



COUNCIL FOR AFFORDABLE  
**HEALTH COVERAGE**

# Stopping Surprise Billing

*Consumer-Centered  
Solutions for Reform*

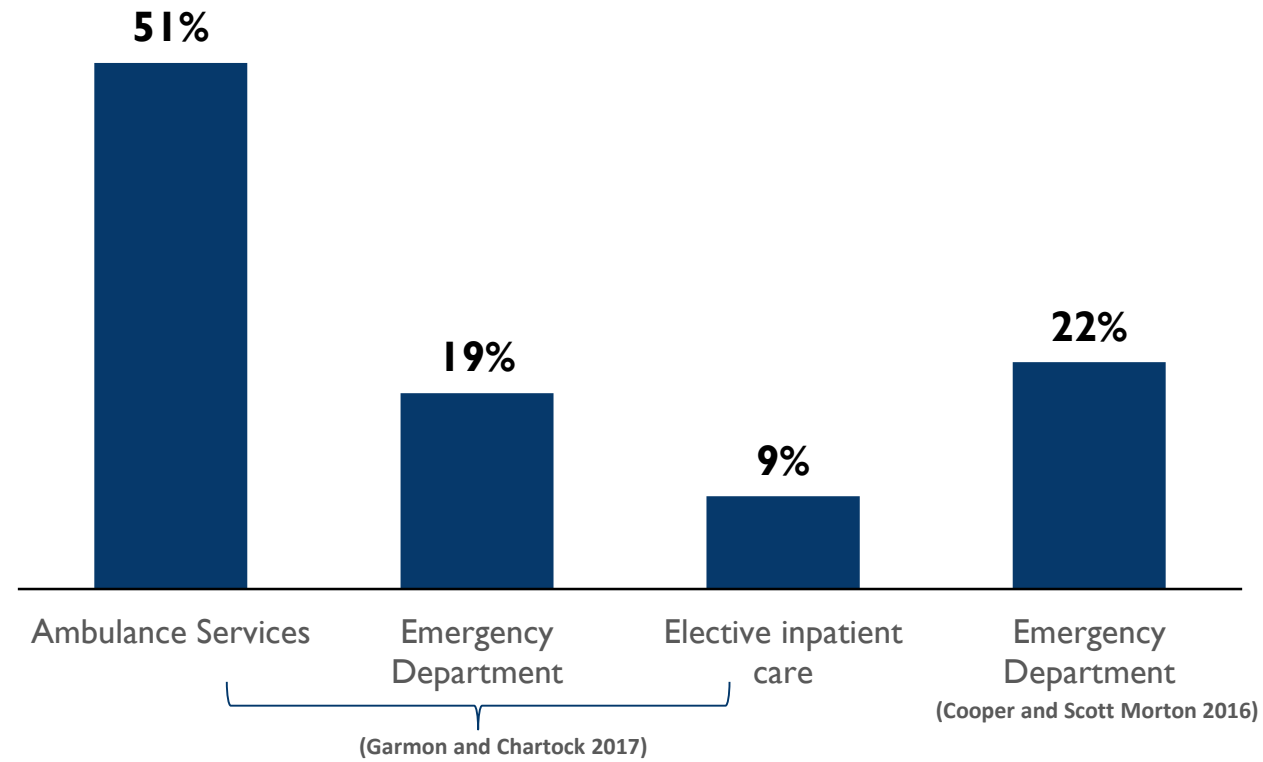


## Surprise bills can arise when patients lack choice

Where they come from	Why
Emergency situations	<ul style="list-style-type: none"><li>• ED physicians OON at INN facility</li><li>• Ambulance dispatched is OON</li><li>• Closest emergency facility is OON</li></ul>
Nonemergency care at an in-network facility	<ul style="list-style-type: none"><li>• Surgery at INN facility with INN surgeon may include an OON anesthesiologist, radiologist, pathologist, assistant surgeon, or other specialist</li><li>• OON hospitalist provides care at INN facility</li></ul>

## Surprise bills are common

### Percentage of Visits Leading to a Potential Surprise Out-of-Network Bill



Source: Garmon and Chartock 2017; Cooper and Scott Morton 2016

Note: For the Garmon/Chartock figures, 19% represents the % of outpatient ED cases, including those to an OON ED, that could result in a potential surprise balance bill.

