

BROOKINGS USC Schaeffer

USC-Brookings Schaeffer Initiative for Health Policy

Policy Approaches to Addressing Surprise Out-of-Network Billing

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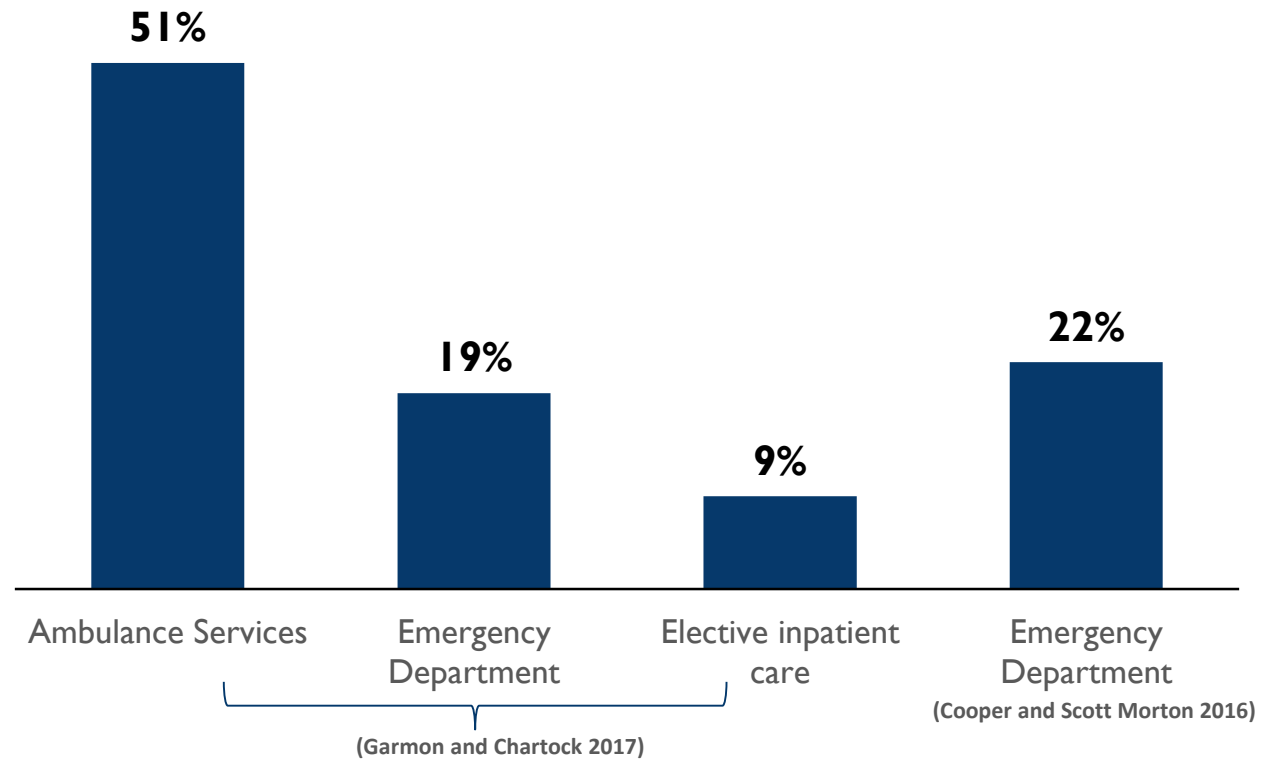
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Surprise bills can arise when patients lack choice

Where they come from	Why
Emergency situations	<ul style="list-style-type: none">• ED physicians OON at INN facility• Ambulance dispatched is OON• Closest emergency facility is OON
Nonemergency care at an in-network facility	<ul style="list-style-type: none">• Surgery at INN facility with INN surgeon may include an OON anesthesiologist, radiologist, pathologist, assistant surgeon, or other specialist• OON hospitalist provides care at INN facility

Surprise bills are common

Percentage of Visits Leading to a Potential Surprise Out-of-Network Bill



Source: Garmon and Chartock 2017; Cooper and Scott Morton 2016

Note: For the Garmon/Chartock figures, 19% represents the % of outpatient ED cases, including those to an OON ED, that could result in a potential surprise balance bill.

Market Failure

Typical price-volume trade-off does not apply

- Patients choose hospitals, not their emergency or ancillary clinicians
- Potentially lucrative OON billing option unavailable to other physicians
- VERY high rates

Hospital role

- Contract with physicians for coverage
- Pressure to join networks
 - Role of hospital payer mix
- Suffer reputational harm from surprise billing
 - Need compensation from physicians to allow surprise billing

Physicians most commonly involved in surprise billing have the highest billed charges relative to Medicare rates

