

April 5, 2019

The Honorable Nancy Pelosi  
Speaker  
United States House of Representatives  
Washington, DC 20515

The Honorable Mitch McConnell  
Majority Leader  
United States Senate  
Washington, DC 20510

The Honorable Kevin McCarthy  
Republican Leader  
United States House of Representatives  
Washington, DC 20515

The Honorable Chuck Schumer  
Democratic Leader  
United States House of Representatives  
Washington, DC 20510

Dear Speaker Pelosi, Leader McConnell, Leader McCarthy, and Leader Schumer:

The undersigned organizations write to offer the patient and consumer perspective regarding the ongoing efforts on Capitol Hill to end “surprise billing.” Surprise billing, also known as out-of-network balance billing, occurs when an insured patient is inadvertently treated by an out-of-network provider due to no fault of their own, and then is charged the difference between the rate their insurer pays the provider and the provider’s billed charge. This amount is often many times what the consumer’s in-network cost-sharing responsibility would be.

Surprise billing is a widespread problem, affecting millions of consumers each year. Recent academic studies have found that approximately one out of five emergency department visits involve care from an out-of-network provider.<sup>i</sup> Surprise bills occur for people in all types of health insurance plans. For example, even among large employer plans, nearly one-in-ten elective inpatient procedures involved a potential surprise bill.<sup>ii</sup>

States across the country have worked to address surprise billing for many years. While meaningful protections exist in many states, they generally do not include self-insured plans, which comprise a large share of the health insurance market. Additionally, the majority of states still do not have comprehensive surprise bill protections in place even for the markets that state regulators oversee.<sup>iii</sup> The patchwork of state-based policies regarding surprise billing is not sufficient to guarantee protection to the majority of consumers, warranting urgent action at the federal level.

### **Key Considerations for Legislation**

Our organizations are encouraged that Congress is working to protect consumers and end this pervasive practice. It is critical that policymakers act now. It is equally important that policy makers “get it right.” To that end, we offer five key recommendations to ensure that surprise billing legislation works for consumers:

- **Hold Consumers Harmless:** Most importantly, the legislation must ensure that consumers are held completely harmless from surprise bills that they incur due to no fault of their own. Consumers should not receive surprise bills and not have to take any action to receive protection from surprise out-of-network billing. In a surprise billing situation, insured consumers should never have to pay more than their normal in-network cost-sharing requirement for a service. Legislation should also be explicit that costs accrue to in-network deductibles and out-of-pocket caps in surprise bill situations.

- **Hold Costs Down:** A key consideration in Congress is how much the insurer must pay the out-of-network provider in a surprise billing situation. We believe it is critical that the payment rate – however set – does not inflate health care costs across the system. We are open to various mechanisms to determine payment. These include setting a payment benchmark rate, binding arbitration, or some combination thereof. Congress must implement the appropriate guardrails to ensure that the resulting rates are not inflationary. Consumers are interested in protection from out-of-network billing, but are likewise deeply concerned about the overall cost of their health care. If the payment rate in surprise billing situations is inflationary, consumers will feel it in their monthly insurance premiums.
- **Application to All Insurance Plans:** Legislation should apply to all commercial health insurance plans, including individual, small group and large group plans, and self-insured plans.
- **Application to All Care Settings:** Some legislation explicitly lists provider or facility types in which surprise billing protections apply. However, we believe consumers are better protected by a broader standard that ensures that any time consumers receive out-of-network care due to no fault of their own, regardless of provider type, they are protected from surprise bills. This will ensure, for example, that if a consumer visits an in-network doctor who sends their labs out-of-network to be read, the consumer will not be responsible for a balance bill from the lab.
- **Transparency is Not Sufficient:** Some have suggested that increased transparency for consumers could be a sufficient way for Congress to address the problem of surprise billing. Transparency is not enough. In the vast majority of surprise billing cases, the affected patient has little-to-no ability to seek an alternative in-network provider, even if given more information. While we would not oppose greater transparency requirements for plans and providers, such requirements are clearly insufficient to meaningfully protect consumers.