**This reflects strategic behavior...but not by all providers**

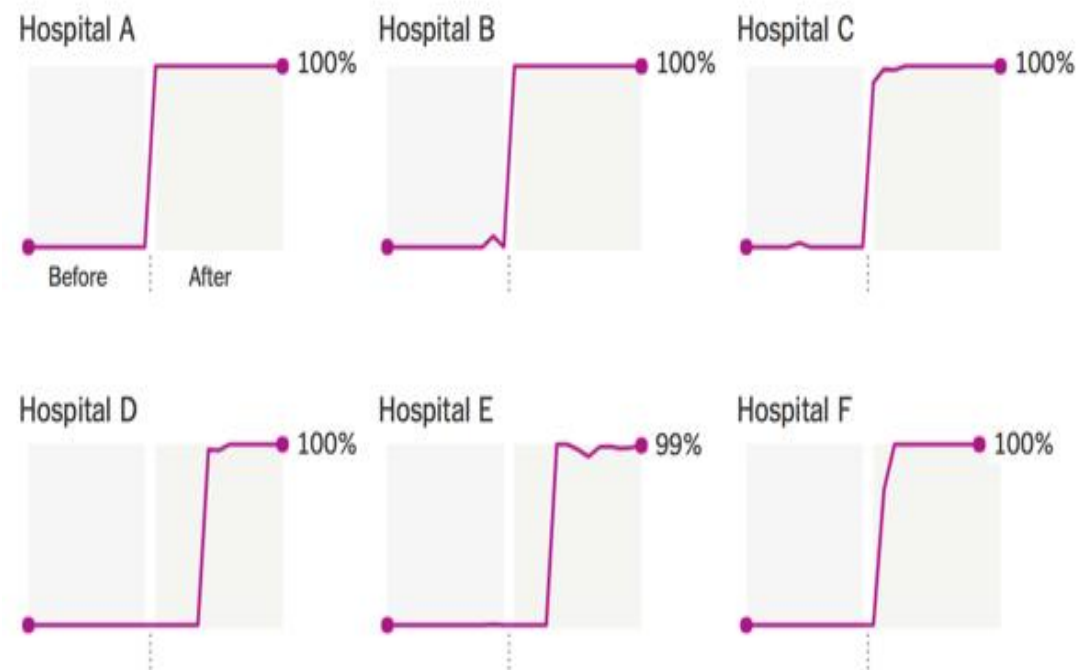
- Majority of hospitals have very low out-of-network ER billing rates. At 15% of hospitals, *at least 80% are balanced billed*
- When one ER staffing company – EmCare – contracts with a hospital → Out of network bills jump **80%**

Source: Cooper, Scott Morton, and Shekita, 2019

## 'Like a Light Switch'

In several hospital emergency rooms, **out-of-network rates** for customers of one large insurer jumped to nearly 100 percent after EmCare took over. Below, the year before and the year after a switch.

Percent of in-network E.R. visits where doctors' fees were billed as out of network



## Physicians most commonly involved in surprise billing have the highest billed charges relative to Medicare rates

Ratio of Charges to Medicare Allowed Amounts by Physician Type, 2016

	Median	20 <sup>th</sup> Percentile	80 <sup>th</sup> Percentile
Anesthesiology	5.51	2.52	11.08
Emergency Medicine	4.65	2.79	7.50
Diagnostic Radiology	4.02	2.64	8.03
Pathology	3.43	2.25	5.10
All Other Specialists	2.27	1.46	4.01
All Primary Care	2.03	1.39	3.54

Source: Analysis of Medicare Provider Utilization and Payment Data: Physician and Other Supplier Public Use Files, calendar year 2016

