insurers directly. This legislation was widely supported by consumer organizations, and was endorsed by the American Cancer Society, Consumers Union, AARP, and the Children's Defense Fund – New York among others.

This case study describes what the state did and how local advocates worked with their Department of Financial Services to secure passage of this important legislation.

What was the problem?

In New York, like other parts of the country, surprise out-of-network medical bills occur for a variety of reasons²:

Surprise out-of-network medical bills are the top health insurance related complaint the department receives.

- Inadequate or outdated provider networks³
- Low reimbursement levels for out-of-network care⁴
- Difficulty comparing and understanding out-of-network coverage⁵
- Lack of appropriate consumer disclosures for non-emergency care⁶
- Changes in reimbursement practices⁷
- Predatory emergency care situations⁸

² *An Unwelcome Surprise: How New Yorkers Are Getting Stuck with Unexpected Medical Bills from Out-of-Network Providers*, New York State Department of Financial Services DFS report, March 7, 2012, <http://www.governor.ny.gov/assets/documents/DFS%20Report.pdf>.

³ A consumer may see that a provider is listed as being in their plan's network and may later discover that this information is incorrect or outdated.

⁴ Most insurance plans reimburse at low rates for out-of-network care as a way to control costs.

⁵ It is extremely difficult for consumers to understand what their out-of-network coverage actually covers. Many consumers think their out-of-network services will be covered at a higher level and do not know how much the insurance company will pay until they receive bills. Without this prior knowledge, many consumers are shocked to discover how little financial protection their health plan offers when care is delivered by an out-of-network provider.

⁶ Consumers are not notified before receiving care from an out-of-network provider in non-emergency situations, as related by Dana in the CU story collection effort. If an out-of-network anesthesiologist administers the anesthesia or an out-of-network physician assists during part of an operation, the consumer may face a large and unexpected medical bill, despite having scheduled the operation at in-network hospital or with an in-network surgeon.

⁷ Changes in reimbursement policies from the Usual and Customary Rate to 140% of Medicare dramatically reduce reimbursement rates and are confusing to consumers. Most do not understand that 140% of Medicare, despite sounding like a high level of reimbursement, is less than the Usual and Customary Rate, and is much less than most providers charge.

⁸ Consumers are extremely vulnerable in emergency situations when they are not able to choose between different provider options and are sometimes subjected to egregious charges.

The Department of Financial Services (DFS) reports that out-of-network medical bills are the top health insurance related complaint the department receives.⁹ As stated in their report, *An Unwelcome Surprise: How New Yorkers Are Getting Stuck with Unexpected Medical Bills from Out-of-Network Providers*, DFS hears from consumers “who have done everything possible to use in-network hospitals and doctors, but nonetheless receive a bill from a specialist or other provider who the consumer did not know was out-of-network.”¹⁰

Apart from their unexpected nature, these bills are devastating for consumers because they can be extremely high. This happens for two reasons -- low consumer coverage for out-of-network bills and a practice known as balance billing.

Insurance plans typically offer low coverage for out-of-network services.¹¹ For example, insurance might cover 80% of an in-network service, but plans may only cover 40% for out-of-network services. In most cases, this leaves consumers to pick up the large difference between the out-of-network provider’s full charge and the insurer’s payment. If the insurance payment is significantly less than the provider charge, which is likely when consumers see out-of-network providers who have not negotiated rates with insurance plans, consumers are stuck with the difference, or the balance, between what their insurance company will cover and the out-of-network provider’s total charge.

Emergency situations are especially precarious for consumers. According to the DFS report, a small, but significant number of providers appeared to take advantage of consumers during emergencies.¹² The report highlights a complaint from a consumer who “received an \$83,000 bill from the non-participating plastic surgeon for reattaching his finger, which was severed in a table saw accident. The insurer asserted, however, that other physicians in the area typically charge one-fourth, or about \$21,000, for the procedure.”¹³ Consumers are vulnerable to out-of-network medical bills in emergency situations because they are unable to seek care from an in-network provider or to evaluate and compare several options.

