

Chairman Scott and Ranking Member Foxx
House Education and Labor Committee
2176 Rayburn House Office Building
Washington, D.C. 20515

Delivered electronically

July 25, 2019

Dear Chairman Scott, Ranking Member Foxx, and members of the Committee:

Consumer Reports¹ writes to urge your support for the No Surprises Act (HR 3630, incorporated in HR 2328 as part of July 17 Energy and Commerce markup), which would protect patients across the country from surprise medical bills, to avoid enacting policy that could raise healthcare costs over time, and to extend these consumer protections to air ambulance billing. For over 80 years, Consumer Reports has worked with consumers for truth, transparency, and fairness in the marketplace. Surprise medical bills are symptomatic of the breakdown of those critical values in the healthcare system.

The Problem Of Surprise Medical Bills Poses A Well-Documented Threat To All Patients.

Also known as out-of-network balance billing, surprise billing occurs when an insured patient, through no fault of their own, is treated by an out-of-network provider, 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. Consumers who have health insurance, frequently a large cost itself, should not have their personal finances threatened by out-of-network care that is out of the patient's control. And yet, for millions of patients a year, that is the current reality.

The problem of surprise medical bills is well-documented. Recent academic studies have found that approximately one out of five emergency department visits involve care from an out-of-network provider.² 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

¹ Consumer Reports is an independent, nonprofit membership organization that works side by side with consumers to create a fairer, safer, and healthier world. For 83 years, CR has provided evidence-based product testing and ratings, rigorous research, hard-hitting investigative journalism, public education, and steadfast policy action on behalf of consumers' interests. Unconstrained by advertising, CR has exposed landmark public health and safety issues and strives to be a catalyst for pro-consumer changes in the marketplace. From championing responsible auto safety standards, to winning food and water protections, to enhancing healthcare quality, to fighting back against predatory lenders in the financial markets, Consumer Reports has always been on the front lines, raising the voices of consumers.

² Cooper, Zack, Fiona Scott Morton. 2016. "Out-of-network emergency-physician bills—an unwelcome surprise." NEJM 2016; 375:1915-1918. Available at <https://www.nejm.org/doi/full/10.1056/NEJMp1608571>.

involved a potential surprise bill.³ Strikingly, the vast majority of surprise medical bills come from a small fraction of hospitals.⁴ The protections offered by the No Surprises Act would affect a relatively small group of healthcare providers who do not contract with health plans, and in some cases charge sharply higher rates that are 2-5 times the prevailing in-network rate. Many surprise bills come from providers of ancillary medical services, such as anesthesiology, radiology, or labs.⁵

For years, Consumer Reports and allied organizations have advocated for state-based solutions to the surprise billing problem. This has led to meaningful protections for some consumers in some states. Yet, because of federal preemption, state laws cannot protect the nearly 100 million enrollees in self-insured plans. Furthermore, the majority of states still do not have comprehensive surprise bill protections in place even for the markets that state regulators oversee.⁶ 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.

In July, we joined 17 allied organizations in writing to Congressional leadership with guidelines for how legislation can be of greatest benefit to consumers. In that letter, which is attached, we explained that successful legislation to stop surprise bills must:

- ensure that consumers are held harmless from surprise bills that they incur due to no fault of their own;
- adopt a payment mechanism that does not inflate healthcare costs, as consumers ultimately bear these costs; and
- apply to all insurance plans.

The solution to surprise medical bills should not further escalate out-of-control healthcare costs.

While it is critical to get patients out of the middle of billing disputes between health plans and providers, consumers also have a very strong interest in assuring payment rates for surprise bills do not result in excessive charges get passed along in the form of higher insurance premiums. When health insurance becomes more expensive, fewer consumers can afford it, and some decline to enroll. Others are forced to enroll in high deductible plans; and finally others are negatively impacted because they must devote more family income and resources to paying for

³ Garman, Christopher, Benjamin Chartock. 2017. "One in Five Inpatient Emergency Department Cases May Lead to Surprise Bills." Health Affairs. Vol 36. No. 1. Available at <https://www.healthaffairs.org/doi/10.1377/hlthaff.2016.0970>.