## This market failure affects all patients through high in-network rates

### Average contracted commercial payment rates:

- Anesthesiologists ≈ 350% of Medicare
- Emergency Medicine ≈ 300% of Medicare
- Radiologists ≈ 200% of Medicare
- Average across all physicians ≈ 125% of Medicare

***Results in higher premiums for all commercially-insured***

# Key Elements of a Comprehensive Solution

## Take patients out of the middle

- They should not have to initiate action

## Be comprehensive

- Broader than emergency
- All types of health plans

## Avoid policies that increase health spending

# Billing Regulation

## Three parts

- Prohibit balance billing
- Insurers treat OON care as in-network
- Set a minimum OON payment standard

## Establishing the limit

- Do not base on billed charges
- Avoid basing limits on current contracted rates
  - Already way too high
- Little risk of setting limit too low
- Uneasy about arbitration, but same considerations apply



# Contracting Regulation

## 1. Prohibit emergency & ancillary clinicians from independent billing

- Emergency and ancillary clinicians contract with facilities – not health plans
- Services get bundled into facility rate negotiated between facility and health plan
  - Analogue to nurses

## 2. Network matching

- As a condition of working at a facility, require emergency & ancillary clinicians to contract with all the same health plans as the facility

## Potential for a real market

# Surprise Billing



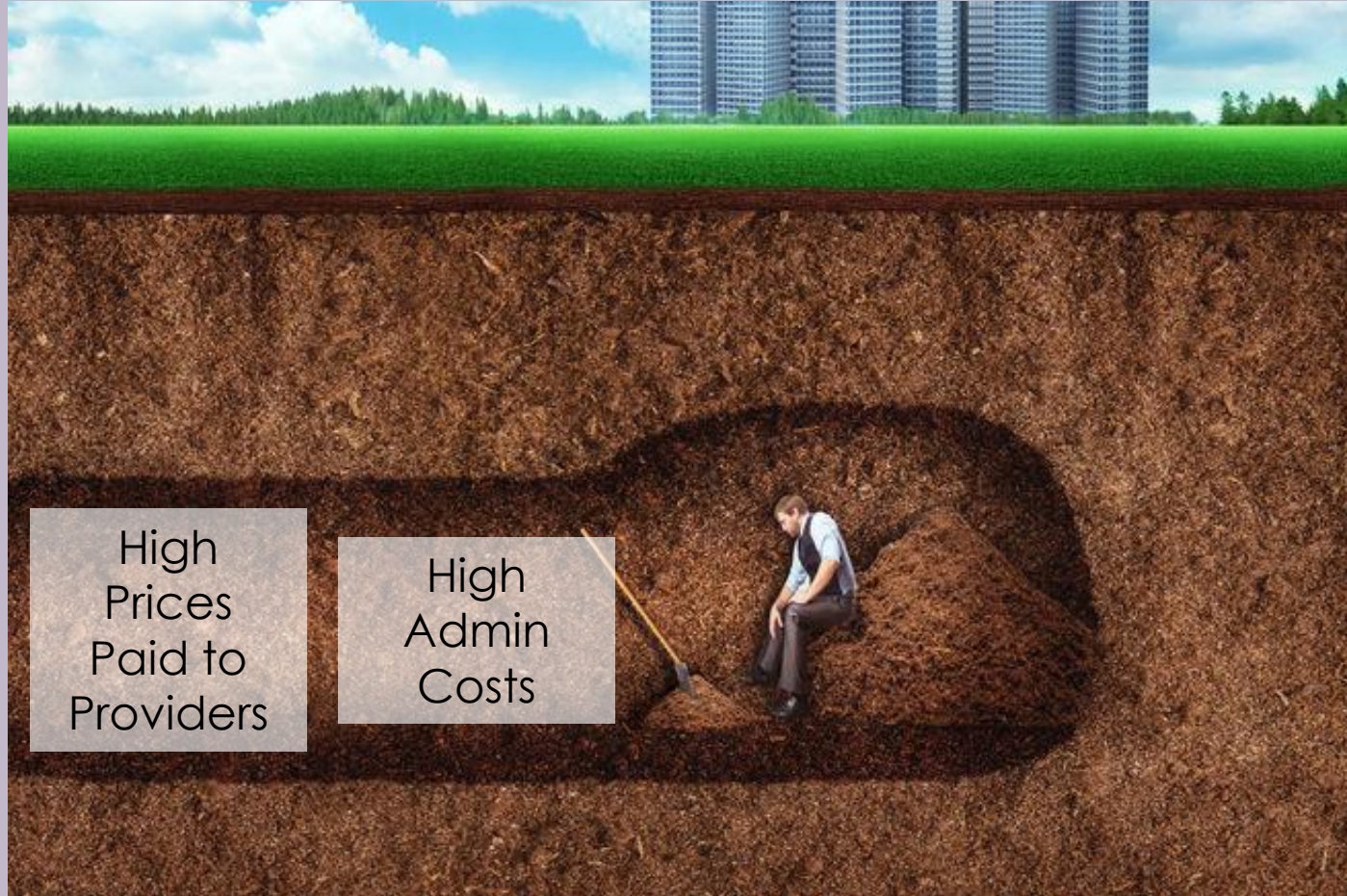
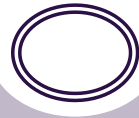
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MAY 29, 2019

