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# New surprise billing proposal by Ways and Means pushes for arbitration guided by median rates

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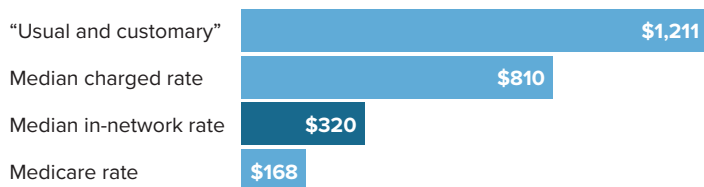
The House Ways and Means Committee has released a long-expected plan to eliminate surprise medical bills, setting up a showdown between several competing proposals. The new proposal adopts a similar set of financial protections for patients, but differs in its approach to resolving payment disputes between providers and insurers.

Unlike a competing proposal by the House Energy and Commerce and Senate HELP committees, the Ways and Means bill would not create a federal benchmark that sets a default price for many surprise bills. Instead, all surprise bills could be brought to an independent mediator — the approach favored by hospital and doctor groups.

However, the arbitration process proposed by Ways and Means would instruct the mediator to consider the median in-network rate for the service under dispute, and prohibits consideration of more generous standards such as charged rates or “usual and customary” rates.

## Comparison of proposed price benchmarks

Cost of an ER visit with high severity in New York state



The decision to recommend a particular reference price will likely affect the proposal’s overall cost to the federal government.

CBO estimates that proposals like the Energy and Commerce bill with a firm benchmark at the median in-network rate would save more than \$20 billion over ten years. In contrast, a provider-friendly proposal by Reps. Raul Ruiz (D-Calif) and Phil Roe (R-Tenn.) that encourages arbitration and a “usual and customary” reference rate at the 80th percentile of charges would cost at least \$10 billion.

Rep. Lloyd Doggett (D-Texas), head of the Ways and Means health subcommittee, said it is crucial that the bill generates significant savings. A source familiar with the committee’s discussions estimated about \$10 billion in savings. Doggett also said he will push for an amendment that would crack down on private equity firms profiting from surprise billing.

The House Education and Labor Committee has also waded into the fray, releasing its own bill that is broadly similar to the Energy and Commerce bill. Despite the multitude of competing bills, lawmakers insist their approaches are not far apart and are eyeing a May deadline for resolving the issue.

## Comparison of recently proposed surprise billing legislation

	HOUSE WAYS AND MEANS PROPOSAL	HOUSE ENERGY AND COMMERCE, SENATE HELP PROPOSAL
<b>Financial protections for patients</b>	In surprise billing situations, patients cannot be sent “balance bills” for out-of-network costs and are responsible for paying only their in-network cost-sharing rates, which will apply to their deductible or out-of-pocket max	In surprise billing situations, patients cannot be sent “balance bills” for out-of-network costs and are responsible for paying only their in-network cost-sharing rates, which will apply to their deductible or out-of-pocket max
	Health plans are required to give patients <b>advance cost estimates</b> and information about the network status of their providers for all services scheduled at least three days in advance	Providers and health plans are required to provide patients <b>estimates of their out-of-pocket costs</b> within two days of a request
<b>When do financial protections apply?</b>	Emergency departments	Emergency departments
	Out-of-network providers at in-network facilities, unless the patient signs consent form informing them of out-of-network costs	Out-of-network providers at in-network facilities, unless the patient signs consent form informing them of out-of-network costs
	Out-of-network ancillary services at in-network facilities	Out-of-network ancillary services at in-network facilities
		<b>Air ambulances</b>
	Mandatory 90-day in-network cost sharing period for <b>patients with complex conditions</b> whose network status changes mid-treatment	
<b>Payment standard to replace balance bills</b>	Arbitration for any payment disputes lasting longer than 30 days, with <b>no minimum threshold</b> , and potential for “batching” similar claims together	Median in-network rate, with arbitration for bills when the median in-network rate is <b>more than \$750</b>
	Independent mediators instructed to <b>consider median in-network rate</b> , and are prohibited from considering billed or “usual and customary” charges	Mediators instructed to consider training, education, market share, provider experience and the complexity of care provided
	Defers to existing state law on surprise billing	Defers to existing state law on surprise billing
<b>Claims data and provider directories</b>	Creates a database of <b>air ambulance costs and claims</b> published by HHS	Authorizes state grants to create <b>all-payer claims</b> databases
	Requires each insurer to establish a directory of in-network providers, either available online or within one business day	Requires each insurer to establish a directory of in-network providers, either available online or within one business day

Sources: Senate HELP Committee; House Ways and Means Committee; FAIR Health