The consequences of surprise out-of-network bills can be devastating. Consumers faced with thousands of dollars in medical bills frequently declare bankruptcy or invest significant resources to take on the insurance companies and providers

⁹ Anemona Hartocollis, “New York Curbs Medical Bills Containing Surprise”, *The New York Times*, March 30, 2014, http://www.nytimes.com/2014/03/31/nyregion/new-york-curbs-medical-bills-containing-surprises.html?_r=0.

¹⁰ *An Unwelcome Surprise: How New Yorkers Are Getting Stuck with Unexpected Medical Bills from Out-of-Network Providers*, New York State Department of Financial Services DFS report, March 7, 2012, <http://www.governor.ny.gov/assets/documents/DFS%20Report.pdf>.

¹¹ Ibid

¹² Ibid

¹³ Ibid

who are behind the bills. According to the DFS report, “surprise medical bills are causing some consumers to go broke.”¹⁴

How New York Addressed the Problem

DFS and a coalition of advocates worked together to pass the 2014 legislation which aims to protect consumers from “surprise” out-of-network medical bills. The new provisions protect consumers in the following ways^{15 16}:

1. Consumers are held harmless from out-of-network emergency bills and non-emergency claims where an in-network provider was unavailable or disclosure of services provided by an out-of-network provider was not made. In these situations, consumers will be responsible for their usual in-network cost-sharing.
2. An arbitration process between providers and insurers will shield patients from becoming involved in payment negotiations and will provide additional financial protection.
3. Plans that offer out-of-network coverage will be required to provide a minimum level of coverage for out-of-network services.
4. Plans have to provide improved disclosure so consumers can understand reimbursement levels and have an idea of the amount their plan will cover for out-of-network services.
5. Plans must meet minimum network adequacy requirements.
6. Plans will have to make it easier for consumers to submit out-of-network claims online and out-of-network doctors will have to include an insurance claim form with their bills

Advocates in New York hope these protections can serve as a model for other states. The provisions directly address the problems that consumers face and represent a balanced compromise between the competing concerns of providers, insurers and consumers.

The following steps laid the groundwork for the passage of these provisions into law.

REPORT DOCUMENTING THE PROBLEM

On March 7, 2012, the New York State Department of Financial Services released a report describing the out-of-network medical bill problem in the state and how it affected consumers. “An Unwelcome Surprise: How New Yorkers are Getting

¹⁴ *An Unwelcome Surprise: How New Yorkers Are Getting Stuck with Unexpected Medical Bills from Out-of-Network Providers*, New York State Department of Financial Services DFS report, March 7, 2012, <http://www.governor.ny.gov/assets/documents/DFS%20Report.pdf>.

¹⁵ NYFACH, Memorandum In Support: Out of Network Legislation (TED Article VII, § U) January, 2013, http://www.cidny.org/resources/2014-01-28_Out-of-Network%20Surprise%20Bills.Support.NYFAHC.pdf.

¹⁶ One Page Summary of Bill Provisions,
<http://stopsurprisemedicalbills.files.wordpress.com/2014/02/cuomo-oon-bill-summary-s-6357b-part-u.pdf>.

"Stuck with Unexpected Medical Bills from Out-of-Network Providers" explained the multiple causes of out-of-network bills, the widespread nature of the problem, and proposed strong consumer protections as a solution. This report started the advocacy process that led to the consumer protection legislation.

CRAFTING THE LEGISLATION

The DFS report was unique in that it went beyond describing the problem; it also suggested new consumer protections to target the issues identified. As reflected in the final legislation, the report proposed the following solutions: making it easier for consumers to comparison shop; improving disclosure for non-emergency services; prohibiting excessive charges in emergency situations; improving network adequacy; establishing minimum coverage levels; and making the claim submission process more consumer friendly.