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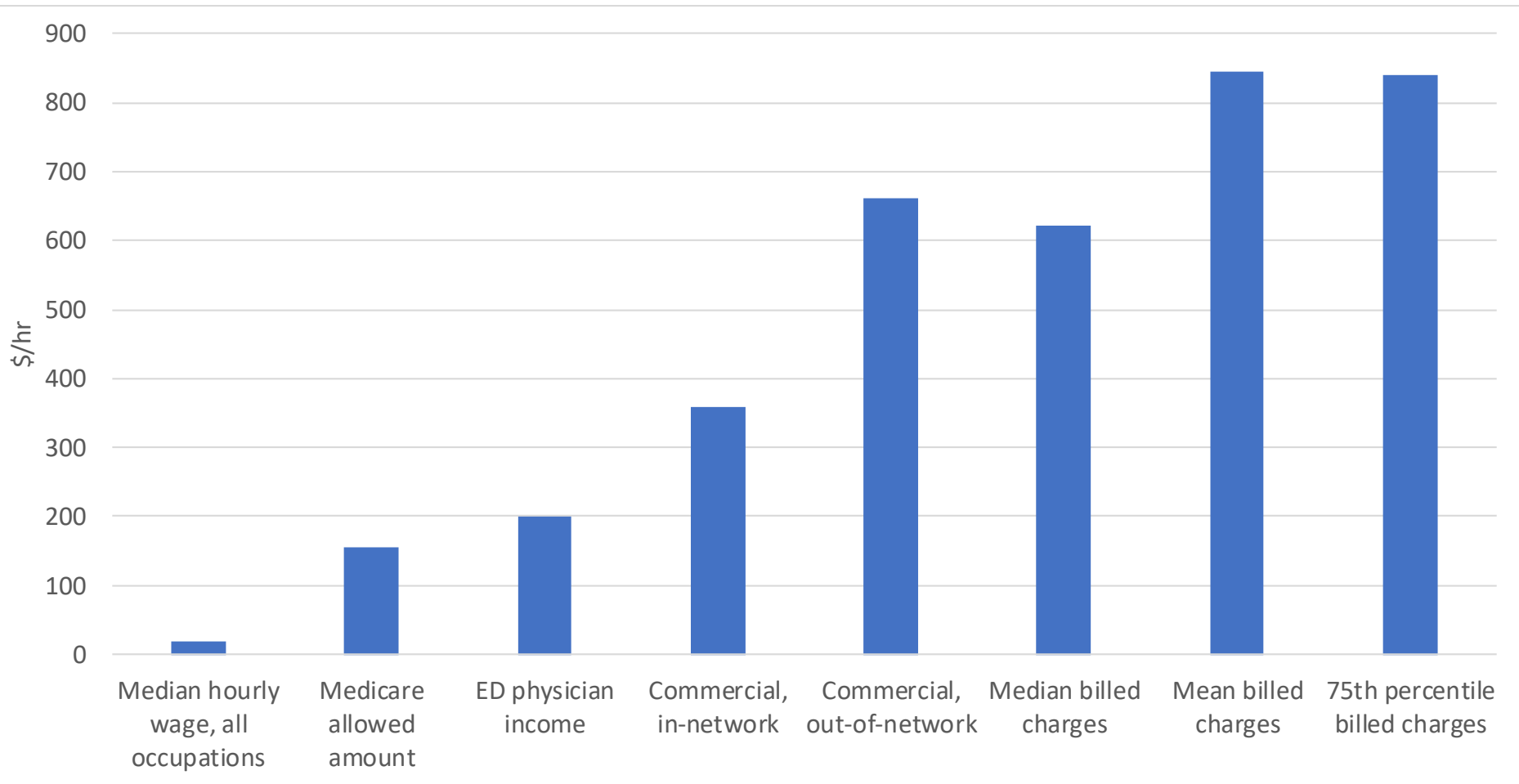
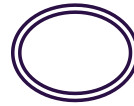


