

# ACTION ALERT



July 2, 2019

## Contact Congress to support 'surprise' billing benchmark approach outlined in Senate HELP, draft House Energy and Commerce bills

### *Action Required*

Please contact your member of Congress – and those with whom your company has a relationship – to **urge their support for legislation that addresses “surprise” medical billing through the use of a payment benchmark based on the median in-network rate**, as is included in bipartisan legislation approved by the U.S. Senate Health, Education, Labor and Pensions (HELP) Committee and in draft bipartisan legislation released by the U.S. House of Representatives Energy and Commerce Committee. In anticipation of the House Energy and Commerce Committee considering surprise billing legislation [next week], as well as future action in the Senate, it is critically important that lawmakers hear from employers as soon as possible to **strongly support the payment benchmark approach and reject arbitration**.

[Click here for a draft letter you can send to your elected representatives.](#)

We also encourage you to **join us for in-person meetings in lawmakers' offices on Capitol Hill**. We are scheduling meetings with members of Congress on July 18 and 19. See below for more information on how to participate.

### *Policy Background*

Surprise medical bills are those that occur after a patient receives emergency care in an out-of-network facility or uses an in-network facility where ancillary, but necessary, services are rendered by out-of-network providers, such as anesthesiologists or radiologists.

A number of bills seek to protect patients from surprise medical bills but differ in their approach to resolving payment from payers to providers. Using a Medicare-based benchmark is a preference for many employers. Arbitration is seen as an inefficient, ineffective and inflationary approach to addressing surprise billing.

In a bipartisan 20-3 vote on June 26, the Senate HELP Committee approved the Lower Health Care Costs Act (S. 1895), which uses a federal benchmark approach. The [draft No Surprises Act](#), developed by the House Energy and Commerce Committee, also establishes a minimum market-based payment benchmark set at the median contracted (in-network) rate for the service in the geographic area the service was delivered.

Nevertheless, many lawmakers are opposed to this approach, including a bipartisan group led by Senator Bill Cassidy (R-LA), which instead supports independent dispute resolution via arbitration.

The health care provider community is strongly lobbying for the arbitration approach, which the Council has urged lawmakers to reject.

### *Talking Points*

- Employers are deeply concerned about the burden that unexpected medical bills from out-of-network providers place on employees and their families. **A lack of meaningful patient choice in selecting certain specialized providers allows the providers to charge inflated rates by staying out-of-network, generating surprise bills.**
- The incentive for certain providers to stay out-of-network and charge inflated rates constitutes a market failure that limits the benefit of networks in controlling costs for patients and plans and necessitates Congress to act.
- To ensure equitable payment for the services provided without discouraging network participation or resulting in higher costs for all consumers, we strongly support a fair and reasonable market-based benchmark payment based on the median in-network rate for the service in the geographic area as an alternative to costly and complex arbitration.
- Recent estimates from the non-partisan Congressional Budget Office (CBO) show that consumers and taxpayers could save more than \$25 billion over 10 years if Congress were to implement this federal benchmark for out-of-network provider rates.
- Binding arbitration is an inefficient and ineffective approach to addressing surprise medical billing and should be rejected. As Congress seeks to bring greater transparency to health care costs, a costly, complex and opaque arbitration process is a step in the wrong direction.

### *Key Targets*

We encourage you to reach out to your elected representatives and those with whom your company has a relationship. [Click here for a draft letter you can send to your elected representatives.](#)

[Find your congressional representative by address](#)

[Click here for a list of Senators, sorted by state, and their phone numbers.](#)

[Click here for a list of House Representatives, sorted by state, and their phone numbers.](#)

The following committees and committee members should be considered high priority:

[Senate HELP Committee](#)

[House Energy & Commerce Committee](#)

[House Education & Labor Committee](#)

### *Capitol Hill Meetings & Staff Contact*

To join us for in-person meetings with lawmakers on Capitol Hill on July 18 and 19, or for more information or assistance connecting with members of Congress, contact [Ilyse Schuman](#), senior vice president, health policy, for more information. She can be reached at 202-289-6700.