



ACEP Surprise Billing Federal Advocacy Toolkit

NOVEMBER 2019

We Need to Hear from You

Surprise, or out-of-network, billing is the most important issue facing emergency physicians today. The decisions being made in Washington, DC could have widespread ramifications throughout the health care system, including cuts to physician reimbursement and reduced access for patients who need emergency care.

For nearly a year, ACEP has been doing [everything we can](#) to advocate on behalf of emergency physicians and your patients on this rapidly-changing situation. In January 2019, ACEP released [specific recommendations](#) to Congress that protects patients when emergency care is out-of-network.

We are at a pivotal moment in our legislative efforts, and our grassroots advocacy is having an impact. Your livelihood as a physician is at risk both in terms of sharp reductions in salaries and reimbursement and restricted opportunities for where you can practice. These decisions could also reduce access to quality care for your patients. There is still time though to **raise your voice and influence the outcome**.

The following toolkit provides messaging guidance and other resources such as a template op-ed and social media posts to help promote ACEP’s advocacy position.

Thank you for fighting for the millions of emergency patients who count on you every day.

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Ways to Advocate

We need everyone to raise their voice to advocate for the specialty and your patients. Please take this opportunity to:

- [Urge your members of Congress](#) not to rush legislation and to consider independent dispute resolution (IDR) as the best solution to protect patients from surprise billing.
- Write a [letter-to-the-editor](#) or an [op-ed](#) using the templates below.
- Join the conversation on social media by using the sample Facebook and Twitter posts [below](#).
- Share ACEP's [one-pager and infographic](#) to advocate for IDR.
- Help spread the word among your patients about ACEP's surprise billing campaigns: [Out of the Middle](#), an ACEP-led consumer advocacy campaign, and Protect Emergency Care
- Join the [911 Network](#)—ACEP grassroots advocacy group—to stay up-to-date on relevant federal activity and lend your voice to speak out on behalf of thousands of emergency physicians and millions of patients.
- Join [ACEP's Spokespersons' Network](#) to work with our public relations efforts to promote our key messages via the media.
- View ACEP's publicly available surprise billing advocacy materials, such as press releases, polls and more [here](#).

Talking Points

The following reflect ACEP's priorities and the current political landscape related to surprise billing. Members should use these talking points when communicating with policymakers, media and other external groups. Focus on one topline message at a time, using supporting messages where appropriate. Please use the [IDR infographic and fact sheet](#) to explain how the "baseball-style" independent dispute resolution process works.

Emergency physicians have consistently called for a federal solution to protect patients from surprise billing without compromising access to care.

- Patients shouldn't have to choose between life and debt. That's why ACEP has been working with Congress since early 2018 and has consistently supported a ban on balance billing of patients, as long as patients' access to care is not compromised.

The issue of surprise billing is complicated, and any solution will impact many aspects of the health care system. Congress needs to be thoughtful about passing the best federal solution.

- Several proposals currently being debated in Congress will not only fail to solve surprise billing but could threaten patients' access to emergency care—particularly in rural and underserved communities.
- Rushing a quick fix into an end-of-year bill will lead to long-term consequences and won't successfully protect patients from surprise bills. Patients deserve a cure, not a band-aid.

Rate setting would be the tipping point for a host of unintended consequences for patients, including massive physician shortages, increased wait times, and delayed access to care.

- Rate-setting would allow insurers to undercompensate for services provided to patients both in- and out-of-network, straining already thin physician and hospital resources and limiting the ability to improve clinical quality, attract top physicians, and keep hospitals open.
- Under the EMTALA law, I must screen and stabilize any patient who walks in to my emergency department before there can be any discussion of insurance status or payment. Emergency physicians are proud to provide this care since otherwise many patients would go without treatment. But this mandate means that nearly 70 percent of emergency care is uncompensated or undercompensated.

Faced with the prospect of having our payments slashed, emergency physicians are worried for their livelihood, their patients and the future of the specialty.

- Legislation tying payments to median in-network rates will reduce annual revenue for emergency physicians up to 40 percent*.
- Combined with an upcoming estimated 9 percent Medicare fee schedule cut for emergency services in 2021, and this year's expiring .5 percent MACRA annual updates, emergency physicians are looking at an overall cut of almost fifty percent in the near future.