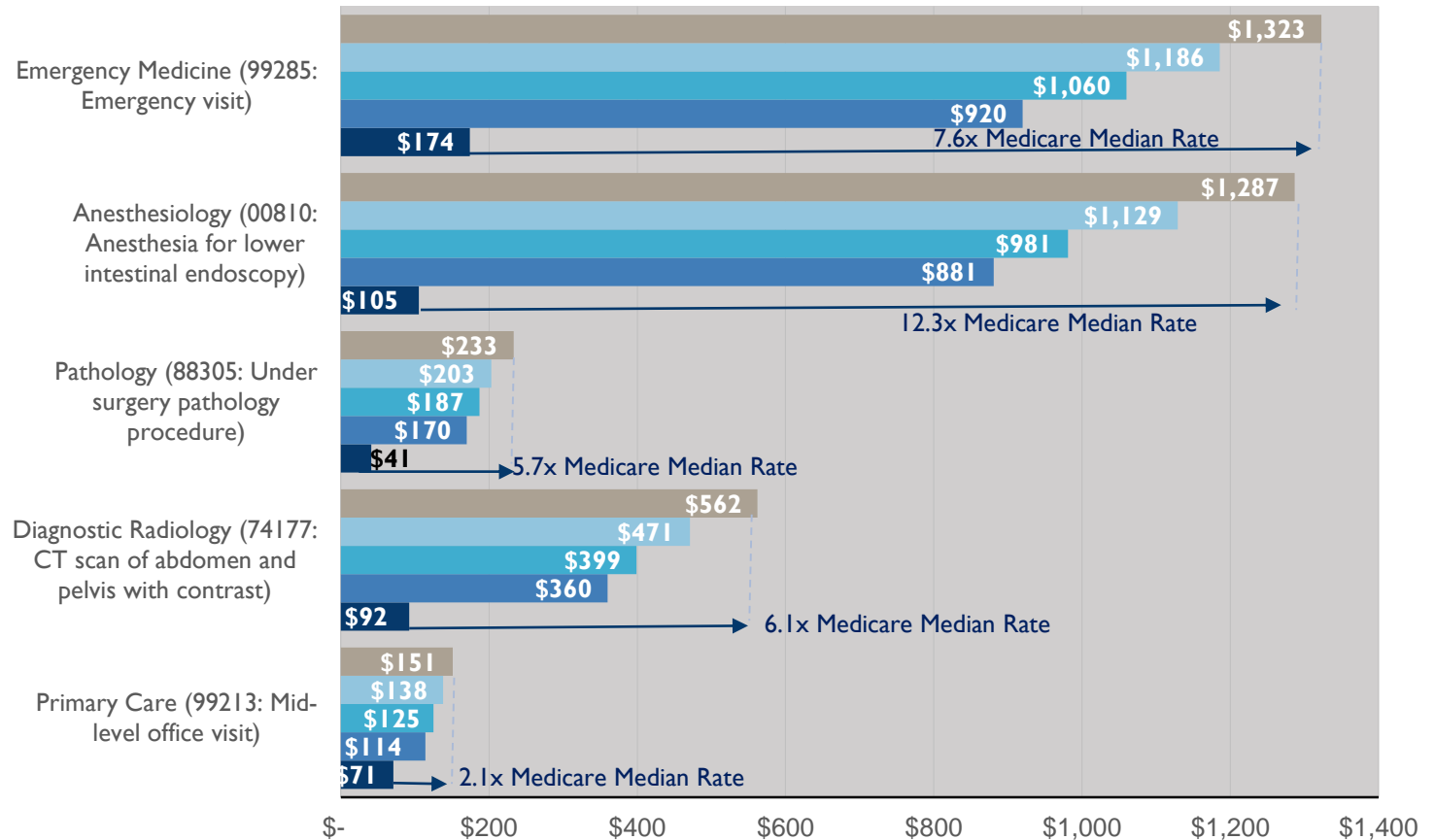
Ratio of Charges to Medicare Allowed Amounts by Physician Type, 2016

	Median	20 th Percentile	80 th Percentile
Anesthesiology	5.51	2.52	11.08
Emergency Medicine	4.65	2.79	7.50
Diagnostic Radiology	4.02	2.64	8.03
Pathology	3.43	2.25	5.10
All Other Specialists	2.27	1.46	4.01
All Primary Care	2.03	1.39	3.54

Source: Analysis of Medicare Provider Utilization and Payment Data: Physician and Other Supplier Public Use Files, calendar year 2016

Charges and Median Medicare Rates for Common Physician Services

■ 80th Percentile of Charges ■ 70th Percentile of Charges ■ 60th Percentile of Charges ■ Median of Charges ■ Median Medicare Rate



Source: Analysis of Medicare Provider Utilization and Payment Data: Physician and Other Supplier Public Use Files, calendar year 2016. Services represent the professional component of common physician services for each specialty presented. Provider specialties are included in the data. The Primary Care specialty includes family practice and internal medicine physicians.

