



# Surprise Billing: The Fight Continues

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November 12, 2020



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# Oversimplified Description of a Complicated Issue

Broad (public\*) agreement that surprise billing should be banned, and that patients should be “taken out of the middle.” All agree – in a surprise billing situation, patient should pay only their in-network cost sharing. But then...

Benchmark Price	Arbitration	Network Matching
OON bills paid at a price established by law/regulation (general consensus around “median in-network”.)	OON bills are negotiated between plans and providers. If no agreement, bills go to binding arbitration.	Hospitals and contractors (generally physicians) required to have the same networks. Eliminates <i>most</i> surprise bills.
Supported by purchasers, health plans, most consumer groups.	Supported by providers, private equity	Supported by many researchers.
Greatest cost savings.	Less cost savings.	Less cost savings.

*\*Private equity firms are making huge profits on surprise bills and use surprise billing as an intentional business strategy. I’m in no way convinced they want to solve this problem.*

- **May 2019** – Sens. Cassidy, Hassan, *et al* introduce first comprehensive surprise billing legislation of 116<sup>th</sup> Congress.
- **June 2019** – Senate HELP Committee chair and ranking member (Sens. Alexander and Murray) introduce and mark up Lower Health Care Costs Act, including comprehensive surprises billing fix.
- **July 2019** – House Energy and Commerce Committee (E&C) chair and ranking member (Reps. Pallone and Walden) introduce and mark up “No Surprises Act.”
- **December 2019** – HELP and E&C agree on bipartisan, bicameral text and seek to include in end of year funding package. House Ways and Means (W&M) Chair and Ranking Member (Reps. Neal and Brady) move to block inclusion, promising action in the new year.
- **February 2020** – W&M and Education and Labor Committees mark up their own separate legislation. Goal is to reach bipartisan, bicameral agreement to be included in next Continuing Resolution (May).
- **February 2020-Present – COVID.** Various attempts to include legislation in COVID relief packages have failed.

# Current status of Legislation

HELP/E&C/E&L Proposal	W&M Proposal
<p>After patient meets in-network cost sharing requirement, plan pays benchmark rate based on median in-network contracted rate.</p> <p>For bills in which the in-network rate exceeds \$750, either party may request binding “baseball style” arbitration. Arbitrator must consider in-network median contracted rate and may NOT consider billed charges.</p>	<p>No benchmark payment.</p> <p>After patient meets in-network cost sharing requirement, plan and provider exchange relevant information. If unable to reach mutual agreement on payment within 30 days, either party may initiate mediation process.</p>



1. Protect patients from surprise medical bills sent by out-of-network providers in as many situations as possible. This includes care for:
  - Emergency situations and respective services
  - Services or treatments performed at an in-network facility by an out-of-network provider that the patient did not elect to receive treatment from
  - Ambulatory transportation to any health care facility in an emergency.
2. Require health insurance providers to reimburse non-participating doctors based on a local benchmark based on **market-rates** negotiated by other doctors in the area.
3. Avoiding a cumbersome arbitration process that increases costs for patients, businesses, and taxpayers.



## Opportunities

- Biden has highlighted this as an issue (but so did Trump). Has not taken a position on payment rates.
- New Congress (may) provide an opportunity for a reset.
- Health policy will be important in 2021 ... there may be legislative vehicles.

## Challenges

- Underlying argument has not been resolved and neither side shows interest in budging.
- Champions of market-based benchmark (Alexander, Walden) are retiring.



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