A quarter of the House of Representatives [supports legislation](#) that contains a workable independent dispute resolution (IDR) process.

- IDR is a proven market-based approach that brings everyone to the table, making it an efficient process where insurers and physicians can negotiate fairly and quickly, without added bureaucracy or cost.
 - In New York, this model has almost [eliminated surprise bills](#), while insurance premiums and health care costs in the state have grown more slowly than the rest of the nation.
 - According to a recent [Morning Consult poll](#), 69 percent of Americans prefer a third-party resolution process over allowing the government to set physicians' rates.
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Letter to the Editor Template

The following is a template letter to the editor for you to tailor and submit to your local paper of record. Most publications provide guidance on how to submit letters on their website. Most letters to the editor average 200 to 500 words, so please be mindful of word count parameters specific to the publication to which you're submitting.

Dear Editor:

We've heard surprise billing stories from all over the country, and there is no doubt that a federal solution is needed to protect patients. It's clear the issue of surprise billing is complicated, and any solution will impact many aspects of the health care system.

When it comes to surprise billing, patients deserve a cure, not a short-term band aid. A quarter of the House of Representatives [supports legislation](#) that contains a workable independent dispute resolution (IDR) process, which protects patients without impacting compromising access to care.

IDR is a fast and fair process for physicians and insurers to use to resolve payment disputes (without any need for patient involvement). IDR has been proven to nearly eliminate surprise bills in New York without significantly increasing health costs. The other legislative option, government rate setting, would be the tipping point for a host of unintended consequences for patients, including massive physician shortages, increased wait times, and delayed access to care.

To provide meaningful and long-lasting protection for patients, Congress needs to be thoughtful about passing the best federal solution. Rushing a quick fix into an end-of-year bill will lead to long-term consequences and won't successfully protect patients from surprise bills. Patients deserve a cure, not a band-aid.

Op-Ed Template

The following is a template op-ed for you to tailor and submit to your local paper of record. Most publications provide guidance on how to submit op-eds on their website. When possible, use an anecdote or story to add a powerful emotional element. Please be mindful of word count parameters specific to the publication to which you are pitching the op-ed.

Patients deserve a cure for surprise billing, not a short-term band aid

We've heard surprise billing stories from all over the country, and there is no doubt that a federal solution is needed to protect our patients. It's clear the issue of surprise billing is complicated, and any solution will impact many aspects throughout the health care system. That's why it's critical that Congress take a thoughtful approach when it comes to identifying the best approach.

Several proposals currently being debated at the federal level will not only fail to adequately solve surprise bills but could threaten patients' access to emergency care—particularly in rural and underserved communities. A federal solution that relies on rate setting opens the door to a host of unintended consequences for patients, including massive physician shortages and increased wait times. Rate-setting would allow insurers to undercompensate for services provided to patients both in-

and out-of-network, straining already thin physician and hospital resources and limiting the ability to improve clinical quality, attract top physicians and keep hospitals open.

Instead, a [quarter of the House of Representatives supports legislation](#) that contains a workable independent dispute resolution (IDR) process. IDR is a proven market-based approach that brings everyone to the table, making it an efficient process where insurers and physicians can negotiate fairly and quickly, without added bureaucracy or cost. Most importantly, patients are *never* involved, since they only pay the in-network rate.

This simple and efficient solution has effectively incentivized providers to charge reasonable rates and insurers to pay appropriate amounts in several states. In New York, for example, this model has almost [eliminated surprise bills](#), while insurance premiums and health care costs in the state have grown more slowly than the rest of the nation. In fact, when given a choice, 69 percent of [Americans prefer a third-party resolution process](#) over allowing the government to set doctors' rates.

I understand the pressure Congress must feel to fix this critical issue, but lawmakers must be thorough in their mission to find meaningful and long-lasting protection for patients. Rushing a quick fix into an end-of-year bill will lead to long-term consequences and won't successfully protect patients from surprise bills. Patients deserve a cure, not a band-aid.