Health Care for All New York (HCFANY) advocated for an important missing component – an arbitration provision. This element of the legislation prevents consumers from being dragged into the middle of financial disputes between insurers and providers. Once implemented, if consumers are stuck with a surprise bill for an out-of-network service that was either an emergency or for which they did not receive proper out-of-network disclosure, they will pay the regular in-network co-pay or co-insurance. The insurance company and the provider will resolve the financial dispute through an arbitration process without the consumer.

ELEVATING THE ISSUE

Advocates collected stories, provided bill memos, made legislative visits and held press conferences to raise the profile of the issue. Advocates, many of whom had been working to raise the profile of this issue for some time, were able to have Governor Cuomo include the topic in his State of the State address in January of 2014.

PROCEDURAL STRATEGY

Previous consumer protection bills introduced in the New York Assembly in 2012 and 2013 failed to pass both houses. With the support of DFS, advocates pressed to have the consumer protection provisions included in Governor Cuomo's 2014-2015 state budget, thereby forcing a vote on an issue that had garnered widespread support. The budget was passed into law on March 31, 2014. The decision to include the consumer protections in the budget so the legislature would have to address the issue was crucial to the passage of the provisions.

The arbitration provision prevents consumers from being dragged into the middle of financial disputes between insurers and providers.

SECURING SIMILAR LEGISLATION IN OTHER STATES

New York was in a unique position to address this problem and it is important for advocates in other states to understand the factors that were key to New York's success.

Advocates emphasized the importance of a consumer-friendly and proactive insurance department to the legislative success in New York. They also cited the original DFS report as providing the necessary documentation and analysis of the problem and its root causes, and praised the department and Superintendent Lawsky for proposing solutions to address each issue.

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The volume of consumer complaints played a crucial role and was a key initiating factor for the DFS report. Marketplace conditions in New York led to very high bills for consumers, making it more likely that consumers would find an avenue to complain. Consumers were able to lodge official complaints because of the pro-consumer orientation of the insurance department, the multiple avenues for complaints, and a strong advocate community that helped consumers figure out the system.¹⁷

The following specific advocacy strategies were deemed especially important to the successful passage of the consumer protection legislation.

CONSUMER STORIES

Advocates used a story collection effort to bolster their citizen outreach and strengthen their advocacy strategy. New Yorkers for Accessible Health Coverage, Health Care for All New York, and Consumers Union invited New Yorkers who had experienced surprise medical bills to share their stories and more than 125 people responded.

The story collection report, *New Yorkers Speak Out About Surprise Medical Bills*, begins with the story of Claudia Knafo, who ended up with nearly \$100,000 in medical bills after cervical spine surgery.¹⁸ Ms. Knafo explained: "I did my due diligence. I researched this physician and read reviews on the web. I made sure he was in-network by checking the hospital's website, using the telephone physician referral system, and contacting the hospital's patient coordinator in the

¹⁷ New Yorkers have three main avenues for complaints: the Department of Financial Services, the Attorney General's office, and the Community Service Society of New York's Community Health Advocates (CHA) program which is New York State's designated Consumer Assistance Program under Section 1002 of the Affordable Care Act. The contact information for CHA (<http://www.communityhealthadvocates.org/>) is listed on all Explanation of Benefits (EOB) in New York, so when consumers received their EOBs and faced surprise, out-of-network bills, they knew who to contact for help.

¹⁸ *New Yorkers Speak Out About Surprise Medical Bills: Consumer Stories About Medical Bill Shock*, Consumers Union, March 24, 2013.

<http://stopsurprisemedicalbills.files.wordpress.com/2014/05/surprise-bills-consumer-stories.pdf>.

neurosurgery department. All three confirmed he was in-network.” Ms. Knafo faced a huge bill because of this misrepresentation, and because the insurance company retroactively applied a new reimbursement model for out-of-network services.

Ms. Knafo stated that she was: “concerned that, to get through this, I was going to have to declare bankruptcy. My husband and I even talked about divorcing to separate and protect our assets. It felt like my family and I were used as pawns in a chess game between insurance and doctor. It was also infuriating that neither wanted to address each other directly, and that all liability rested on my shoulders.”

