



ACEP Surprise Billing Federal Advocacy Toolkit

Overview

SEPTEMBER 2019

Dear ACEP member,

Surprise billing is the most important issue facing emergency physicians today. The decisions being made in Washington, DC could have a far greater impact on how we care for our patients than even the Emergency Medical Treatment and Labor Act (EMTALA) did in 1986.

For nearly a year, ACEP has been doing [everything we can](#) to advocate on behalf of emergency physicians and our patients on this rapidly-changing situation. In January, 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 starting to have an impact. But still at risk are your livelihood as a physician (both in terms of sharp reductions in salaries and reimbursement expected, and reducing opportunities on where you can practice), and continued 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 to help promote ACEP's advocacy position.

Thank you for all you do to fight for the millions of emergency patients who count on us every day.

Sincerely,

Vidor Friedman, MD, FACEP
ACEP President

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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:

- [Schedule a meeting](#) with your legislators during the August congressional recess.
- [Ask your legislator to support HR 3502](#), The “Protecting Patients from Surprise Medical Bills Act,” introduced by Reps. Raul Ruiz (D-Calif.) and Phil Roe (R-Tenn.), and weigh in to raise the alarm on the dangers of the current benchmarking proposal under consideration in the Senate.
- Share ACEP’s [one-pager and infographic](#) to advocate for independent dispute resolution (IDR).
- Help spread the word about [Out of the Middle](#), an ACEP-lead consumer advocacy campaign, among your patients.
- Join the [911 Network](#). This ACEP grassroots advocacy group helps you lend your voice to the cause of thousands of emergency physicians and millions of patients.
- View ACEP’s publicly available surprise billing advocacy materials, such as press releases, polls and more [here](#).
- Access the [ACEP members-only surprise billing federal advocacy toolkit](#). Contents include regularly updated talking points, template social media posts, and other resources to help advocate for your position.
- Sign the [group pledge](#). If you are part of a practice group, consider signing a pledge to adopt best practices for engaging in good faith contract negotiations with insurers and supports patients during their care and through the billing process.
- [Watch the recent ACEP members-only townhall](#) on advocating for surprise billing during the August Recess.

Talking Points

ACEP members should use these talking points when talking about federal activity related to surprise billing with policymakers, the 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 (you can [download them here](#)) to explain how the “baseball-style” independent dispute resolution process works.

Patients shouldn’t have to choose between life and debt.

- My patients can’t choose when and where an emergency may happen and shouldn’t be punished financially for it.

Under federal law, I must screen and stabilize any patient who walks in to my emergency department before there is any discussion of payment or insurance status.

- While the Emergency Medical Treatment and Labor Act (EMTALA) law ensures access to care for all patients, it means that nearly [70 percent](#) of emergency care services goes uncompensated or undercompensated.
- Emergency physicians are proud to provide this care because otherwise many patients would go without treatment.

To end surprise billing and truly protect patients, Congress must level the playing field and improve transparency.

- In January, ACEP released specific [recommendations](#) to Congress that protect patients when emergency care is out-of-network.
- ACEP supports a prohibition of “balance billing” of a patient *provided* there is a corresponding fair and independent mechanism to resolve provider-insurer billing disputes.
- Patients should also not have to pay any more out-of-pocket costs for emergency care than they would have paid if it was in-network. Under current law, this patient protection only applies to coinsurance and copays for emergency care, *not* deductibles.

We need to take patients out of the middle without letting insurance companies dodge their responsibility to cover their care.

- According to a recent [Morning Consult poll](#), 81 percent of Americans believe the majority of costs associated with surprise medical bills are the responsibility of insurance companies.
- If insurers have their way, patients will have fewer choices, less quality and health care could become more expensive when patients need it most.

Government rate-setting would have unintended consequences to the healthcare system and could harm access to care for underserved areas.

- Rate setting would allow insurers to undercompensate for services provided to patients both in- and out-of-network, straining physician and hospital resources and limiting the ability to improve clinical quality, attract top physicians and keep hospitals open.
- According to a recent [Morning Consult poll](#), 63 percent of Americans are concerned about the effects of government rate setting on small communities that already face hospital and doctor shortages.

ACEP therefore supports instead H.R. 3502, the “[Protecting People from Surprise Medical Bills Act](#)” introduced in June by Reps. Raul Ruiz, MD (D-CA) and Phil Roe, MD (R-TN).