⁴ Surprise medical bills occur in a highly concentrated group of hospitals: according to one study, half of hospitals have out-of-network billing rates below two percent, while "the out-of-network billing rate for hospitals in the 75th percentile of the distribution of out-of-network billing rates was 28 percent and 15 percent of hospitals have out-of-network rates of higher than 80 percent." Cooper, Zack, Fiona Scott Morton, Nathan Shekita, "Surprise! Out-of-Network Billing for Emergency Care in the United States," (March 2018), at p. 19. Available at <https://docs.google.com/document/d/16b5uH7srEi41Y-10o6kIBTakoRnLHuHwZ-nSpsqIn9w/edit?usp=sharing>

⁵ Adler, L. et al.. "Rep Ruiz's Proposal for Surprise Billing Would Lead to Much Higher Costs and Deficits," Health Affairs, July 16, 2019, available at: <https://www.healthaffairs.org/doi/10.1377/hblog20190716.355260/full/>

"...[These] emergency and ancillary physicians charge much higher amounts than their peer physicians relative to what Medicare pays for those same physician services. Further, there is a non-trivial minority of these specialists with especially exorbitant charges, who appear to be most aggressively leveraging the threat of surprise billing patients."

⁶ Jack Hoadley, Kevin Lucia, and Maanasa Kona. 2019. "State Efforts to Protect Consumers from Balance Billing," The Commonwealth Fund. Available at <https://www.commonwealthfund.org/blog/2019/state-efforts-protect-consumers-balance-billing>

coverage, instead of buying other goods and necessities.

Consumer Reports and others have advocated that surprise bill default payment levels be set with a view toward maintaining affordability of premiums and insurance coverage.

The No Surprises Act in its original form hews closely to our recommendations for protecting the affordability of health insurance. The Congressional Budget Office has estimated that the bill would reduce commercial insurance premiums by 1%, and decrease federal deficits by \$25 billion over 10 years.⁷

Yet, amendments accepted in the markup by the House Energy and Commerce Committee included an amendment to provide for arbitration for bills that exceed \$1,250. We believe this provision could, over time, increase administrative costs and inflate healthcare costs for all consumers. The proposed arbitration provisions would allow providers to challenge individual fees based on a number of factors, such as the complexity of the case and the provider's training as well as "any other extenuating circumstances."

We oppose this approach, which in particular may drive up the costs that consumers, employers and health plans have to pay for hospital facility fees. Establishing a fair payment benchmark in advance of medical service provision would provide greater clarity and administrative simplicity, and more consistent protection and billing arrangements for patients seeking medical care. Cases involving higher level of complexity can already be billed at higher rates using medical procedure codes, as is customary for many procedures, and do not require an arbitration system to achieve fair resolution. We are also deeply concerned that arbitration criteria preferred by some specialty providers – using billed charges as a basis for setting payment – would inflate costs throughout the system, ultimately raising premiums for consumers. While the legislative language currently prevents the use of billed charges as criteria in the arbitration process, we are concerned the bill could later be amended in ways that result in excessive charges for medical services, that would be passed along to patients in the form of higher premiums. Furthermore, if surprise bill payments are set too high, they would also provide an incentive for providers to stay outside of health plan networks, undermining affordability and continuity of care for patients.

We urge you to reject proposals like this in favor of a solution that would keep premiums affordable for consumers and employers, and hold down the growth of overall healthcare costs over time.

Patients Urgently Need Protection Against Surprise Billing by Air Ambulances, Which Generate Very Large Balance Bills

We strongly encourage the House of Representatives to add language to the No Surprises Act to address the serious problem of surprise out-of-network bills from air ambulances, by

⁷ Adler, L. et al.. "Rep Ruiz's Proposal for Surprise Billing Would Lead to Much Higher Costs and Deficits," Health Affairs, July 16, 2019, available at: <https://www.healthaffairs.org/doi/10.1377/hblog20190716.355260/full/>

incorporating similar or identical provisions to those proposed in the Lower Health Costs Care Act (S. 1895) in the Senate. Patients cannot reasonably choose an air ambulance provider in an emergency, when time is of the essence, and they must be transported rapidly to a medical facility. Because 70% of air ambulance transports currently take place on an out-of-network basis, every year many patients are stuck with huge surprise bills of \$20,000, \$50,000 or even more.

