

# What You Need To Know About ‘Surprise Bills’

Update | July 13, 2020

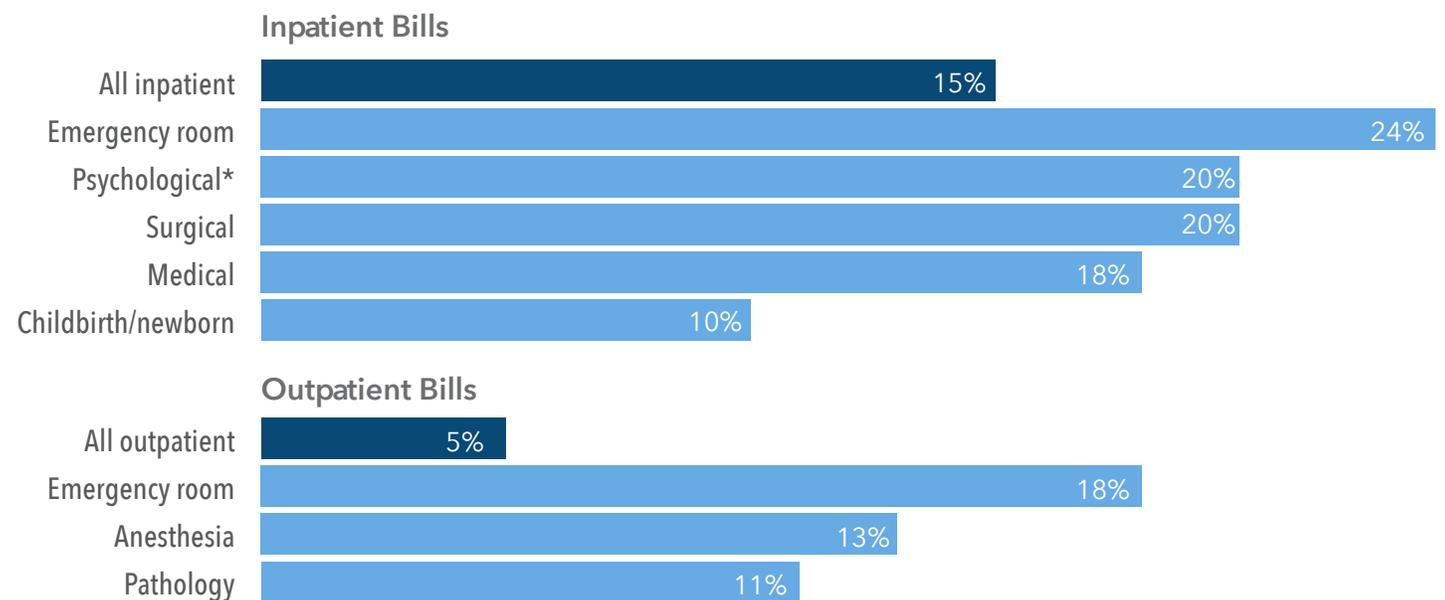
## Policy Update

After more than a year of Committee hearings, legislative proposals, and stakeholder conflict, Congressional momentum to address surprise medical billing has stalled in the wake of the novel coronavirus. However, recently the White House has renewed their to push for a Congressional ban of surprise medical bills—potentially as part of the next coronavirus package—aiming to score a legislative victory for the President and Republicans up for reelection.

<p>“Surprise” medical bills, which occur when insured patients unwittingly receive care outside their insurance network, can be financially devastating.</p>	<p>President Donald Trump prodded Congress to send legislation stopping surprise bills to his desk last year, and lawmakers were optimistic they could come together on a fix.</p>	<p>But the issue is divisive among powerful health care interests, which disagree on how to resolve the payment disputes.</p>	<p>The Trump administration is revisiting the issue after momentum stalled. It would give both Democrats and Republicans a consumer win to tout on the campaign trail.</p>
--	--	---	--

### Surprise out-of-network charges are more common in bills for emergency and psychological care

Kaiser Family Foundation analysis of employer based coverage at in-network facilities



Source: PoliticoPro, Pro Analysis, Gary Claxton et. al., “An analysis of out-of-network claims in large employer health plans,” Peterson-Kaiser Health System Tracker

