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Legislature rejects Hochul's surprise billing reforms, siding with doctors and hospitals

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Amanda D'Ambrosio

State lawmakers rejected Gov. Kathy Hochul's proposals to overhaul New York's system to resolve surprise medical billing disputes, fueling a battle between insurers and medical providers over how much doctors get paid for out-of-network services.

In their one-house budget proposals released Monday, the state Senate and Assembly omitted Hochul's reforms to so-called independent dispute resolution. When doctors and insurers can't agree on how much plans should pay for an out-of-network service, they go through a behind-the-scenes arbitration to allow a neutral third party to decide how much to reimburse.

Hochul's budget proposal would save \$56 million a year, according to the Budget Division, by making Medicaid exempt from the independent dispute resolution process and by bringing in the state's Empire Plan. The Empire Plan covers state employees. The governor's budget also proposes lowering the benchmark rates that are used in arbitration, tying them not to what providers charge for services but for the average rates paid by private insurers. Proponents say the shift is a more accurate representation of the market rate.

The divide between the governor and the legislature mirrors a feud between providers and health insurers over payment disputes. The governor's reforms are backed by insurers, which complain that reimbursements for out-of-network services have skyrocketed in recent years. But doctors and hospitals say that making the arbitration system less accessible through the governor's measures will reduce patients' access to emergency and specialty care.

Nicolette Simmonds, a spokeswoman for the governor, said "Governor Hochul looks forward to negotiating with her partners in the legislature to reach a budget agreement that makes New York safer and more affordable."

New York implemented the independent dispute resolution process in 2015 under its surprise billing law. The legislation preceded the federal No Surprises Act, which established a similar process to allow providers and insurers to dispute medical bills without forcing patients to get stuck in the middle.

But the state's process is benchmarked to the high rates that hospitals and doctors charge for specific services — a sticker price that no one actually pays, said Michael Kinnucan, senior health policy adviser at the Fiscal Policy Institute, a left-leaning think tank. That has resulted in much more lucrative payments to specialty providers who see Medicaid patients out-of-network, and an incentive for physicians to stay out-of-network, he said.

“You can have kind of a bonanza if you are an out-of-network provider,” Kinnucan said. “The problem with setting up this kind of process is that over time, bad actors figure it out.”

Insurance companies say they are paying much more for specialty services such as anesthesiology and radiology through the independent dispute resolution process. Plans that cover 91% of the mainstream Medicaid population paid \$116.5 million through the arbitration process in 2024 — up significantly from the \$3.2 million they would have paid under the Medicaid rate, according to a survey conducted by the New York Health Plan Association, which represents insurers.

The number of Medicaid claims going through the payment dispute process have also increased. Insurers represented by the association received more than 14,000 claims in 2024, a 1,700% increase from the 778 claims they received in 2021.

In one instance, a Medicaid patient received back surgery from an out-of-network physician at a downstate hospital, for which Medicaid paid \$3,000 under the fee schedule, according to the association. The provider disputed the payment and submitted a bill for \$566,000, and an arbitrator determined that the surgeon should receive \$514,000.

“Considering the focus that's been placed on identifying fraud, waste and abuse, I mean this is a clear example of it,” said Eric Linzer, HPA president and CEO.

Dr. David Jakubowicz, president of the physician trade group Medical Society of the State of New York, said that insurers have “manufactured this ‘crisis,’” adding that they have previously negotiated rates with physicians. He said that insurers' efforts to “gut access to a fair IDR appeal mechanism through the budget will only make patient access to needed emergent care worse.”

“The choice between a doctor rendering emergent surgical care at 2 a.m. versus an insurer who doesn't even have an operator available at that time is easy,” Jakubowicz said. “The legislature has wisely sided with access preservation.”