# New York Consumers, Employers Facing Higher Costs Under Arbitration

*Recent Data Highlight Need for Market-Based Benchmark*

Recent data from the New York Department of Financial Services (DFS) provides a comprehensive look at the experience with the state's arbitration process to resolve surprise medical bills. Based on analysis from researchers at *USC-Brookings Schaeffer Initiative for Health Policy*, the "data suggest that the state's arbitration process is substantially increasing what New Yorkers pay for health care." Highlights from the report and subsequent news coverage are included below.

## USC-BROOKINGS SCHAEFFER ON HEALTH POLICY

Experience with New York's arbitration process for surprise out-of-network bills // Oct. 24

- "The biggest concern raised about NY's arbitration process is the state's guidance that arbiters should consider the 80th percentile of billed charges (as calculated by FAIR Health, an independent insurance claims database) when determining the final payment amount. Providers' billed charges, or list prices, are unilaterally set, largely unmoored from market forces, and generally many times higher than in-network negotiated rates or Medicare rates. And telling arbiters to focus on 80th percentile of charges—that is, an amount higher than what 80% of physicians charge for a given billing code—drives this standard still higher."

- "…the New York Department of Financial Services report finds that arbitration decisions have averaged 8% higher than the 80th percentile of charges."

- "Therefore, it is likely that the very high out-of-network reimbursement now attainable through arbitration will increase emergency and ancillary physician leverage in negotiations with commercial insurers, leading either to providers dropping out of networks to obtain this higher payment, extracting higher in-network payment rates, or some combination thereof, which in turn would increase premiums. If insurers are additionally increasing out-of-network payment for services in order to reduce the risk of losing in arbitration, that would further amplify this inflationary impact on premiums."

## Forbes

How Arbitration For Surprise Medical Bills Leads To Runaway Costs & Higher Premiums // Sept. 25

- "The [private equity] lobbyists love arbitration for a simple reason: it leads to higher prices. In New York, the largest state where arbitration is used for surprise bills, arbitrators are instructed to use the 80th percentile of hospital list prices as the benchmark for their decision. These hospital list prices are a lot like paying full fare for an airline ticket; they often come out to 10 or 20 times what Medicare pays emergency rooms for the same services."

- "By benchmarking out-of-network prices at such a high rate, the New York law incentivizes ER doctors to raise their prices even higher, knowing that by doing so, the benchmark for arbitration will also go up."

- "In addition, if you want to arbitrate a claim in New York, you have to pay the state a fee of $395. There are about 12 million out-of-network emergency-room bills in the country each year for people with private insurance; applying these fees to every surprise bill would increase health care costs by $4.7 billion annually."

**AXIOS**
New York's very expensive surprise billing solution // Oct. 25

- "New York's surprise billing law — which providers hope will become the model for a national solution — has resulted in providers receiving some very high payments, according to a new analysis by the USC-Brookings Schaeffer Initiative for Health Policy."
- "Why it matters: Surprise medical bills impact two groups of people: The patients directly responsible for paying them, and the rest of us, who pay higher premiums as a result of their existence."
- "A solution resulting in higher provider reimbursements would still protect patients from enormous surprise bills, but it could raise health care costs and thus premiums."

**FierceHealthcare**
USC-Brookings report: New York arbitration law leading to higher costs // Oct. 25

- "USC-Brookings also doubted the state's report that the law had saved consumers $400 million, saying there is 'no supporting evidence provided and the actual data released in the report strongly suggests that the opposite is true.'"
- "The analysis added that more bills have faced an arbitration decision each year, increasing from 396 in 2016 to 1,014 in 2018. Of that 1,014, the provider won 402 of them and the insurer won 205."

**Kaiser Health News / NPR**
To End Surprise Medical Bills, New York Tried Arbitration. Health Care Costs Went Up // Nov. 5

- "'People think there's something magical about arbitration, that these brilliant geniuses sit down and look at all the facts to make a decision,' Adler says. 'They're normal people who don't have much more expertise than insurers or providers, and this strongly suggests they're just coming up with a rule of thumb.'"
- "According to the analysis, the number of bills undergoing arbitration went from 115 in 2015 to 1,014 in 2018. Many advocates of arbitration predict the number of claims will drop over time as insurers and providers work out claims themselves. Based on these numbers, though, this hasn't happened yet."
- "Insurance plans and doctors 'won' about the same number of cases, and in 2018 more cases seemed to go in the providers' favor. Yet, Adler points out, consumers appeared to lose either way."
- "That's because even when the insurance plan won, it was on average only 11% less than the 80th percentile, which Adler says is still about three times as much as a patient would pay if the doctor were in-network. Those extra costs, he says, get passed on in the form of higher premiums."