



## Estimated Federal Cost and Savings Detail and National Health Expenditure Impact from Adding Independent Dispute Resolution and CPI Indexing to H.R. 2328, the House Energy and Commerce Committee's Anti-Surprise Billing Proposal

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On September 18, the Congressional Budget Office (CBO) released its cost estimate of H.R. 2328, the Reauthorizing and Extending America's Community Health Act, which was ordered reported by the House Committee on Energy and Commerce on July 17, 2019.<sup>1</sup> Title IV of H.R. 2328, the No Surprises Act, would set rates for "surprise" bills from hospital-related providers – such as anesthesiologists, radiologists, pathologists, or emergency physicians – who do not participate in patients' networks despite the hospital's in-network status. CBO estimates that the provisions to address surprise billing in H.R. 2328 would save about \$21.9 billion over 10 years.

Earlier this summer, CBO also estimated the savings from S.1895, the Senate HELP Committee's surprise billing proposal.<sup>2</sup> Like the House proposal, the Senate bill would set rates for out-of-network surprise bills at the median in-network rate (a so-called benchmark approach). The Senate bill would save \$24.9 billion over the same 10-year period.

### **Binding Arbitration Costs an Estimated \$6.2 billion to taxpayers and \$21 billion over 10 years to Employers and Private Payers**

CAHC has built on the CBO estimate to estimate the incremental cost of the IDR provision and the savings from the CPI provision. The table below uses the CAHC surprise billing model, and CBO's note that the IDR provision would reduce savings by approximately 25 percent. This illustrates in more detail the possible annual, and 10-year savings due to the CPI provision and costs of the IDR provision of H.R. 2328, as well as the total estimated private health insurance costs (employer and individual markets) during that time. Of course, if CBO releases more detailed estimates of these provisions, these CAHC illustrations would no longer be needed.

Based on our analysis, **CAHC estimates the costs of IDR would place an additional \$6.2 billion in added costs to the federal budget, and \$21 billion in total costs on employers and other private payers.** Because employers and insurers pass these added costs onto consumers in the form of increased premiums or cost sharing, patients will end up paying more as a result of IDR versus a pure benchmark model. Experiences from the New York arbitration process confirms that IDR will increase private payer costs both as a result of the higher payment rates and greater administrative costs.<sup>3</sup>

<sup>1</sup> <https://www.cbo.gov/publication/55640>

<sup>2</sup> <https://www.cbo.gov/publication/55457>

<sup>3</sup> "Experience With New York's Arbitration Process for Surprise Out-of-Network Bills", October 24, 2019 accessed at <https://www.brookings.edu/blog/usc-brookings-schaeffer-on-health-policy/2019/10/24/experience-with-new-yorks-arbitration-process-for-surprise-out-of-network-bills/>

New York state has implemented an IDR process that is similar to the Committee passed bill. According to a recent Brookings review of New York data, the state process is "substantially increasing what New Yorkers pay for health care". This is due to two primary factors: first, the volume of surprise bills entering arbitration is increasing and; second, payments are averaging 8 percent more than the 80<sup>th</sup> percentile of charges, or an amount that 8 percent more than what 80 percent of physicians charge for a specific billing code. Charges are list prices, and largely "unmoored from market prices". As a result of this new data, CAHC believes the costs of IDR are understated both here and in the CBO estimates.

The cost estimates of the House and Senate bills differ for two main reasons.

- First, the House bill contains a provision limiting the annual increase in billing rates to the overall rate of price inflation, or Consumer Price Index (CPI). CBO has acknowledged that the CPI provision adds to the savings, but did not detail the exact amount in the estimate of H.R. 2328.
- Second, the House bill includes an arbitration provision, under which health care providers could dispute the in-network billing rates. This provision is called Independent Dispute Resolution (IDR). According to CBO, the IDR provision reduces the savings by about 25 percent, based on the agency’s assessment that “the IDR process would be likely to result in larger payment rates to providers.” However, like the CPI provision, CBO did not provide a year-by-year estimate of the IDR provision’s added cost.

CBO also estimated different impacts on private payers like insurers and employers as a result of the changes. Specifically, CBO estimates that:

- In affected markets in most years, premiums would be about 1 percent lower than they are projected to be under the current law, as out-of-network providers would be reimbursed on the basis of the insurer’s in-network rates.
- The decrease in premiums would be offset somewhat by increases in rates for providers that now receive below-median payments.
- Lower premiums would be offset somewhat by increased costs for insurers to cover out-of-network care that they do not cover under current law (such as laboratory fees for out-of-network, nonemergency services) and any increase in the use of health care resulting from improved out-of-network coverage.

CAHC urges Congress to reject an IDR approach as it would bear an expensive and unnecessary cost for consumers and taxpayers. Patients are already paying higher costs due to surprise bills and the solution should not hold them accountable for a \$21 billion lawyer tax.

**Illustrative Breakdown of CPI and IDR Provisions in H.R. 2328**

	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2020-2029
<b>Impact on Federal Deficit, Cost (+) or Savings (-) in billions</b>											
CBO -- S. 1895 Title 1 Ending Surprise Medical Bills	0.0	-1.1	-2.1	-2.5	-2.6	-2.8	-3.1	-3.4	-3.5	-3.7	-24.9
CAHC Illustration -- Approximate Savings from CPI Provision	0.0	-0.1	-0.2	-0.2	-0.3	-0.3	-0.4	-0.5	-0.6	-0.7	-3.3
CAHC Illustration -- Approximate Cost of IDR Provision	<u>0.0</u>	<u>0.3</u>	<u>0.5</u>	<u>0.6</u>	<u>0.6</u>	<u>0.7</u>	<u>0.8</u>	<u>0.9</u>	<u>0.9</u>	<u>0.9</u>	<u>6.2</u>
CBO -- H.R. 2328 Title IV No Surprises Act	0.0	-0.9	-1.8	-2.1	-2.2	-2.4	-2.8	-3.0	-3.2	-3.5	-21.9
<b>Impact on National Health Expenditures in billions</b>											
<b>Private Health Insurance Costs (Employer and Individual Mkt)</b>											
S.1895 Title 1 Ending Surprise Medical Bills	0	-4	-7	-8	-9	-9	-10	-11	-12	-12	-83
Approximate Savings from CPI Provision	0	0	-1	-1	-1	-1	-1	-2	-2	-2	-11
Approximate Cost of IDR Provision	<u>0</u>	<u>1</u>	<u>2</u>	<u>2</u>	<u>2</u>	<u>2</u>	<u>3</u>	<u>3</u>	<u>3</u>	<u>3</u>	<u>21</u>
H.R. 2328 Title IV No Surprises Act	0	-3	-6	-7	-7	-8	-9	-10	-11	-12	-73

Source: All calculations and estimates by CAHC, except CBO estimates of S. 1895 and H.R. 2328 as marked.  
 Note: Components may not sum exactly to totals due to rounding.