



AMERICAN BENEFITS COUNCIL

July 10, 2019

The Honorable Frank Pallone, Jr.
Chair
Committee on Energy and Commerce
Washington, DC 20515

The Honorable Greg Walden
Ranking Member
Committee on Energy and Commerce
Washington, DC 20515

The Honorable Anna Eshoo
Chair
Subcommittee on Health
Washington, DC 20515

The Honorable Michael Burgess
Ranking Member
Subcommittee on Health
Washington, DC 20515

RE: The No Surprises Act (H.R. 3630)

Dear Representatives Pallone, Walden, Eshoo and Burgess,

The American Benefits Council (“the Council”) is writing to express our support for the No Surprises Act (H.R. 3630). We urge all members of the U.S. House of Representatives Committee on Energy and Commerce Health Subcommittee to vote in favor of this vitally important measure to lower health care costs for American workers and their families.

The Council is a Washington D.C.-based employee benefits public policy organization. The Council advocates for employers dedicated to the achievement of best-in-class solutions that protect and encourage the health and financial well-being of their workers, retirees and families. Council members include over 220 of the world's largest corporations and collectively either directly sponsor or administer health and retirement benefits for virtually all Americans covered by employer-sponsored plans.

Employers play a critical role in the health care system, covering more than 181 million Americans – over half of all Americans – and, on average, paying 82% of the cost of coverage.

Employers are deeply concerned about the burden that unexpected medical bills from out-of-network providers place on employees and their families. We seek to protect patients from surprise bills without undermining access to high-quality, high-value networks or increasing health care costs for individuals and employer providers of health coverage. Indeed, we view the effort to protect patients from surprise balance bills within the broader context of the effort to lower health care costs. **As such, we urge members of the subcommittee to support the No Surprises Act.**

A lack of meaningful patient choice between providers who participate in a plan's network and those who do not is the key component of surprise balance billing. As noted in our letter dated June 5, 2019, a study published in JAMA comparing physician charge-to-Medicare payment ratios across specialties, sheds light on the drivers of surprise billing. "Physician excess charge was higher for specialties in which patients have fewer opportunities to choose a physician or be informed of the physician's network status."³ For example, anesthesiologists were charging rates equivalent to 500% of what Medicare pays for the same service. The ability of these specialties to set such astronomical rates is a powerful incentive to remain out of network, which, in turn, generates surprise balance bills. Clearly, this constitutes a market failure that limits the benefit of networks in controlling costs for patients and plans and necessitates legislative intervention.

We applaud the Energy and Commerce Committee for crafting legislation that instead addresses the underlying root of the problem. By prohibiting balance billing and establishing a benchmark payment rate based on the median contracted rate for the service in the geographic area, the legislation would remove the incentive for certain providers of emergency services and those practicing at in-network facilities to remain out-of-network. In so doing, the legislation would both protect patients from surprise bills and be non-inflationary for all consumers. Additionally, because the benchmark rate would vary by geographic region, this would help ensure providers in rural and frontier areas would receive higher payments.

To go further in reducing health care costs, we would prefer that the benchmark be set *at the lower of* the median in-network rate or 125% of the Medicare rate. By virtue of the fact that patients lack a meaningful role in their selection, the in-network rates for anesthesiologists, for example, averaged nearly 350% of Medicare rates in 2018, far above the average contracted rate for all physicians of 128% of Medicare.⁴ The Council recognizes the No Surprises Act reflects a carefully crafted compromise, and while we would prefer this lower of 125% of Medicare or the median in-network rate, we support the bipartisan approach introduced by the chairman and ranking member.

³ <https://jamanetwork.com/journals/jama/fullarticle/2598253>

⁴ <https://www.brookings.edu/research/state-approaches-to-mitigating-surprise-out-of-network-billing/>

The Council strongly opposes the use of independent dispute resolution (IDR) in surprise balance billing situations. The Council believes that the use of an IDR process would impose on plans and issuers – as well as providers – significant administrative inefficiencies, unnecessary costs and unpredictable outcomes. For large companies with nationwide operations, arbitration would be administratively complex, costly and time-consuming. As the committee strives to bring greater transparency to health care costs, arbitration is a step in the wrong direction. However artfully the legislation is crafted, arbitration brings unpredictability and the individual bias of the arbitrator into the equation. Congress needs to fix the problem of surprise medical billing at its root and in a uniform manner, not add more cost, risk and opaqueness to it.

Finally, the Council strongly urges the subcommittee to include emergency air and ground ambulance services within the ambit of the surprise balance billing protections and payment requirements. These services, particularly in rural areas, are critical to addressing emergency situations, and patients should not be faced with the choice between enormous out-of-pocket costs and seeking life-saving care.

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The Council shares the committee’s concern with surprise medical bills and the financial pain they inflict on patients. We applaud the committee for its bipartisan legislation to address surprise billing in a manner that seeks to cure this problem, not merely mask its symptoms. The legislation can bring relief to patients burdened by surprise medical bills and all consumers seeking lower cost and better quality health care. Please do not hesitate to reach out with any specific questions.

Sincerely,

A handwritten signature in black ink that reads "Ilyse Schuman". The signature is written in a cursive, flowing style.

Ilyse Schuman
Senior Vice President, Health Policy

CC: All members, U.S. Senate
All members, U.S. House of Representatives