



February 10, 2020

The Honorable Bobby Scott
2176 Rayburn House Office Building
Washington D.C. 20515

The Honorable Virginia Foxx
2101 Rayburn House Office Building
Washington D.C. 20515

Dear Chairman Scott and Ranking Member Foxx:

On behalf of the National Taxpayers Union, I write in opposition to your proposed legislation to tackle surprise medical bills, the “Ban Surprise Billing Act” (H.R. 5800).¹ While well-intentioned, this bill would apply the ineffective tools of a federal benchmark and government-led arbitration to the surprise billing problem. This could lead to supply shortages, higher health costs, and further bureaucratic intervention into American health care—all results that Committee members should try to avoid. We encourage the Committee to go back to the drawing board with proposals that protect patients and lower health costs without putting government’s thumb on the scale for one group of stakeholders over another.

Both of the dominant federal proposals to tackle surprise billing have serious flaws. The benchmark is the most worrisome, given that this solution would have the federal government setting the rates for certain kinds of care. Doctors have warned this would give health insurance plans significant leverage over the rates they are paid for both in-network and out-of-network services, and in turn impact the provision and supply of care across the country.²

Government-led arbitration is also problematic. When the government sets the terms arbitrators can consider while mediating payment disputes between payers and providers, it risks favoring one party over another. Indeed, a leading proposal utilizing arbitration (also called “independent dispute resolution”) would have arbitrators consider the 80th-percentile of doctors’ billed charges when determining the proper payment for services,³ which could have an inflationary impact on American health costs. While the Ban Surprise Billing Act avoids this troublesome guidance, concerns remain over how stakeholders could and would game the system to win disputes.

Just as two wrongs do not make a right, combining these approaches is very unlikely to deliver long-term relief to the American health care system. As NTU wrote in December on similar legislation brokered by the Senate Health, Education, Labor, and Pensions (HELP) Committee and the House Energy and Commerce Committee:

¹ “H.R. 5800 - Ban Surprise Billing Act.” Congress.gov, introduced February 7, 2020. Retrieved from: <https://www.congress.gov/bill/116th-congress/house-bill/5800/text> (Accessed February 10, 2020.)

² Duffy, Erin L. “Influence of Out-of-Network Payment Standards on Insurer–Provider Bargaining: California’s Experience.” American Journal of Managed Care, August 2019. Retrieved from: <https://www.ajmc.com/journals/issue/2019/2019-vol25-n8/influence-of-outofnetwork-payment-standards-on-insurer-provider-bargaining-californias-experience?p=1>

³ “H.R. 3502 - Protecting People From Surprise Medical Bills Act.” Congress.gov, introduced June 26, 2019. Retrieved from: <https://www.congress.gov/bill/116th-congress/house-bill/3502/text> (Accessed February 10, 2020.)

“Though more details of the legislative negotiations are forthcoming, press reports indicate the legislation will add an arbitration component to the benchmark system that already passed out of each committee earlier this year. The National Taxpayers Union believes it is critically important to protect patients from surprise bills, but believes there are alternative fixes that address this problem while not relying on government-heavy schemes to solve payment disputes.”⁴

Rather than setting up a new government regime for determining the price of care, NTU supports a contract-based alternative, developed by health policy experts David Hyman and Ben Ippolito, that would adjust how doctors, hospitals, and insurers contract with one another.⁵ A separate, detailed proposal from health experts Doug Badger and Brian Blase also deserves consideration, given that it relies on existing Federal Trade Commission enforcement rather than new government rules and regulations.⁶

While we are opposed to the Committee’s combination of a benchmark and government-led arbitration, we do applaud the Committee’s inclusion of the provider directory and cost-sharing information measures in the Ban Surprise Billing Act.⁷ Improving the accuracy of provider directories would tackle one of the root causes of surprise medical bills.⁸ Allowing patients to receive good-faith estimates for scheduled care ahead of time is also a very reasonable expectation of plans and providers, and will help reduce surprise billing incidents. We believe these provisions should be included in any and all reforms considered by the Committee and Congress going forward.

We thank you for your work on and attention to the issue of surprise medical bills, but urge you to reconsider your approach. Neither a benchmark nor government-led arbitration represent the kind of patient-first, market-based health reform that will deliver savings to taxpayers and consumers in the long run. We hope you will instead consider alternatives, such as the contract-based solution, and we stand ready to assist the Committee in any ways you deem helpful.

Sincerely,

Andrew Lautz
Policy and Government Affairs Associate

CC:

⁴ “‘Surprise Billing’ Health Legislation Would Insert Federal Bureaucrats Into Health Decisions.” National Taxpayers Union, December 9, 2019. Retrieved from:

<https://www.ntu.org/publications/detail/surprise-billing-health-legislation-would-insert-federal-bureaucrats-into-health-decisions>

⁵ Lautz, Andrew. “Why a Contract-Based Solution to Surprise Billing Is Best for Taxpayers and Patients.” National Taxpayers Union, January 24, 2020. Retrieved from:

<https://www.ntu.org/publications/detail/why-a-contract-based-solution-to-surprise-billing-is-best-for-taxpayers-and-patients>

⁶ Badger, Doug, and Blase, Brian. “A Targeted Approach to Surprise Medical Billing.” The Galen Institute, December 2019. Retrieved from: https://galen.org/assets/A_Targeted_Approach_To_Surprise_Medical_Billing.pdf

⁷ “Section-by-Section: The Ban Surprise Billing Act (H.R. 5800).” Committee on Education and Labor, February 2020. Retrieved from:

<https://edlabor.house.gov/imo/media/doc/2020-02-11%20Ban%20Surprise%20Billing%20Act%20Section%20by%20Section.pdf> (Accessed February 10, 2020.)

⁸ Lautz, Andrew. “Better Paths Forward on Surprise Billing.” National Taxpayers Union, September 10, 2019. Retrieved from: <https://www.ntu.org/publications/detail/better-paths-forward-on-surprise-billing>

The Honorable Susan A. Davis
The Honorable Raúl M. Grijalva
The Honorable Joe Courtney
The Honorable Marcia L. Fudge
The Honorable Gregorio Kilili Camacho Sablan
The Honorable Frederica S. Wilson
The Honorable Suzanne Bonamici
The Honorable Mark Takano
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