HEALTH ACCESS
California's Health Consumer Advocacy Coalition

FACT SHEET

AB 1611 (Chiu): Stop Surprise Emergency Bills from Out-of-Network Hospitals

AB 1611 will protect patients from surprise emergency room bills from out-of-network hospitals. This bill will ensure that patients only owe the same copay or deductible they would pay for in-network emergency care.

The only thing you should be thinking about when you or a loved one are lying on a gurney in an emergency room is trying to get well—not whether there will be a bill of thousands of dollars for that care. No consumer, especially one that is insured, should be at risk of being sent to collections or face financial ruin just because they did the right thing and went to an emergency room when they thought they were having an emergency.

Existing California Law and the Court's Ruling on Balance Billing

California law says that for most consumers, if the consumer reasonably believed they were having an emergency and received emergency care, then their health plan is required to cover that care, whether at an in-network or out-of-network hospital.

Yet still today for some Californians, if you or a loved one needs to go to an emergency room you can still be billed for thousands of dollars or more. You can be sent to collections, your wages can be garnished, and even your house can be seized.

In 2009, the California Supreme Court ruled unanimously in *Prospect Medical Group, Inc. vs. Northridge Emergency Medical Group, et al.*, that non-contracting ER doctors and other non-contracting emergency services providers, such as hospitals, cannot balance bill consumers. Balance billing refers to a practice in which doctors and hospitals seek payments from the consumer for the "balance" between what the doctor or hospital charge and want to get paid (the "sticker price"), and what the health plan actually pays for that emergency room visit. With this court ruling, doctors and hospitals are not supposed to balance bill patients for emergency care. Most consumers should owe only their copays or deductibles.

The court ruling has provided relief to millions of California consumers but it did not address every problem with surprise bills nor did it apply to every California consumer. Consumers can still get the initial bill for that emergency room care, and the court ruling does not protect most consumers from being billed and sent to collections for the "sticker price" for emergency room care. Additionally, the *Prospect* case applied only to the 14 million Californians with PPOs and HMOs regulated by the Department of Managed Health Care. The case did not apply to the one million Californians with coverage regulated by the CA Department of Insurance or the almost six million Californians with coverage regulated by the federal Department of Labor.

Under another California law, AB 72 (Bonta, 2016), consumers are protected from surprise bills when they receive care from an out-of-network doctor (such as an anesthesiologist or radiologist) at an in-network facility. Consumers are only billed for their in-network cost-sharing and no more. The law protects consumers from a surprise bill from an out-of-network doctor when receiving non-emergency services at in-network facilities.

AB 72 also helps to control health care costs by basing the payment that an out-of-network provider receives on rates paid by public and private payers, rather than what was billed or the "sticker price" sought by providers. Out-of-network doctors are reimbursed either 125% of Medicare rates or the average contracted rate paid by the specific health insurer for the same or similar services in the same geographic area, whichever is greater. Unfortunately, the law did not apply to emergency services, a gap that AB 1611 (Chiu) would fix.

Consumers Need Protection from Surprise Emergency Bills

California law for most insured consumers is clear. It does not matter whether the hospital emergency room is in-network or not – the only thing you owe is your copays or deductible especially if you reasonably thought you were having an emergency and received care[i]. This basic consumer protection has been the law for a decade. But this law did not apply to every consumer and it did not save consumers from being balance billed or getting surprise bills.

On top of this, hospitals are leveraging that consumer protection that health plans must cover emergency care, in-network or out-of-network, in order to extract higher payments from health plans. Hospitals leverage their monopoly in providing ER services in a certain area in their contracts with health plans and can then charge higher payment amounts. Our state's laws that are meant to protect consumers from being denied coverage for emergency care are now being used to drive up overall prices and health care costs. Consumers are getting billed for emergency care, even if they do not owe that money—and they are also paying higher premiums, copays, and deductibles because of overall higher hospitals costs.

AB 1611 (Chiu) Ensures Consumers Do Not Get Surprise Emergency Bills

AB 1611 would protect patients by making sure they only owe their in-network cost sharing for emergency care, regardless of whether the emergency room is in- or out-of-network for their insurer. AB 1611 would also ensure patients are not sent to collections for more than their copays or deductibles. Hospitals are prohibited from balance-billing and sending surprise medical bills to consumers as a condition of their state licensure.

To protect consumers with both state regulated health coverage and federally regulated coverage such as self-insured plans provided by employers and union trust funds, AB 1611 would apply to hospitals, as well as health plans and health insurers. AB 1611 would also ensure that a patient's health coverage is not used as leverage for higher payment to hospitals by limiting payment to either the "reasonable and customary" rate, which includes both what private and public payers actually pay hospitals, or the average contracted rate paid by the specific health insurer for the same or similar services in the same geographic area.

No one should ever worry about whether their insurance is enough to cover the care they received in an emergency room. After facing the trauma of an emergency, consumers should not be faced with the second trauma of possible financial ruin.

AB 1611 (Chiu) is co-sponsored by **Health Access Californ**ia and the **California Labor Federation.**

[i] This is sometimes referred to as a "prudent layperson" standard: that is inaccurate. A "prudent layperson" standard refers to a person of average education and average judgment, a standard that is biased against those of different cultures and varying levels of education. For example, a limited English proficient consumer with a high school education, born in another country, is not a person of "average education". The standard in California law is more consumer-friendly: if the consumer (not the insurer or the doctor) reasonably believed they were having an emergency the care must be covered