

# How Congress' surprise billing compromise fell short

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On the afternoon of Dec. 11, five Democratic leaders in the U.S. House of Representatives huddled to hammer out discord over a surprise billing proposal, just days before a deadline to fund the government.

The spending bill was the best chance lawmakers had to pass surprise billing legislation before the end of the year, as it would insulate them from taking a vote that would divide the powerful corporate interests. But now that prospect was in jeopardy.

House Speaker Nancy Pelosi (Calif.) and Majority Leader Steny Hoyer (Md.) met with Energy & Commerce Chair Frank Pallone, Ways & Means Chair Richard Neal (Mass.) and Education & Labor Committee Chair Bobby Scott (Va.), and Pelosi gave the committee chairs until 11 a.m. the next day to work out their differences on the measure.

Staff met but they failed to reach an agreement by the deadline. Lawmakers left surprise billing legislation out of the year-end spending deal but set up a potential route for passage in the spring.

Months of debate on how to protect patients from out-of-network charges at in-network facilities culminated in an eight-day period when a bipartisan, bicameral proposal with White House support came together, but ultimately fell short. Some observers aren't so sure that a compromise exists anymore.

"Ultimately, the leadership decided that with unresolved disagreements between the committees of jurisdiction, more time was needed and surprise billing would be reserved for the must-past May health extenders vehicle," a Democratic leadership aide said.

Lawmakers starting in November dropped hints [about competing surprise billing deals](#) in the works as the Dec. 20 deadline to fund the government approached.

By the end of the first week of December, Senate health committee Chair Lamar Alexander (R-Tenn.), Pallone and House Energy & Commerce ranking member Greg Walden (R-Ore.) announced a deal that included an arbitration backstop to address some insurer-provider conflicts, which providers had been pushing for.

There was a catch to the proposal— one of the four negotiators, Senate health committee ranking member Patty Murray (D-Wash.), decided not to sign on.

Senate Minority Leader Chuck Schumer (D-N.Y.) called Murray on Dec. 6 and expressed his disapproval of the deal, the [Washington Post reported](#). The powerful Greater New York Hospital Association [opposed the compromise](#) and called for delaying legislative action until 2020.

A spokesman for Schumer said the minority leader had concerns about the proposal's impact on New York's surprise billing law. He claimed Schumer called appropriations negotiators before they had reached a final agreement and told them that he would not stand in the way of a surprise billing deal.

"Sen. Schumer is confident that legislation to end surprise billing will pass next year and will work hard to make sure that happens," the spokesman said.

The American Hospital Association also opposed the deal quickly. The description indicating that payments could be based on benchmark rates was enough to garner the group's opposition, said Tom Nickels, AHA's executive vice president for government relations and public policy.

"It wasn't clear what, if anything, had changed," he said.

But the next day more policy details emerged and the White House endorsed

the deal, even though hospital groups didn't like what they saw.

The bicameral proposal lowered the threshold for arbitration from payments with median in-network rates of at least \$1,250 in the House Energy & Commerce bill to \$750. Provider groups said the threshold would still make the mechanism inaccessible for specialties including emergency department physicians, pathologists, radiologists and some anesthesiologists. At a stakeholder meeting the afternoon of Dec. 9, concerns compounded over a 90-day cooling off period that had not been included in prior legislation.

Some hospital and provider groups took the cooling off period to mean that a provider would only be able to bring four individual payments to arbitration per year.

"If you go one by one with a 90-day cooling off period, that benefits insurers who don't have to deal with the cash flow issues," said American Society of Anesthesiologists President Mary Dale Peterson.

A congressional aide familiar with the bicameral compromise said the groups misunderstood the proposal, but without legislative text the issue has not yet been definitively resolved.

Sussing the details of the bicameral proposal lost its urgency when, three weeks after saying they had an agreement, House Ways & Means Committee leaders [decided to drop](#) an eleventh-hour, one-page description of a framework to address surprise billing on Dec. 11. They made their intention abundantly clear— they wanted to delay legislation until 2020.

"Chairman Neal and I believe this should be the first issue Congress takes up when we get back after the first of the year," Ways & Means ranking member Kevin Brady (R-Texas) said.

Supporters of the rival bicameral compromise legislation saw the action as deliberate sabotage. A congressional aide supportive of the Energy &

Commerce compromise legislation called the Ways & Means release "ridiculous House jurisdictional jockeying," while Neal's primary opponent accused him of kowtowing to his donors.

Neal's second-largest donor in the 2020 campaign cycle is the Blackstone Group, a private equity firm that [owns physician staffing giant TeamHealth](#). TeamHealth has [come under scrutiny](#) for balance billing patients, though the company says it has stopped the practice.

"The chairman's campaign donations do not influence his policymaking, and the assertion that they've affected his bipartisan work on a solution to the surprise billing crisis is entirely false," said Neal spokesperson Erin Hatch.

Brady's top donor this cycle is Welsh, Carson, Anderson & Stowe, a private equity firm that owns several staffing companies, according to a [Kaiser Health News analysis](#). Alexander, Murray, Pallone and Walden did not report similar donations.

After House committee leaders failed to meet Pelosi's Dec. 12 deadline, the appropriations packages were released on Dec. 16 [without any provisions protecting patients from surprise medical bills](#).

Pallone ultimately voted against the domestic spending bill, a notable break for a senior House Democrat. Neal, on the other hand, seemed satisfied.

"Well, I mean most of the stuff we wanted for the year-end did get in," Neal said on Tuesday.

Lawmakers in both chambers and parties say they want a surprise billing fix next year, but May is a difficult time to pass major bipartisan legislation because it will be six months out from a presidential election.

The legislative landscape could get more complicated in the House if the Ways & Means Committee releases legislative text behind its framework and if the Education & Labor Committee, which also has jurisdiction over surprise

billing, decides to develop its own proposal.

While some stakeholders remain optimistic that a viable proposal could emerge in 2020, others see the snubbing of a bicameral, bipartisan bill with White House support as a sign that there is no middle ground.

"A compromise is like a unicorn. It doesn't exist. And maybe once people can get that through their skulls, we can make some progress on this," said a lobbyist who supported the bicameral proposal.