

AFL-CIO

LEGISLATIVE ALERT

January 30, 2020

United States House of Representatives
Washington, DC 20515

Dear Representative:

On behalf of the AFL-CIO, I urge you to oppose proposed changes to “surprise medical bill” legislation that would increase health insurance premiums for working people. Proposals to expand the use of arbitration or dispute resolution to determine provider payment will inflate physician and private equity profits at the expense of consumers.

The surprise medical bill problem must be resolved both by protecting consumers from bearing the brunt of unexpected out-of-pocket expenses for medical services and by addressing the market failure that allows these unreasonable charges to occur. The legislative proposals now under discussion by the House Education and Labor and Ways and Means committees appear to offer adequate protections for individual consumers who face unexpected expenses, but the degree to which excessive provider charges will be addressed is in question.

Studies conducted by researchers at Yale and USC-Brookings point to excessive physician and provider charges as the root cause of this market failure. Providers can charge high prices because demand is “inelastic” when patients cannot make a choice during an emergency or acute care situation. Unfortunately, private equity firms have moved to exploit this market failure as a profit opportunity, and research has shown that as private equity moves in, provider charges surge as much as 82 percent. Other analysis shows that efforts to ameliorate provider prices for just four physician specialties often engaged in surprise billing would save people with employment-based coverage approximately \$40 billion annually.

It is alarming that provisions to limit providers from charging inflated rates appear to be under attack. The bipartisan proposal put forward by the House Energy and Commerce and Senate Health, Education, Labor, and Pensions committees in December included an Independent Dispute Resolution (IDR) process to appeal to provider groups that are concerned about accepting average, market-determined rates for their services. The proposal included some reasonable restrictions on providers’ use of IDR to obtain higher payments, including limiting IDR to claims greater than \$750, instructing arbiters to consider the market share of providers, and imposing a “cooling off period” to avoid potential abuse of the process. At a minimum, these limitations on IDR should be preserved.

The optimal approach for addressing this market failure is to employ a payment benchmark to resolve these disputes. Employing a benchmark set at 125% of the rates paid by

Medicare would incentivize providers to negotiate with health plans and arrive at a market-based rate that is not inflationary. Higher benchmarks, such as median contracted rates, are better than the IDR approach, but provide less incentive for providers to negotiate with payers.

As surprise medical bills legislation moves through the House of Representatives, we urge you to support an approach that employs a strong payment benchmark and avoids the use of IDR to determine provider payments. This kind of solution will protect consumers from surprise bills without increasing overall health care costs for working people.

Sincerely,



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American Federation of Labor and Congress of Industrial Organizations

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