As proposed in the current version of S.1895, patients would be held harmless from receiving surprise air ambulance bills. Patient cost sharing for air ambulances would be equal to the amount if such services were provided by an in-network provider. Group health plans or health insurance issuers would be required to pay out-of-network air ambulance providers at the median in-network rate for that service in the same geographic area. To help assure that payment rates are fair and adequate, S. 1895 grants authority to the Secretary of Health and Human Services to establish a methodology that health plans would follow to determine the median in-network rate, and to define geographic regions for calculations of the payment level.

By way of background, over the last 15 years, there has been a dramatic change within the air ambulance industry, with a rapid expansion of for-profit operators entering the market. In 2016, just four providers controlled 51% of the national market.⁸ Because air ambulance operators do not need to make detailed cost data public, there is currently no way to evaluate the true cost of air ambulance travel. However, the scope of the surprise billing problem is illustrated by news reports and state investigations:

- The average charge from Air Methods, the largest air ambulance operator, rose from about \$13,000 in 2007 to \$50,200 in 2016, according to Research 360, an independent firm that tracks the industry.⁹ The average bill for the industry overall was \$32,895 in 2014, the most recent year for which there is data.¹⁰
- The North Dakota Insurance Department received 25 consumer complaints between 2013 and April 1, 2016. Twenty of these complaints were against a single for-profit air ambulance provider who charged a total of \$884,244 for the 20 flights, an average of \$44,212 per flight. Just 33 percent of the charges were covered by the patients' insurance.¹¹
- The Maryland Insurance Administration held hearings in 2015 to investigate a string of consumer complaints regarding air ambulance billings ranging from \$20,000 to over

⁸ Up in the Air: Inadequate Regulation for Emergency Air Transportation," Consumer Reports Advocacy, April 2017, page 5 citing Air Methods May 2016 Corporate Presentation. Available at: <https://advocacy.consumerreports.org/research/up-in-the-air-inadequate-regulation-for-emergency-air-ambulance-transportation>

⁹ Up in the Air: Inadequate Regulation for Emergency Air Transportation," Consumer Reports Advocacy, April 2017, page 5, footnote 23 and 24.

¹⁰ Rosato, Donna. "Air Ambulances: Taking Patients for A Ride," Consumer Reports, April 2017, available at: <https://www.consumerreports.org/medical-transportation/air-ambulances-taking-patients-for-a-ride/>

¹¹ Up in the Air: Inadequate Regulation for Emergency Air Transportation," Consumer Reports Advocacy, April 2017, footnote 29.

\$40,000.¹²

- Insurance departments from nine states received 55 consumer complaints about a combined \$3.8 million in air ambulance charges – an average charge of \$70,000 per trip.
- A sampling of 19 air ambulance bills received by Montana residents showed that the average cost per flight for an out-of-network ambulance flight was \$53,397.¹³
- One patient in Massachusetts recently received a surprise air ambulance bill for a whopping \$474,725.¹⁴

Federal legislation to address this issue is essential, because states are currently preempted from regulating rates or routes of aircraft under the 1978 Airline Deregulation Act. So even though state insurance commissioners have received many complaints about excessive air ambulance bills, they lack the legal and regulatory capacity to protect patients. We therefore strongly urge the House to please include provisions preventing surprise air ambulance billing in the final version of the No Surprises Act.

Conclusion

Congress has the ability to protect patients from the fundamental unfairness of surprise medical bills and to do so in a way that does not inflate the overwhelming cost of healthcare for us all. We therefore strongly urge you to vote in favor of the No Surprises Act when it comes before the House Education and Labor Committee and to amend the legislation to also extend this critical consumer protection to air ambulance billing.

Sincerely,



Chuck Bell, Programs Director
Consumer Reports
101 Truman Avenue
Yonkers, NY 10703
(914) 378-2507 · (914) 830-0639 mobile
cbell@consumer.org



Dena Mendelsohn, Senior Policy Counsel
Consumer Reports
1 Market Street, Spear Tower
36th Floor
San Francisco, CA 94105
(415) 431-6747
dena.mendelsohn@consumer.org

¹² Up in the Air: Inadequate Regulation for Emergency Air Transportation,” Consumer Reports Advocacy, April 2017, footnote 30.

¹³ Up in the Air: Inadequate Regulation for Emergency Air Transportation,” Consumer Reports Advocacy, April 2017, footnote 32.