We are encouraged by recent bipartisan progress on advancing legislation to end surprise billing. While we understand there are still details to work out, it is urgent that Congress addresses surprise billing this year. Consumers cannot wait any longer. We look forward to working with Congress and other stakeholders to seek meaningful patient- and consumer-focused solutions to this problem.

While stakeholders may disagree on the details, members of Congress must demonstrate leadership on behalf of their constituents. This may require tough choices – choices that may not be uniformly popular among special interest groups. The public has identified health care costs as a top priority for action this Congress, and addressing surprise billing is a chance to demonstrate real leadership to the people. We urge you to swiftly take advantage of this opportunity, and our organizations stand ready to help as you move forward on these important protections for consumers.

Sincerely,

### **National Organizations**

Families USA  
 1,000 Days  
 AFSCME  
 Asian & Pacific Islander American Health Forum  
 Consumer Reports  
 Doctors for America  
 First Focus on Children

Justice in Aging  
Medicare Rights Center  
MomsRising  
National Alliance on Mental Illness  
National Association of Pediatric Nurse Practitioners  
National Association of Social Workers  
National Center for Transgender Equality  
National Consumers League  
National Disability Rights Network  
National Multiple Sclerosis Society  
National Partnership for Women & Families  
The Arc of the United States  
Voices for Progress

### **State Organizations**

#### California

California Pan-Ethnic Health Network

#### Colorado

Colorado Children's Campaign  
Colorado Consumer Health Initiative

#### Connecticut

Universal Health Care Foundation of Connecticut

#### Kentucky

Kentucky Equal Justice Center  
Kentucky Voices for Health

#### Mississippi

Mississippi Health Advocacy Program

#### Nebraska

Nebraska Appleseed

#### New Mexico

New Mexico Center on Law and Poverty

#### New York

New Yorkers for Accessible Health Coverage

#### North Carolina

NC Justice Center

#### Ohio

Universal Health Care Action Network of Ohio

Oklahoma

Oklahoma Policy Institute

Pennsylvania

Pennsylvania Council of Churches  
Pennsylvania Health Access Network

Tennessee

Tennessee Justice Center

Texas

Center for Public Policy Priorities  
Children's Defense Fund – Texas

Virginia

Celebrate Healthcare LLC  
Social Action Linking Together (SALT)  
Virginia Breast Cancer Foundation  
Virginia Poverty Law Center

Vermont

Office of the Health Care Advocate, Vermont Legal Aid

West Virginia

West Virginia Together for Medicaid  
West Virginians for Affordable Health Care

cc: Rep. Richard Neal, Chair, Committee on Ways and Means  
Rep. Kevin Brady, Ranking Member, Committee on Ways and Means  
Rep. Frank Pallone, Chair, Committee on Energy and Commerce  
Rep. Greg Walden, Ranking Member, Committee on Energy and Commerce  
Rep. Bobby Scott, Chair, Committee on Education and Labor  
Rep. Virginia Foxx, Ranking Member, Committee on Education and Labor  
Sen. Chuck Grassley, Chair, Committee on Finance  
Sen. Ron Wyden, Ranking Member, Committee on Finance  
Sen. Lamar Alexander, Chair, Committee on Health, Education, Labor, and Pensions  
Sen. Patty Murray, Ranking Member, Committee on Health, Education, Labor, and Pensions

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<sup>i</sup> Cooper, Zack, Fiona Scott Morton. 2016. "Out-of-network emergency-physician bills—an unwelcome surprise." NEJM 2016; 375:1915-1918. <https://www.nejm.org/doi/full/10.1056/NEJMp1608571>.

<sup>ii</sup> Garman, Christopher, Benjamin Chartock. 2017. "One in Five Inpatient Emergency Department Cases May Lead to Surprise Bills." Health Affairs. Vol 36. No. 1 <https://www.healthaffairs.org/doi/10.1377/hlthaff.2016.0970>.

<sup>iii</sup> Jack Hoadley, Kevin Lucia, and Maanasa Kona. 2019. "State Efforts to Protect Consumers from Balance Billing" The Commonwealth Fund. <https://www.commonwealthfund.org/blog/2019/state-efforts-protect-consumers-balance-billing>