



## AMERICAN BENEFITS COUNCIL

December 8, 2020

The Honorable Mitch McConnell  
Majority Leader  
U.S. Senate  
Washington, DC 20515

The Honorable Charles Schumer  
Democratic Leader  
U.S. Senate  
Washington, DC 20515

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

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

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

The twin public health and economic crises brought upon by the COVID-19 pandemic has crystallized the need for Congress to take action to reduce health care costs and protect all patients and consumers from surprise medical bills. While all efforts should be made to support the health care system and providers who are on the front lines fighting COVID-19, we must also guard against excessive charges to patients and health plans by certain out-of-network providers exploiting market failures to drive surprise balance billing. The [recent report from the Government Accountability Office](#) offers yet another confirmation of the market failure generating surprise billing.

Members of the American Benefits Council (“the Council”) – the nation’s major employers – are deeply concerned that the creation of a new federal arbitration process to settle payment disputes will only exacerbate this market failure and fuel the practice of surprise billing rather than stem it. We strongly urge you to reject a stand-alone arbitration proposal that will neither protect patients nor fix the problem.

Arbitration is an inefficient, ineffective and inflationary approach to addressing surprise medical billing. This flawed approach equates to a reward for some providers of certain medical specialties who set astronomical rates by remaining out-of-network because patients have no meaningful choice in their selection. [The experience in states that have adopted this arbitration model](#) bears this out. It makes no sense for Congress

to enshrine across the country a mandatory arbitration process that adds more cost, complexity and opaqueness for working families and employers.

The solution is clear. A fair, reasonable, local market-based approach to resolving billing disputes must be the foundation of federal surprise billing legislation. Only by aligning reimbursement for out-of-network providers in surprise billing situations with local, private negotiated rates will a fair market be restored and consumers protected. Over the past two years, the Council and our members have asked Congress to fix the problem of surprise billing at its root through the use of a local, median in-network benchmark instead of an arbitration model. Now, as you complete your important work for the American people before the end of the 116th Congress, we again urge you to reject the flawed federal arbitration proposal to address the issue of surprise medical billing.

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 of Congress