October 10, 2018

The Honorable Bill Cassidy, MD
United States Senate
Washington, DC 20510

Dear Senator Cassidy:

On behalf of Families USA, one of the nation's leading health care consumer organizations dedicated to high quality, affordable health care and improved health for all, and Consumers Union, the advocacy division of Consumer Reports, we are writing to share our support for your draft legislation to address the serious issue of surprise medical bills.

Surprise medical billing occurs when a patient goes to an "in-network" medical facility, but unknowingly receives treatment from a provider outside of their insurance plan's network. As a result, the patient may face much higher bills than would be typically charged for the same care from an in-network provider due to no fault of their own. Many patients are not financially prepared to handle these additional costs and these unpaid medical bills are a major source of credit problems and bankruptcies for consumers. Federal protection from surprise out-of-network bills is urgently needed. While approximately a dozen states have led the way on this important consumer protection, state protections do not cover a majority of Americans, and do not protect enrollees in all types of health plans.

Your bipartisan legislation would ban surprise medical bills from out-of-network providers who treat patients who visit in-network facilities, and restrict insurers from charging more than in-network cost sharing when patients receive out-of-network care due to no fault of their own. Importantly, the legislation would also set a payment standard for how insurers reimburse out-of-network providers in surprise billing situations.

Scope of surprise balance billing protections

We strongly support this legislation for holding consumers harmless from costs in excess of in-network cost sharing when they receive out-of-network care due to no fault of their own in most instances. We also strongly support the comprehensive provisions in the discussion draft that protect consumers in both emergency and non-emergency situations, as we have heard from consumers who have received surprise bills from a range of provider types. Consumers have experienced surprise bills from emergency visits, surgeries, and even in simple situations such as getting an annual mammogram, when their doctor sends the mammogram to an out-of-network lab for analysis.[1] Consumers should be protected from

[1] "Consumer Reports Survey Finds One-Third of Privately Insured Americans Hit by Surprise Medical Bills," Consumer Reports National Research Center, 5/5/15, available at: https://consumersunion.org/news/consumer-reports-survey-finds-nearly-one-third-of-privately-insured-americans-hit-with-surprise-medical-bills/ See also: "5 Doctors Most Likely to Stick You with Surprise Medical Bills," ConsumerReports.org, 1/17/17, available at: https://www.consumerreports.org/medical-billing/5-doctors-likely-to-stick-you-with-surprise-medical-bills/

unfair balance bills and insurer cost-sharing that is greater than in-network cost-sharing in all situations where they unknowingly receive out-of-network care, and in situations where no suitable in-network provider is available.

To that end, we are concerned that the section of the bill aimed at protecting consumers after they receive emergency care and have been stabilized may not sufficiently protect consumers from out-of-network surprise bills from subsequent non-emergency providers. Given that, in other situations where consumers are exposed to non-emergency out-of- network services due to no fault of their own, they are fully protected from surprise bills under the draft legislation, we do not believe consumers should be held to a different and less protective standard after receiving emergency care. The standard that consumers be given the option to transfer to an in-network facility after stabilization may put the consumer in a medically risky position, if transferring would be stressful to their health or if there is not another in-network facility accepting patients within a reasonable time and distance. We therefore recommend deleting the section entitled "subsequent non-emergency services," and instead applying the protections for "non-emergency services" to individuals who have been stabilized after receiving emergency care.

While we strongly support ensuring that consumers who receive surprise bills from non-emergency providers are held harmless, we understand that some consumers voluntarily elect to receive out-of-network care. To account for this, we recommend that the section on non-emergency services incorporate a notice requirement to ensure that consumers indicate whether or not they are "knowingly, voluntarily and specifically" choosing care from a specific out-of-network provider. State law, such as in New Jersey, can provide a model to ensure that no consumers are balance billed from providers unless they are making an *intentional choice* to go out-of-network for care, by electing to receive care from a specific out-of-network provider. Without such a notice requirement, some may argue that the section on non-emergency services is overly inclusive of providers. We believe all types of providers should be included under surprise bill protections, but that notice requirements can ensure that consumers are still able to choose out-of-network care voluntarily without surprise bill protections being applied too broadly.

Payment to out-of-network providers from insurers

Robust networks are key to preventing surprise bills and unintended out-of-network care. To that end, we strongly support that the discussion draft sets a payment standard for how insurers reimburse providers when consumers receive out-of-network care due to no fault of their own. However, we believe this standard as outlined in the draft should be modified to best ensure that the rates to providers in these situations are not excessive and properly incentivize providers to participate in insurance networks.

Specifically, we are concerned that the payment standard for states that do not set their own thresholds, outlined in the draft as the greater of 1) the median in-network amount negotiated by health plans and insurance issuers for the service provided by a provider in the same or similar specialty and provided in the same geographical area or 2) 125 percent of the average allowed amount for all private health plans and insurance issuers for the service for the applicable calendar year or most recent year the data is available, reported in a database maintained by a nonprofit organization, will result in unduly high payment rates to out-of-network providers.

We suggest considering other mechanisms that will result in better control of health care costs and incentivize in-network participation by providers. For example, payment rates could be set based on a percentage of Medicare, as is currently the model in California law. Alternatively, payments could be established based on a "baseball-style" binding arbitration process, the process utilized under the New York surprise billing law.

We strongly support the intent and goals of this critically important draft legislation, and look forward to further opportunities to work with you on refining it. We hope your colleagues will support this legislation. By helping to solve the problem of surprise bills for consumers and protecting the coverage and care people have now, Congress can make a huge difference on health care for people across America.

We commend you for your leadership on this issue and look forward to working with you on it in the future.

Sincerely,

Claire McAndrew, Director of Campaigns and Partnerships
Families USA

Charles Bell, Programs Director
Consumers Union

Cc: The Honorable Tom Carper
The Honorable Chuck Grassley
The Honorable Michael Bennet
The Honorable Todd Young
The Honorable Claire McCaskill

Contact info:

Claire McAndrew, Director of Campaigns and Partnerships
Families USA
202-626-3030
cmcandrew@familiesusa.org

Charles Bell, Programs Director
Consumers Union
914-378-2507
cbell@consumer.org