Many New Yorkers shared similar stories. Lester wrote, “I had lung cancer surgery by an in-network surgeon in an in-network hospital. But I was billed by the anesthesiologist who was not in-network. I had no choice.” It took Lester more than a year of writing letters to resolve the issue.

Roberta wrote that she received a surprise bill from an out-of-network anesthesiologist “because the one I confirmed in advance as in-network was switched without my knowledge on the day of the procedure.” She then asks, “What was I supposed to do, ask everyone in the operating room if they were in-network? And if they weren’t cancel the operation?”

Story collection allows advocates to put a human face on the issue and makes it harder to dismiss the problem, especially when such large medical bills were involved. Advocates singled out the story collection effort as a first step that should be taken to repeat this process in another state.

CITIZEN ACTION

It is also important to get patients directly involved in the advocacy process, by meeting with legislators and telling their stories. In addition to recording their experiences with surprise bills, the story collection effort helps identify patients who might be willing to become more involved. Advocates in New York were fortunate that Ms. Knafo became a “super advocate” for this cause, speaking at a press conference and meeting with state legislators to personally tell her story.

Consumers Union also invited New Yorkers to send e-mail messages to members of the New York State Legislature in support of the consumer protection legislation, and more than 4,000 consumers took action.

COALITION OF ADVOCACY ORGANIZATIONS

Advocates in New York have a long history of working cooperatively within coalitions. Health Care For All New York and New Yorkers for Accessible Health Coverage, both of which are comprised of advocacy organizations with different focuses and from different areas of the state, played a pivotal role in securing the passage of the legislation.

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Health Care For All New York made the passage of legislation protecting consumers from surprise, out-of-network medical bills a priority for the 2012, 2013, and 2014 legislative sessions. Consumers Union also joined the advocacy efforts and was able activate their strong consumer contact list for the story collection effort.

As the advocacy coalition was broad and composed of diverse groups, legislators could see that, not only were highly recognizable organizations like the American Cancer Society and AARP supporting the bill, but smaller organizations and sub-groups from all over New York were as well.

GOVERNMENT ALLIES

Key advocates repeatedly underscored the importance of having allies in state government as the movement to pass the consumer bill began with the DFS report documenting the problems and suggesting solutions. The Department also worked actively with advocates to build support for the bill. Superintendent Lawsy spoke at a consumer coalition press conference in favor of the passage of the legislation and made it clear that the passage of this legislation was important to him.

MEDIA OUTREACH

Advocates used media outreach to grow awareness of this issue among the public and legislators, and to show the breadth of the advocacy coalition. They held two press conferences, featuring Claudia Knafo and Superintendent Lawsy, and reached out to editorial boards to try to increase the story coverage.

Advocates took out paid advertisement in the Albany Gazette, a publication read by state legislators, to show the breadth and strength of their coalition. The strong name recognition of the AARP and the American Cancer Society, along with other prominent health advocacy organizations, provided strong support for the legislation.

This issue played well with the media because it is relatively easy to explain and is something many people can understand on a personal level. The story collection and the prominence of Claudia Knafo's story in particular gave the media coverage of this problem a human dimension.

IN SUMMARY

This case study shows how advocates in New York, working with supportive government allies, were able to achieve strong consumer protections against surprise, out-of-network medical bills. Advocates repeatedly emphasized the importance of documenting the problem in your state, establishing a robust story collection effort, forming an active advocacy coalition, and cultivating relationships with key government officials.

We encourage you to reach out to key advocates in New York with your questions:

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Consumers Union is the policy and advocacy division of *Consumer Reports*. We have a long history of advocating for improvements in the consumer marketplace. Since our creation in 1936, we have worked for safer, more affordable, and better quality products and services at both the state and federal levels. We are a non-profit, non-partisan organization with an overarching mission to test, inform and protect.

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