

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.