Chapter Newsletter Blurb

The following is a blurb about surprise billing to place on your ACEP chapter's website.

Surprise billing is the most important issue facing us as emergency physicians today. The decisions being made in Washington, DC. right now, could have widespread ramifications throughout the health care system, including cuts to your reimbursement and reduced access for patients who need emergency care.

Congress needs to protect our patients and their families when their insurance coverage fails them and keep them out of the middle of disputes between insurers and providers. To help us do that, ACEP has created an advocacy toolkit that we can use when communicating with the public and policymakers. You can download the ACEP Member Surprise Billing Advocacy Toolkit [here](#).

Sample Social Media Posts

The following are template social media posts for members to use on Twitter. ACEP members should tag their members of Congress when appropriate and use the following hashtags to tap into ongoing

conversations: #SurpriseBilling and #OutOftheMiddle. Make sure you follow [@EmergencyDocs](#) on Twitter and like and share our posts about surprise billing.

Suggested Facebook Posts

- Emergency physicians have consistently called for a federal solution to protect patients from out-of-network, or surprise billing, without compromising access to care. Patients should not have to pay any more out-of-pocket costs for emergency care than they would have paid if it was in-network. protectemergencycare.org
- To provide meaningful and long-lasting protection for patients, Congress needs to be thoughtful about passing the best federal solution. When it comes to surprise billing, patients deserve a cure, not a band-aid. protectemergencycare.org
- A quarter of the House of Representatives supports legislation that contains a workable independent dispute resolution (IDR) process. IDR is a proven market-based approach that brings everyone to the table, making it an efficient process where insurers and physicians negotiate fairly and quickly, without added bureaucracy or cost. protectemergencycare.org
- In New York, IDR has almost [eliminated surprise bills](#), while insurance premiums and health care costs in the state have grown more slowly than the rest of the nation. We should look to homegrown successes rather than resort to government rate setting. protectemergencycare.org
- The issue of surprise billing is complicated, and any solution will impact many aspects throughout the health care system. Rate setting opens the door to a host of unintended consequences for patients, including massive physician shortages, increased wait times and delayed access to care. protectemergencycare.org

Suggested Tweets

- Emergency physicians have consistently called for a federal solution to protect patients from #surprisebilling, without compromising access to care.
- The issue of #surprisebilling is complicated, and any solution will impact many aspects of the health care system. Congress needs to be thoughtful about the best, long-term solution for patients. protectemergencycare.org
- Several proposals in Congress will not only fail to solve #surprisebilling but could threaten access to emergency care—particularly in rural and underserved communities. protectemergencycare.org
- Rate setting would be the tipping point for a host of unintended consequences for patients, including massive physician shortages, increased wait times and delayed access to care. Patients deserve a better solution to #surprisebilling. protectemergencycare.org
- A quarter of the House supports legislation that contains a workable independent dispute resolution process (IDR). IDR protects patients without compromising access to care. protectemergencycare.org
- IDR is a proven market-based approach that brings everyone to the table, making it an efficient process where insurers and physicians can negotiate fairly and quickly, without added bureaucracy or cost. #surprisebilling protectemergencycare.org
- Congress needs to be thoughtful about passing the best federal solution. When it comes to #surprisebilling, patients deserve a cure, not a band aid. protectemergencycare.org

- Rushing a quick fix to #surprisebilling is not the best option to provide meaningful and long-lasting protection for patients.
- Hundreds of thousands of physicians agree IDR is the best solution to take patients out of the middle without unintended consequences. <https://www.emergencyphysicians.org/press-releases/2019/9-6-2019-providers-to-congress-protect-patients-from-surprise-bills-without-compromising-access-to-care>

Surprise Billing FAQ

The following are frequently asked questions (FAQs) and ACEP's responses to why the issue of surprise billing is so important to the field of emergency medicine and how you can advocate on behalf of your profession. For questions about working with media, surprise billing policy details or advocacy efforts, please contact PR@acep.org.

Q. What is “surprise billing”?

More than half of Americans have received a surprise medical bill in the past year for a cost they thought was covered by their insurance. Often, these surprises result from a lack of understanding of complex insurance benefits or increasingly high deductibles.

