

October 17, 2019

The Honorable Richard Neal, Chairman
The Honorable Kevin Brady, Ranking Member
House Committee on Ways and Means
1102 Longworth House Office Building
Washington D.C. 20515

Dear Chairman Neal, Ranking Member Brady, and Members of the Committee:

On behalf of the undersigned organizations, representing a diverse coalition of taxpayer advocacy groups, we write urging you to avoid a negotiated rulemaking process to address surprise billing. Though we may disagree on the best methods to resolve payment disputes over surprise bills, we are unified in believing that outsourcing this process to unelected federal bureaucrats will lead to outcomes that leave many stakeholders, including patients and taxpayers, unsatisfied.

A recent letter from the Chairman indicates that the Committee is considering establishing a negotiated rulemaking committee that includes the Departments of Health and Human Services (HHS), Labor, and Treasury, along with “key stakeholders.”¹ The letter argues “negotiated rulemaking would require all parties to come to the table to agree on a resolution, increasing administrative efficiency and giving all parties an equal voice.” Like many regulatory efforts, though, we believe the devil is in the details.

First and foremost, under the traditional negotiated rulemaking process a “committee’s conclusions are not binding on the agency” or agencies.² Unless carefully written, negotiated rulemaking may just lead to Congress handing over all its decision-making authority on surprise billing disputes to federal bureaucrats.

Even if Congress were to bind agencies to the recommendations of the negotiating committee, there is no guarantee that stakeholders can come to a timely, amicable resolution to current and future payment disputes. Indeed, one of the seven considerations agencies are required to make before pursuing negotiated rulemaking is whether “there is a reasonable likelihood that a committee will reach a consensus on the proposed rule within a fixed period of time.”³

Lastly, it should be noted that even proponents of negotiated rulemaking have acknowledged that experts “are divided over questions of the legitimacy, benefits, and effectiveness” of the process. While the Chairman argues in his letter that negotiated rulemaking worked for other health care regulations, a process with disputed legitimacy, benefits, and effectiveness should not be used to solve what has become a pressing concern for patients, providers, insurers, and taxpayers. Worse yet would be letting regulators, who don’t answer to voters, lead this disputed process.

We encourage the Committee to continue working directly with stakeholders to reach a resolution to the issue of surprise medical billing and payment disputes rather than passing this process off to unelected bureaucrats. If Congress lacks sufficient information or analysis to complete prudent legislation, it has numerous options, including additional hearings or working groups formed to solicit and evaluate more intensely the comments of outside stakeholders. Taxpayers deserve solutions pursued and written into law by their elected officials, rather than one written by D.C. regulators who cannot be held accountable by the American people.

Sincerely,



National
Taxpayers Union



60 Plus
Association



American Commitment



Center for a Free Economy



Center for Freedom and
Prosperity

¹ Neal, Richard (Chairman, House Committee on Ways and Means). Letter to: Ways and Means Democratic Colleagues. Committee on Ways and Means, September 27, 2019. Retrieved from: <https://www.scribd.com/document/428317457/Neal-Surprise-Billing>

² Garvey, Todd. “A Brief Overview of Rulemaking and Judicial Review.” Congressional Research Service, Updated March 27, 2017. Retrieved from: <https://crsreports.congress.gov/product/pdf/R/R41546>

³ 5 U.S.C. § 563(a)(4) (1990).



Center for Individual Freedom



Club for Growth



Consumer Action for a Strong Economy



Council for Citizens Against Government Waste



FreedomWorks



Goldwater Institute



Institute for Liberty



Less Government



Small Business & Entrepreneurship Council (SBE Council)



The Market Institute