# If You Find Yourself In A Deep Hole ...



- Step 1: Stop digging

# What's A Fair Hourly Rate for an Emerg Dept Physician?



Based on CPT 99284 (ED visit, high severity), assuming 6906 wRVUs per 2000 hours worked (<https://www.beckershospitalreview.com/compensation-issues/2015-physician-compensation-work-rvu-by-specialty.html>).

#### Sources:

Median hourly wage:

[https://www.bls.gov/oes/current/oes\\_nat.htm](https://www.bls.gov/oes/current/oes_nat.htm)

Medicare allowed amount, and mean billed charges:

<http://www.cms.gov/apps/ama/license.asp?file=https://downloads.cms.gov/files/Medicare-National-HCPCS-Aggregate-CY2016.zip>

ED physician income:

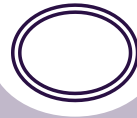
<https://www.acepnow.com/article/emergency-physicians-2016-2017-compensation-report-shows-lack-standardization-specialty/>

Commercial in- and out-of-network rates:

Pelech, D. (2018). An Analysis of Private-Sector Prices for Physicians' Services (Working Paper 2018-01). Retrieved from <https://www.cbo.gov/system/files/115th-congress-2017-2018/workingpaper/53441-workingpaper.pdf>

Median and 75<sup>th</sup> percentile billed charges: Bai, G., & Anderson, G. F. (2017). Variation in the Ratio of Physician Charges to Medicare Payments by Specialty and Region. JAMA, 317(3), 315. doi:10.1001/jama.2016.16230

# Tradeoffs from Provider Perspective



Out-of-network

Balance Bill

In-network

Easier Collections

Patient Volume



An iceberg floating in the ocean. The tip of the iceberg is visible above the water surface, while the much larger, jagged base is submerged underwater. The sky is clear blue, and the water is a deep blue. The text is overlaid on the right side of the image.

Surprise Bills

Unshoppable Care  
/  
Excess Pricing

# Out-of-network Guardrail

Medicare  
Advantage  
Has It

Commercial  
Plans Don't



# Surprise Billing and Out of Network Cap Proposals

## Key Issues

- Surprise Billing Contexts Only vs. All Out-of-Network Rates
- Rate Capping vs. Rate Setting
- National Backstop to Prevent Provider Migration
- Econ Theory: Provider Out-of-Network Potential → In-Network Rates