¹⁴ “\$474,725: Mass Stroke Patient Receives ‘Outrageous’ Medical Flight Bill,” WBUR-FM, December 20, 2018, available at: <https://www.wbur.org/commonhealth/2018/12/20/cunningham-angel-medflight-charges>

July 10, 2019

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

The Honorable Kevin McCarthy
Minority Leader
U.S. House of Representatives
Washington, DC 20515

Dear Speaker Pelosi and Leader McCarthy:

The 18 undersigned organizations representing patients, consumers, providers and labor, write to offer our strong support for legislation to end “surprise billing.” Also known as out-of-network balance billing, surprise billing occurs when an insured patient, through no fault of their own, is treated by an out-of-network provider 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.ⁱ 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.ⁱⁱ

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.ⁱⁱⁱ 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.

Last month, the Senate Committee on Health, Education, Labor and Pensions marked up legislation that included strong protections for consumers against surprise bills. While the health care committees of jurisdiction in the House of Representatives work to craft bipartisan proposals, we write to provide our support for comprehensive efforts, and to provide guidelines for how legislation can benefit to consumers. We believe successful legislation to stop surprise bills will:

- **Fully Protect Consumers:** Most importantly, legislation should ensure that consumers are held harmless from surprise bills that they incur due to no fault of their own. Consumers should not receive surprise bills and should 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. In addition, legislation should be explicit that in-network costs that consumers pay in surprise bill situations accrue to in-network deductibles and out-of-pocket caps.

To ensure full protection for consumers, successful legislation should apply to all providers that may surprise bill consumers, including all out-of-network providers and services in in-network facilities (including use of equipment, devices, telemedicine services, or other treatments or services) and services provided post-stabilization after admission through an emergency department. Finally, while consumers should be allowed to see out-of-network providers if they choose, legislation should have strong notice requirements for non-facility-based providers. Ideally, legislation should require at least 7-days advance notice of a provider's network status, and notice should provide the cost of out-of-network care. A number of states have already passed surprise bill prohibitions. Federal law must allow state laws to stay in place if they have equally strong or stronger consumer and cost protections.

- **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. While legislation should be crafted carefully to promote robust provider networks, we believe it is critical that the payment mechanism – however set – does not inflate health care costs, as consumers ultimately bear these costs. ***We are open to various mechanisms to determine payment, but are deeply concerned about any mechanism that uses billed charges as a basis for or factor in setting out of network payment.*** Billed charges are often several times higher than the rates providers typically receive for delivering care and using charges as a basis for or factor in setting rates would inflate costs throughout the system, ultimately raising premiums for consumers.
- **Apply to All Insurance Plans:** Successful legislation should prohibit surprise billing in all health insurance plans, including individual, small group and large group plans, and self-insured plans. This will ensure people are protected from surprise bills regardless of where they live.

Members of Congress must demonstrate leadership on behalf of their constituents to address the harmful consumer problem of surprise billing. Millions of families in our country live in constant threat of receiving a crushing surprise medical bill despite being insured and Congress is in the best position to enact protections. ***While action***

to protect consumers from surprise bills and hold down underlying costs may not be uniformly popular among special interest groups, consumers need this help now. We appreciate your bipartisan leadership in taking on surprise billing. We look forward to working with you to ban this egregious practice this year.

Sincerely,

Families USA
AFSCME
American Medical Student Association
Community Catalyst
Consumer Reports
Doctors for America
First Focus Campaign for Children
Health Care for America Now
Mental Health America
MomsRising
National Alliance on Mental Illness
National Association of Social Workers
National Consumers League
National Health Law Program
National Partnership for Women & Families
NETWORK Lobby for Catholic Social Justice
Voices for Progress
1,000 Days

cc: Frank Pallone, Chair, Committee on Energy and Commerce
Greg Walden, Ranking Member, Committee on Energy and Commerce
Bobby Scott, Chair, Committee on Education and Labor
Virginia Foxx, Ranking Member, Committee on Education and Labor

ⁱ Cooper, Zack, and Fiona Morton. 2016. "Out-of-Network Emergency-Physician Bills — An Unwelcome Surprise." *New England Journal of Medicine*. 375:1915-1918.

ⁱⁱ Garman, Christopher, and Benjamin Chartock. 2017. "One in Five Inpatient Emergency Department Cases May Lead to Surprise Bills." *Health Affairs*. Vol 36. No. 1.

ⁱⁱⁱ Hoadley, Jack, Kevin Lucia, and Maanasa Kona. 2019. "State Efforts to Protect Consumers from Balance Billing" The Commonwealth Fund.