



AMERICAN BENEFITS COUNCIL

February 10, 2020

The Honorable Richard Neal
Chairman
Ways & Means Committee
2309 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Kevin Brady
Ranking Member
Ways & Means Committee
1011 Longworth House Office Building
Washington, D.C. 20515

Dear Chairman Neal and Ranking Member Brady:

Members of the American Benefits Council (“the Council”) – the nation’s major employers – are deeply concerned about the burden surprise medical bills place on working families. Our member companies seek to protect their employees from surprise bills through legislation that fixes the root cause of this problem and, thereby, lowers costs for health care purchasers. We urge the committee and Congress to advance a fair, reasonable, local market-based approach as a means of resolving billing disputes instead of the flawed arbitration proposal included in the Consumer Protections Against Surprise Medical Bills Act of 2020.

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.

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. When patients have fewer opportunities to choose a physician or be informed of the physician’s network status, out-of-network providers can charge far more than comparable in-network providers.¹ The ability of some providers of certain medical specialties to set astronomical rates is a powerful incentive for them to remain out-of-network, which, in turn, generates surprise balance bills. Clearly, this constitutes a

¹ Cooper, Zach; Nguyen, Hao; Shekita, Nathan; Morton, Fiona Scott, “Out-Of-Network Billing And Negotiated Payments For Hospital-Based Physicians” December 16, 2019.
<https://www.healthaffairs.org/doi/abs/10.1377/hlthaff.2019.00507>

market failure that limits the benefit of networks in controlling costs for patients and necessitates legislative intervention.

The effort to stop 'surprise' medical bills is all about increasing transparency, certainty and affordability concerning the delivery of health services. We appreciate the consumer protections and transparency provisions included in the legislation as consistent with this goal. However, it makes no sense to create a mandatory arbitration process that adds more cost, complexity and opaqueness to the system and preserves the market failure that gives rise to surprise bills in the first place. This is what will occur as a result of the Consumer Protections Against Surprise Medical Bills Act.

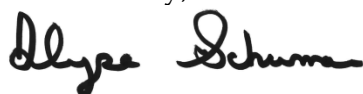
A mandatory arbitration process will greatly encourage and result in disputes over the fees charged for health services. Therefore, the Council supports a clear standard for payments that provides certainty to providers and patients alike. The Senate Health Education Labor and Pensions (HELP) Committee got it right when it approved S.1895, the Lower Health Care Costs Act. That legislation would ensure that out-of-network health providers receive payment based on the median in-network rate charged in the locality where the services were rendered.

The Congressional Budget Office estimates that the compromise, market-based benchmark approach included in the Senate bill would reduce commercial insurance premiums by 1% on average nationwide and decrease federal deficits by \$25 billion over ten years. By contrast, unfortunately, the Ways and Means Committee is considering legislation that enshrines an arbitration approach and the distorted market incentives that encourage certain providers to remain out-of-network and generate surprise bills.

Arbitration will prolong uncertainty and inject complexity and greater costs for consumers and for employers, who bear the largest portion of the overall cost of providing coverage to workers and families. As Congress 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 potential individual bias of the arbitrator into the equation.

We urge the committee to truly protect working families from surprise medical bills by advancing a fair, reasonable, local benchmark provision instead of the flawed arbitration proposal. We will continue to work closely with the committee and Congress to fix this legislation so that it, in turn, fixes the problem of surprise billing.

Sincerely,



Ilyse Schuman
Senior Vice President, Health Policy