

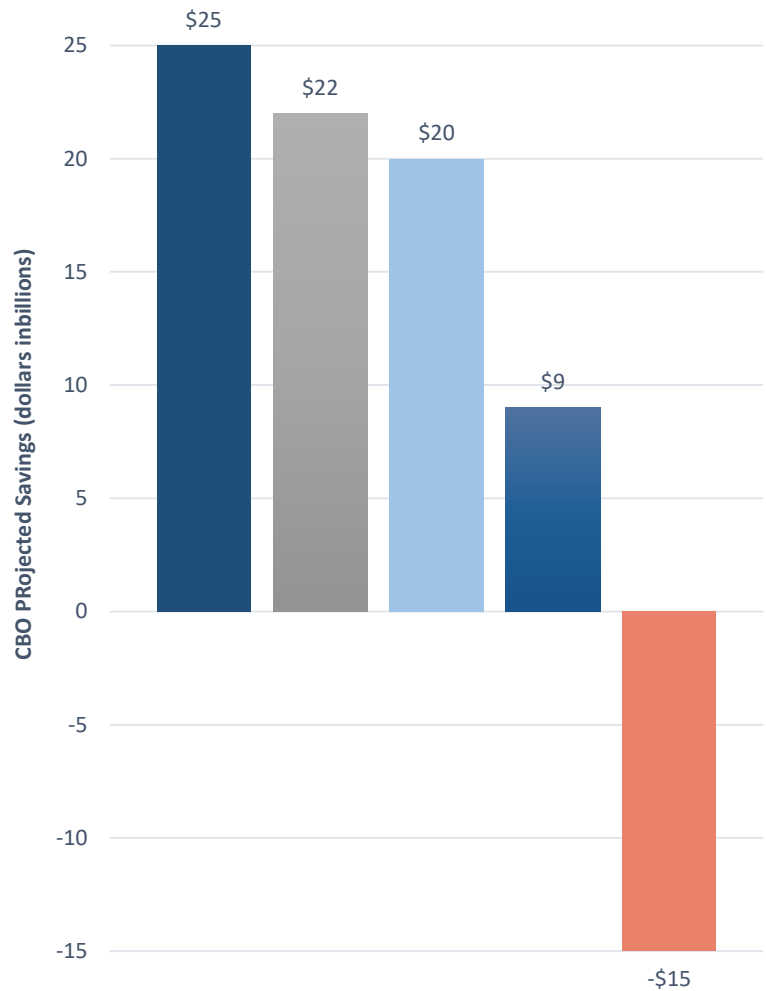


October 2019

Comparison of CBO-Scored Surprise Billing Legislation

In 2019, the Congressional Budget Office has released scores on four separate policy proposals related to surprise billing. An “unofficial” score on a fifth proposal was leaked to press in September. The information below describes each of the proposals and its CBO score.

- HELP Committee Benchmark
- Energy and Commerce Benchmark/IDR
- HELP Committee Benchmark/IDR
- HELP Committee Network Matching
- Ruiz-Roe Legislation



- **HELP Committee Options:** The Senate HELP Committee released a discussion draft of their legislation, the Lower Health Care Costs Act, in May. The discussion draft included three different options on surprise bills. Ultimately, the committee used a benchmark payment rate in its mark, which was discharged by the Committee in June. Importantly the HELP committee bans surprise bills from air ambulances.
 - **Benchmark Payment Rate:** Bans surprise billing. Insurance plans automatically pay providers the median in-network payment rate for the service in the geographic area. There is no dispute resolution process.
 - **Benchmark / IDR:** Bans surprise billing. As above, plans automatically pay providers the median in-network rate. For services in excess of \$750, either the plan or the provider may request that the bill go to an independent dispute resolution process (IDR / “arbitration”). Each party must submit a best final offer for the payment, known as “baseball style” arbitration. The arbitrator may choose one or the other. The “loser” pays for the IDR process.
 - **Network Matching:** Bans surprise billing and institutes a legal requirement that insurers may not contract with a facility unless the facility guarantees that all physicians and other professionals employed at or under contract with the facility (such as a hospital) are in-network.
- **Energy and Commerce Benchmark / IDR:** Similar to the Benchmark / IDR proposal laid out by HELP. Bans surprise billing. Institutes a median in-network payment rate for all bills. For services in excess of \$1,250, either the plan or the provider may request that the bill go to IDR. “Baseball style” arbitration. Bans the arbitrator from considering billed charges in making a determination. Importantly, the E and C bill provides surprise bill protections to non-facility based providers if providers do not deliver adequate notice of out-of-network status.
- **Ruiz / Roe Bill:** Bans surprise billing. Requires the plan to pay a “commercially reasonable rate,” but then allows entities to request arbitration for the final amount of the bill. The arbitrator may choose between specified prices: The original price paid by the plan, the provider’s billed charges, or the final offer submitted by these parties if the arbitrator determines neither of these amounts are reasonable. To determine a final rate, the arbitrator may consider a number of factors, including the 80th percentile of charges.