- Instead of government rate setting, the “Protecting People from Surprise Medical Bills Act” uses an independent resolution process to take patients out of the middle of disputes between insurers and medical providers.
- The “Protecting People from Surprise Medical Bills Act” makes sure patients only pay the in-network amount for emergency care, whether the care delivered was in- or out-of-network. This key provision will encourage health plans to expand their networks for emergency care—helping to address the root cause of “surprise bills,” narrow insurance networks.
- This bipartisan bill also goes further than any other legislative proposals to encourage transparency from insurance providers and make sure that patients understand the limitations of their insurance.

Independent dispute resolution is a simple and efficient solution that incentivizes providers to charge reasonable rates, and insurers to pay appropriate amounts.

- In New York, this model has almost eliminated surprise bills; furthermore, insurance premiums and health care costs in the state have grown more slowly than the rest of the nation.
- IDR is fast, efficient, and non-bureaucratic. Either the physician or insurance company can easily file or respond to IDR online. No lawyers, just an independent reviewer to evaluate the claims and make an impartial decision within 30 days. Most importantly, patients are NEVER involved, since they’ve already been taken out of the middle.
- According to a recent [Morning Consult poll](#), 69 percent of Americans prefer a third-party resolution process over allowing the government to set doctors’ rates.

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 shouldn't have to choose between life and debt

A trip to the emergency department can be an incredibly stressful experience. For someone experiencing a medical emergency, getting quality treatment as soon as possible should be the number one priority—not determining which providers are in-network, how much their deductible is, or thinking about how much treatment will cost. Unfortunately, more and more patients—even those who are well-insured—are realizing the stress of an emergency can continue long after they leave the hospital as medical bills begin to mount.

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. While some of these surprise hospital bills can result from treatment at in-network emergency facilities by out-of-network providers, much more often they result from a lack of customer understanding of complex insurance benefits, and shopping for coverage only based on total monthly premium price.

Congress is currently debating federal solutions to stop surprise billing and 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. Health insurers will be the big winners—leaving patients out in the cold.

Even the most diligent patients can receive unexpectedly high bills for out-of-network care because insurance networks are confusing and hard to navigate. To improve insurer transparency, there should be a requirement to print the deductible—the amount the patient must pay before their insurance kicks in—on the insurance card. By providing plan details in plain language, patients will have an easier time understanding their rights during an emergency and a clear grasp of what their insurer is, or isn't, willing to reimburse.

In addition, patients should only pay in-network costs for emergency care, whether the care they received was in- or out-of-network. Currently this protection applies to the copay and co-insurance, but Congress needs to extend this protection to the deductible. With many insurance plans having patient deductibles of several thousand dollars (if not higher), almost any emergency visit will leave the policy holder personally responsible for thousands before the insurer takes over any remaining portion of the bill.

However, a workable solution must be twofold; once patients are out of the middle of billing disputes and responsible only for in-network costs, there needs to be a fast and fair dispute resolution process for insurers and providers.

Recently, Reps. Raul Ruiz (D-Calif.) and Phil Roe (R-Tenn.) [introduced](#) the ‘Protecting People from Surprise Medical Bills Act,’ which goes further than any other surprise billing legislative proposals to also encourage transparency from insurance providers and make sure that patients understand the limitations of their insurance.

This legislation uses an independent dispute resolution (IDR)—a fast, non-bureaucratic process. Either the physician or insurance company can easily file or respond to IDR online. No lawyers, just an independent reviewer to evaluate the claims and make an impartial decision within 30 days. Most importantly, patients are NEVER involved, since they’ve already been taken out of the middle.

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; furthermore, 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.

We appreciate Congress’ commitment to eliminating surprise bills and encourage lawmakers to pass the ‘Protecting People from Surprise Medical Bills Act’ as it’s the best solution to take patients out of the middle without letting insurance companies dodge their responsibility to cover our patients’ care.

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 a significant impact on how we care for our patients.

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 on the [ACEP OON Billing State Advocacy page](#).

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 and @ACEPAdvocacy on Twitter and like and share our posts about surprise billing.