Emergency physicians agree that a federal solution would help take patients out of the middle of billing disputes that can sometimes arise between insurers and providers. But, if it's not done right, patients' access to care could be in jeopardy and health insurance companies will be the big winners—leaving patients out in the cold.

Q. How does the unique nature of emergency care affect surprise billing?

Unlike most physicians, emergency physicians are prohibited by law from discussing costs of care or insurance details with patients until they are screened and stabilized.

This protection is known as EMTALA (Emergency Medical Treatment and Labor Act) and ensures that physicians focus on immediate needs. However, it means that patients may not fully understand the potential costs of their care or limits of their insurance coverage until they get the bill.

Q. What solutions is Congress considering?

There are proposals in the House and Senate under various stages of discussion; here's what you need to know:

There is bipartisan consensus for taking patients “out of the middle” of billing disputes. The challenge facing legislators is to identify a solution that avoids granting excessive leverage to insurance companies, does not cause massive systemic disruption and does not delay or impede access to emergency care.

If the legislation uses a “**benchmark**” to tie rates for out-of-network (OON) emergency care to rates for care that is provided in-network, then even future in-network rates will likely decrease over time. To encourage fair contracting that reflects local market conditions, benchmarks that cap or set a specific formula for payment for physicians treating out-of-network patients should be avoided.

Establishing a benchmark could have a ripple effect on future contracts, since the OON payment rate becomes the new natural “high” in a geographic area, and future in-network contracts will always be lower. As this continues year-over-year, there will be a downward spiral with potentially disastrous consequences for maintaining patient access to emergency care. High acuity and complexity sites, including EDs in rural areas (where it is harder already to recruit physicians) may especially be put at risk with out-of-network caps.

Instead, ACEP is advocating for legislation that would implement a “**baseball-style independent dispute resolution (IDR)**” process to settle billing disputes between insurers and physicians. This approach is proven, fast and fair. It brings insurers and providers to the table and has nearly eliminated surprise bills in New York without adding significant costs or administrative delay.

Q. How does independent dispute resolution work?

ACEP created a [one-pager and infographic](#) to explain the IDR process, but IDR is simple and efficient process:

- Step 1: The patient receives out-of-network care.
- Step 2: The physician submits a claim to the patient’s insurer, but the patient is only responsible for costs as if they are in-network. The patient is now “out of the middle.”
- Step 3: Insurers will avoid paying the full amount for out-of-network care or attempt to underpay for care provided.
- Step 4: If neither side can agree on payment, either side can take the dispute to IDR.
- Step 5: A third-party mediator reviews the insurer payment and the physician claim.
- Step 6: The mediator picks one of the two offers. Each party wants the arbitrator to pick their offer so there is reason to avoid suggesting an amount that is excessively high or low.
- Step 7: Loser pays. The loser must pay the administrative and processing IDR fees.

Three noteworthy facts about independent dispute resolution:

- In New York in 2018, only 849 of 7.5 million cases (0.0113 percent) went to arbitration. This shows that encouraging fair claims and payments from the start disincentivizes entering the process in the first place. Of the 849 cases, final decisions were nearly evenly split.
- Insurance premiums in New York have grown slower than the rest of the nation. Out of network bills have [declined 34 percent](#). This means that independent dispute resolution is solving surprise bills without significantly raising costs for patients.
- According to a [Morning Consult poll](#), more than two-thirds (69 percent) of patients prefer a third-party resolution process over allowing the government to set doctors’ rates.

Q. What proposal does ACEP support?

The bipartisan HR 3502, the [Protecting People from Surprise Medical Bills Act](#), introduced by Representatives Ruiz, Roe, Bera, Morelle, Taylor, Bucshon, Shalala, and Wenstrup is the only legislative framework before Congress that takes patients out of the middle of medical billing disputes, continues to ensure patients have access to health care services when and where they need them, and provides a level playing field for physicians and insurers. In fact, ACEP Public Affairs staff worked closely with Rep. Ruiz, an emergency physician to develop the legislation.