# Surprise Billing and Out of Network Cap Proposals Federal Budget Impact

Impact on Federal Deficit, Cost (+) or Savings (-) in billions	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2020-2029
<b>Surprise Billing Contexts Only</b>											
AEI -- Ban Balance Billing/Require Hospitals to Contract w/ Docs	-1	-1	-1	-1	-1	-1	-1	-1	-1	-1	-9
ERIC/Brookings Option 1 -- Cap Rates at 125% of Medicare \1	-2	-2	-2	-2	-2	-2	-2	-2	-2	-2	-20
Manhattan -- Cap Rates at 150% of Medicare	-1	-1	-1	-1	-2	-2	-2	-2	-2	-2	-16
Cassidy Original Discussion Draft -- Set Rate 125% of Average	1	1	1	1	1	1	1	1	1	1	10
E&C Disc. Draft (Pallone-Walden) Set Rate at Median In-Network	Approximately Budget Neutral on Premiums; \$50 million APCD funding										
Senate Group Bill (Cassidy-Bennet) Set at Median In-Net. w/ IDR	Increase in Premiums Due to Administrative Cost of IDR, Other Disclosure and Admin. Reqs										
Senate HELP Discussion Draft (Option 1 Network Matching)	-1	-1	-1	-1	-1	-1	-1	-1	-1	-1	-7
<b>All Out-of-Network and Emergency Billing\3</b>											
PPI -- 175% of Mcr in 2022 Phasing Down to 120% by 2035 \2	0	0	-14	-18	-22	-27	-31	-37	-43	-50	-241
CAHC 200% of Mcr 2020 Phasing Down to 150% Over 5 Years	-6	-8	-19	-31	-45	-60	-63	-66	-69	-72	-440

Source: Council for Affordable Health Coverage (CAHC).

Notes: Estimates include both revenue and spending impacts. IDR = Independent Dispute Resolution (binding arbitration). PPI = Progressive Policy Institute.

ERIC = ERISA Industry Committee. ERIC proposal is also supported by other employer groups. Estimates do not include billings for ambulance services.

\1 Brookings Option 2 would be a hybrid, requiring hospital contracts with (and no balance billing from) anesthesiologists, pathologists, and radiologists, but capping rate: for ambulance services and emergency physicians. We have not estimated that proposal yet. Employer groups include ERIC, ABC, Retailers etc.

\2 PPI's proposal is part of a larger package that also eliminates the payroll tax, so the revenue impact of the savings if about half as much as under current law.

\3 Caps would apply to all out-of-network hospital and physician care, including non-emergency services.

# Surprise Billing and Out of Network Cap Proposals

## Background

### Physician Annual Compensation, By Specialty

	Average Annual Compensation (000s)	Percent of Physicians
Plastic Surgery	501	2%
Ortopedics	497	3%
Cardiology	423	3%
Gastroenterology	408	2%
Radiology	401	4%
Dermatology	392	1%
Anesthesiology	386	5%
Otolaryngology	383	1%
Urology	373	1%
Oncology	363	2%
Ophthalmology	357	2%
Critical Care	354	1%
Emergency Medicine	350	6%
Surgery, General	322	3%
Pulmonary Medicine	321	1%
Ob/Gyn	300	5%
<b>Average</b>	<b>299</b>	<b>100%</b>
Nephrology	294	2%
Pathology	286	2%
Psychiatry	273	6%
Allergy & Immunology	272	1%
Physical Medicine & Rehabilitation	269	1%
Rheumatology	257	1%
Neurology	244	3%
Infectious Diseases	231	2%
Internal Medicine	230	13%
Family Medicine	219	18%
Diabetes & Endocrinology	212	1%
Pediatrics	212	8%
Public Health & Preventive Medicine	199	1%

Source: Medscape Physician Compensation Report 2018

<https://www.medscape.com/slideshow/2018-compensation-overview-6009667#1>

### DRAFT: Out-of-Network and Emergency Services Rate Cap Proposals

Assumed Average Billing Rates Relative to Medicare

Anesthesiologists	300%
Emergency	250%
Radiology	200%
Pathology	175%
Category Average	244%
Primary Care Physicians	100%
Non-Primary Specialists	150%
All Physicians	133%
Other Professionals	100%
Hospitals	190%