Suggested Facebook Posts

- Congress is currently debating federal solutions to stop surprise billing and take patients out of the middle of billing disputes. But, if it's not done right, patients' access to care could be in jeopardy. Health insurers will be the big winners—leaving patients out in the cold.
- Reps. Ruiz and Roe's "Protecting People from Surprise Medical Bills Act" is the only legislation that truly takes patients out of the middle of disputes between insurers and medical providers. It goes further than any other legislative proposals to encourage transparency from insurance providers and makes sure patients understand the limitations of their insurance.
- The "Protecting People from Surprise Medical Bills Act" makes certain that patients only pay the in-network amount for emergency care, whether the care delivered was in- or out-of-network. It extends this important protection to the patient's deductible—bringing down the amount a patient must pay out of their own pocket before their insurance kicks in.
- Instead of government rate setting, the "Protecting People from Surprise Medical Bills Act" uses an independent resolution process to take patients out of the middle of disputes between insurers and medical providers, which a majority of Americans prefer.
- Independent dispute resolution is fast, efficient, and non-bureaucratic. No lawyers, just an independent reviewer to evaluate the insurer's and provider's claims and make an impartial

decision within 30 days. Most importantly, patients are NEVER involved, since they've already been taken out of the middle.

- Patients shouldn't have to choose between life or debt. To end surprise billing, Congress must protect patients, level the playing field and improve transparency.
- My patients can't choose when and where an emergency may happen and shouldn't be punished financially for it. We need to take our patients out of the middle of medical billing disputes.
- My patients shouldn't be punished financially for seeking health care when they need it. Too many patients receive surprise bills for costs they thought would be covered by their insurance. Congress shouldn't let insurance companies escape their responsibility.

Suggested Tweets

- @CongressmanRuiz, @DrPhilRoe #SurpriseBilling legislation truly takes patients #OutOftheMiddle of insurer/provider disputes.
- @CongressmanRuiz, @DrPhilRoe #SurpriseBilling legislation goes further than any other bill to encourage transparency from insurance. #OutOftheMiddle
- A majority of Americans prefer a third-party resolution process over allowing the government to set doctors' rates. #OutOftheMiddle #SurpriseBilling
- Unlike "rate setting," IDR ensures more stability for small or rural hospitals and EDs, protecting patient choice and access to care. #SurpriseBilling
- With almost five years of data from New York, it's clear arbitration works for everyone—patients, providers, and insurers. #SurpriseBilling
- IDR protects patients without adding bureaucracy or costs, incentivizes fair negotiations from the start and won't disrupt the health system! #SurpriseBilling
- Patients shouldn't have to choose between life or debt. #OutOftheMiddle #SurpriseBilling
- My patients can't choose when and where an emergency may happen and shouldn't be punished financially for it. #SurpriseBilling #OutOftheMiddle
- #Congress needs to protect patients and their families when their insurance coverage fails them. #SurpriseBilling #OutOftheMiddle
- We need to take patients out of the middle of medical billing disputes without letting insurance companies dodge their responsibility to cover patients' care. #SurpriseBilling #OutOftheMiddle

Surprise Billing FAQ

The following are frequently asked questions 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 cap rates for out-of-network (OON) emergency care, then even future in-network rates will likely decrease over time. To encourage fair contracting that reflects local market conditions, rigid 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 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 College of Emergency Physicians, American Society of Anesthesiologists, College of American Pathologists, American Academy of Ophthalmology, American Association of Orthopaedic Surgeons, American College of Radiology, and the American Association of Neurological Surgeons and Congress of Neurological Surgeons.

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:

- [Schedule a meeting](#) with your legislators during the August congressional recess.
- [Ask your legislator to support HR 3502](#), The "Protecting Patients from Surprise Medical Bills Act," introduced by Reps. Raul Ruiz (D-Calif.) and Phil Roe (R-Tenn.), and weigh in to raise the alarm on the dangers of the current benchmarking proposal under consideration in the Senate.
- Share ACEP's [one-pager and infographic](#) to advocate for independent dispute resolution (IDR).

- Help spread the word about [Out of the Middle](#), an ACEP-lead consumer advocacy campaign, among your patients.
- Join the [911 Network](#). This ACEP grassroots advocacy group helps you lend your voice to the cause of thousands of emergency physicians and millions of patients.
- View ACEP's publicly available surprise billing advocacy materials, such as press releases, polls and more [here](#).
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