This market failure affects all patients through high in-network rates

Average contracted commercial payment rates:

- Anesthesiologists ≈ 350% of Medicare
- Emergency Medicine ≈ 300% of Medicare
- Radiologists ≈ 200% of Medicare
- Average across all physicians ≈ 125% of Medicare

Results in higher premiums for all commercially-insured

Key Elements of a Comprehensive Solution

Take patients out of the middle

- They should not have to initiate action

Be comprehensive

- Broader than emergency
- All types of health plans
- Protect self-insured as well as fully-insured

Avoid policies that increase health spending

Billing Regulation

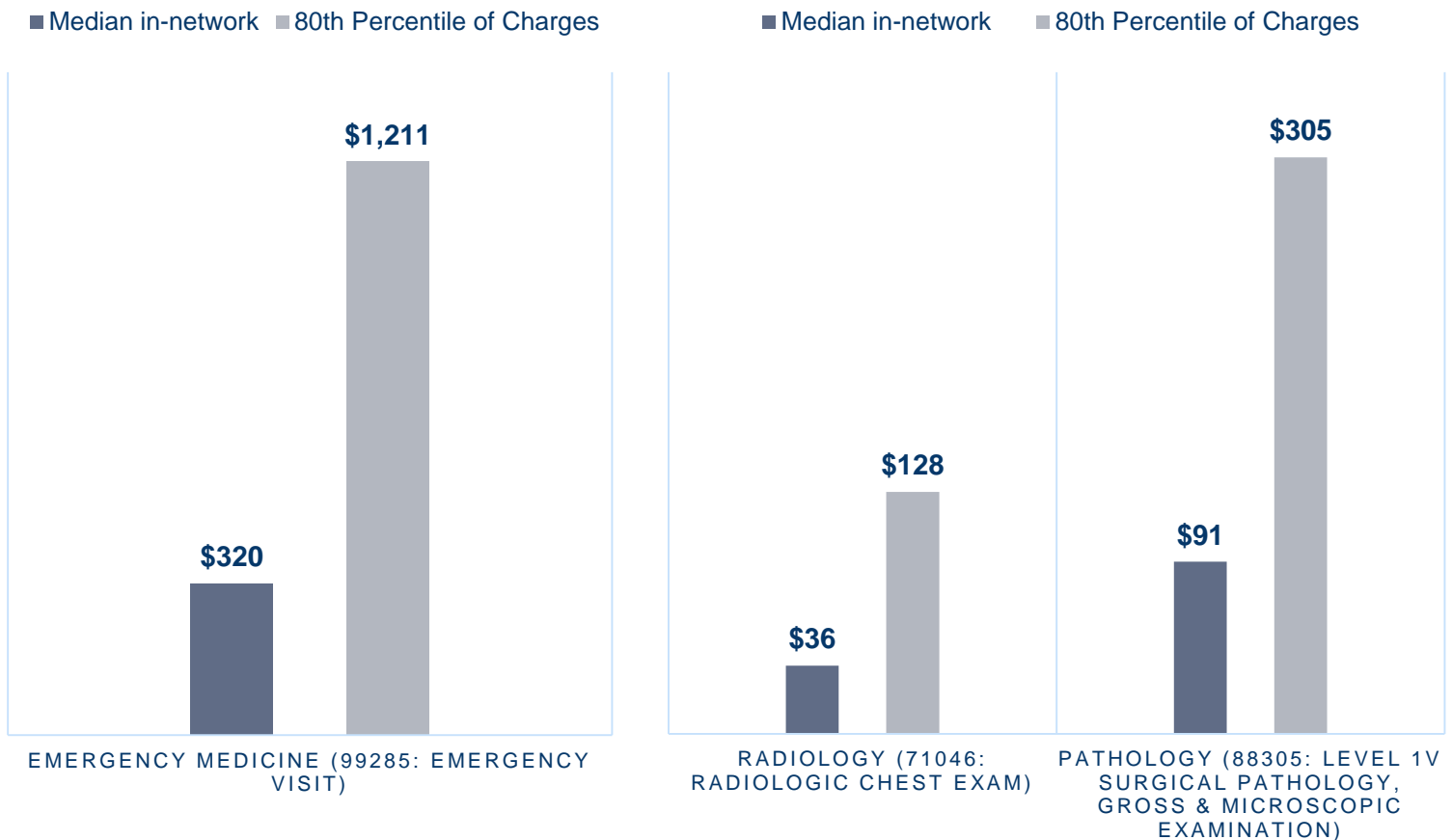
Two parts

- Cap out-of-network charges state-wide (avoids ERISA preemption)
- Insurers treat OON care as in-network

Establishing the limit

- Do not base on billed charges
- Avoid basing limits on current contracted rates
 - Already way too high
- Little risk of setting limit too low
- Uneasy about arbitration, but same considerations apply

New York: Median In-Network Rates vs. 80th Percentile of Charges



Source: FAIR Health, 2018-19

Contracting Regulation

Prohibit emergency & ancillary clinicians from independent billing

- Emergency and ancillary clinicians contract with facilities – not health plans
- Services get bundled into facility rate negotiated between facility and health plan
 - Analogue to nurses
- State regulatory authority over providers avoids ERISA preemption

Potential for a real market

Recommendations

Option #1: Regulate billing by tying cap to a multiple of Medicare rates based on ratio of commercial rates to Medicare for other specialties

- Can vary by state & market
- On average 125%

Option #2: Hybrid of contracting and billing regulation

- Contracting regulation for facility-based services
- Billing regulation for OON EDs and ambulances

Federal Role

Same considerations apply

Can fully protect self-insured plan enrollees

Air ambulance services

Pre-empt existing state laws?