Once patients are protected, this bill goes further than other legislative proposals to encourage transparency from insurance companies and ensure fair and efficient dispute resolution between

physicians and insurers. This independent process protects patients' access to care, without adding cost, bureaucracy, or delay.

Q. How do these proposals impact my clinical practice?

Legislation that caps reimbursement rates, especially at median in-network rates as is currently being considered in both the House and Senate, is detrimental to hospitals and physicians' ability to provide care for patients. This approach gives insurers a federally-supported incentive to lower their already opaque rates and further narrow provider networks—increasing the insurer advantage over physicians without any corresponding accountability or concern about what that could mean for patients.

Emergency physicians are the only safety net for many in our country, including vulnerable uninsured, Medicare, Medicaid, and pediatric patients. Should commercial insurance reimbursement rates be further scaled back, it will be very difficult for many emergency departments to keep their doors open, especially in rural or urban underserved areas.

While patient cost-sharing as a part of health insurance benefit structure can help incentivize patients to make better and lower-cost decisions when seeking scheduled health care, there are significant limitations to its effectiveness in an emergency.

Q. What do patients want?

According to a recent [Morning Consult poll](#), people want lower deductibles. Voters and patients are concerned about the impact of rate setting, especially in smaller communities already facing doctor shortages. And, patients believe insurance companies should pay for surprise medical bills. It is also clear that once patients are out of the middle, they prefer an independent dispute resolution over government rate setting. Some key findings from the poll include:

- More than three-quarters (81 percent) of patients believe the majority of costs associated with surprise medical bills are the responsibility of insurance providers.
- More than half (59 percent) of patients said they wish their insurance company provided plans with lower deductibles, so they could better afford the health care they need.
- More than two-thirds (69 percent) of patients prefer a third-party resolution process over allowing the government to set doctors' rates.
- Nearly two-thirds (63 percent) of Americans are concerned about the effect government rate setting would have on small communities already facing hospital and doctor shortages.
- When given a choice, 69 percent of Americans prefer a third-party resolution process over allowing the government to set doctors' rates.

Q. What is ACEP doing to promote emergency physicians as part of the solution?

For more than a year, surprise billing has been a central focus of ACEP's federal advocacy efforts, building on years of state-level advocacy already done on this issue. Much of this conflict over surprise billing is playing out in the media, and insurers have been trying their hardest to paint emergency physicians in a bad light.

The ACEP public relations team is working diligently to make sure the physician side of the story is fairly portrayed in the press and our advocacy team is working to make sure that the impact of these proposals on patients and physicians is understood by members of the House and Senate. ACEP

is spearheading the [Out of the Middle](#) coalition which seeks to galvanize health care consumers in support of the Protecting People from Surprise Medical Bills Act. ACEP is also running ad campaign targeting Capitol Hill policymakers and staff, www.ProtectEmergencyCare.org, to provide a deeper dive into the benefits of IDR and how proposals such as rate setting could negatively impact patient's access to care.

ACEP recommends a policy [framework](#) that would protect patients from surprise bills. View a [timeline](#) of ACEP advocacy actions. [Click here](#) for the latest press releases, polling data, policy positions and more.

Q. How is ACEP working with other medical specialties to fight insurers and misinformation?

To communicate the risk of granting too much leverage to insurance companies, ACEP is leading the [Out of the Middle](#) coalition which is advocating to Congress to ensure patients are taken out of the middle without impacting patient access and without letting insurance companies dodge their responsibility to cover care.

The coalition is currently running a digital campaign, including paid advertisement, to encourage health care consumers to send an email to Congress advocating on behalf of the "Protecting People from Surprise Medical Bills Act. "

Through this campaign, your patients can send messages directly to their member of Congress and express their preference for a bill that prioritizes independent dispute resolution once they are out of the middle.

The coalition comprises the American Academy of Ophthalmology, American Association of Neurological Surgeons and Congress of Neurological Surgeons, American Association of Orthopaedic Surgeons, American College of Emergency Physicians, American College of Radiology, American Society of Anesthesiologists, College of American Pathologists, and the National Association of Spine Specialists.

Q. What can I do to help?

We need everyone to raise their voice to advocate for the specialty and your patients. Please take this opportunity to:

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