## Surprise Medial Bill Proposals

Lawmakers have introduced a number of proposals over the past year to address surprise medical bills, including:

- **Senate HELP & House E&C Agreement:** Benchmark rate based on commercial median in-network rate, with arbitration backstop for bills over \$750
- **House Education & Labor Legislation:** Sets a federal benchmark payment and allow providers/payers to move to arbitration for bills over \$750; in addition to an air ambulance threshold of \$25,000
- **House W&M Legislation:** Requires providers/payers to enter a 30-day negotiation before escalating to baseball-style arbitration, where arbiter would consider median in-network rate and “other” factors
- **White House proposal:** Prohibits providers from sending surprise bills (balance billing) to patients, but does not mandate how providers and payors will resolve payment disputes; each dispute would need to be worked out on a case-by-case basis

## Key Takeaways for Leading Health Systems

*The proposals differ in terms of settling payment disputes but agree on protecting the patient.* Stakeholders agree that patients should be shielded from these hefty bills; however, payers and providers do not agree on who should pick up the bulk of the bill. Hospital and provider groups have supported voluntary negotiation methods, backed by independent dispute resolution (IDR)—known as arbitration—whereas insurers have lobbied for a federal benchmark payment rate.

*Surprises Billing was supposed to be last year's easy policy fix, but has turned into one of the most divisive issues on the Hill.* The Senate HELP Committee, led by Sen. Lamar Alexander (R-TN), and the bipartisan leaders of the House Energy and Commerce Committee struck a deal in December, but they were unable to include the proposal in the end-of-year government funding package. Then, lawmakers intended to include a surprise billing fix in the May extenders package, to utilize savings to fund expiring health care programs, but those efforts were sunk by the pandemic.

*Currently, providers are barred from sending balance bills to coronavirus patients if they accepted dollars from the Provider Relief Funds (PRF).* The CARES Act and Paycheck Protection Program and Health Care Enhancement Act allocated \$175B to hospitals and other providers but the money comes with strings attached. Providers are prohibited from balance billing COVID-19 patients—presumed or diagnosed—broadly viewing every patient as a potential coronavirus case.

*The White House proposal seems simple, but stakeholders are still split.* The Administration recently floated a simpler fix to the surprise billing issue that would outlaw providers from sending balance bills, but does not clarify how payment disputes are resolved. The proposal hasn't yet received a CBO score, but informal guidance suggests that the proposal could raise premiums by driving up provider rates, which is unfavorable to lawmakers. The proposal falls in line with recommendations made by the American Hospital Association (AHA), but the American Medical Association (AMA) has expressed concerns that the policy does not guarantee physician payment. Meanwhile, insurers and employers fear that without a formula to resolve payment disputes, they could face costly litigation if hospitals or doctors want higher rates.

*Odds of Congress addressing balance billing weaken as coronavirus cases rise.* While there may be a legislative push for a broad ban on balance billing ahead of the November election, it does not look favorable for lawmakers to ostracize the provider community that remains on the frontlines of the pandemic. Furthermore, the issue is still extremely divisive, especially among Senate Republicans, and a vote on the issue could jeopardize key Senators' bids for reelection.

## Power Players



### Frank Pallone

The House Energy and Commerce chair has worked in lockstep with the panel's ranking member, Rep. Greg Walden (R-Ore.), to get a bill out of committee and to hammer out a bicameral proposal.



### Lamar Alexander

Stopping surprise medical bills is viewed as a legacy item for the retiring Senate HELP chair, who has secured a number of deals with ranking member Patty Murray of Washington.



### Richard Neal

The House Ways and Means chair has thrown his weight behind a more provider-friendly version of the legislation, which envisions negotiations between health plans and providers with help from an independent mediator if there's an impasse.



### Bill Cassidy

The Louisiana Republican has been instrumental in pushing for the Senate to include doctor-favored arbitration, and also released a bipartisan bill with several colleagues.

### Doctor Patient Unity

This dark money group spent nearly \$54 million dollars last year to oppose the leading congressional legislation to end surprise medical bills. Two private equity-backed physician staffing companies, TeamHealth and Envision, were revealed to be the major funders.

### Coalition Against Surprise Medical Billing

The group of mostly insurers and employers banded together to lobby for Congress to pass their preferred federal benchmark fix and spent about \$4 million in ads last year.