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The Impact of Surprise Out-of-Network Medical Bills on Consumers

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Subcommittee on Health, Employment, Labor, and Pensions

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Chairwoman Wilson, Ranking Member Walberg, and Members of the House Education and Labor Committee's Subcommittee on Health, Employment, Labor, and Pensions – thank you for the opportunity to speak with you today. I am Frederick Isasi, the Executive Director of Families USA. For nearly 40 years, we have served as one of the leading national voices for health care consumers both in Washington, D.C. and on the state-level. Our mission is to allow every individual to live to their greatest potential by ensuring that the best health care is equally accessible and affordable to all.

The Larger Context of Health Care Costs for Families

Unfortunately, while our country has made substantial progress in health care coverage over the last several decades,[1] health care costs continue to rise much faster than paychecks and erode the financial security of our nation.[2] The consequences of rapidly growing health care costs are real. Approximately 40 percent of our nation's families report not receiving needed medical care[3] because the costs are unaffordable and 44 percent say they didn't go to a doctor when they were sick or injured in the past year because of cost.[4] Additionally, a startling 30 percent of people in our nation report that health care costs are interfering with their ability to meet the most basic necessities of their life, like securing food, heating, or housing.[5]

We are one of the wealthiest nations in the world and we spend twice as much as other high-income nations to provide health care.[6] People across this nation should not have to live in fear of getting sick and facing a sudden, crippling financial burden. And, yet, this what so many American families experience every day.[7] In fact, a larger percentage of the population actually fear medical bills from a serious illness than the serious illness itself (40 percent vs. 33 percent).[8] What's more, according to the American Psychological Association, the stress associated with medical bill anxiety can actually make them sicker.[9]

The Consequences of Surprise Medical Bills

Surprise out-of-network medical bills truly are an egregious example of how our health care system is allowing consumers' costs to spin out of control. Surprise bills can undermine and even destroy the financial security that families are attempting to build and maintain by purchasing comprehensive health insurance.[10] Surprise medical bills are incredibly common. In fact, one-in-five emergency department visits that families make result in surprise medical bills.[11] These bills can result in hundreds, thousands, and even tens-of-thousands of completely unanticipated out-of-pocket costs.[12] They occur most often when families receive emergency care or, when families do their very best to go to an in-network provider and suddenly, after-the-fact, discover ancillary services like anesthesiology, radiology, lab,[13] or ambulance[14] fall outside of their provider network. Surprise out-of-network billing is an utterly non-partisan issue. It is occurring across the nation and in both rural and urban settings.[15]

Allow me to highlight the experience of Nicole Briggs, from Morrison, Colorado. Nicole woke up in the middle of the night with intense stomach pain. After first visiting a free-standing ER, she was told she needed an emergency appendectomy, and she went to

the local hospital. She did her due diligence to confirm repeatedly that the hospital and its providers accepted her insurance. However, months later, she received a surprise bill from the surgeon for $4,727. While the hospital was in-network, the surgeon was an independent, out-of-network provider.

Nicole explained the situation to the insurer, but they continued to demand payment. She declined to pay the bill, and within two years, a credit agency representing the surgeon took her to court, and won the full amount, including interest. As a result, a lien was placed on her home, and the collection agency garnished her wages by 25 percent each month. This came right as she was pregnant and about to go on maternity leave.[16]

The Cause of Surprise Bills

Surprise out-of-network bills are a terrible example of how distorted economic incentives in the health care sector are overwhelming the interests of patients. They're an example of how easily providers and payers have washed their hands of caring for their patients and are sacrificing the financial security of our nation's families to generate revenue or turn a profit. Surprise out-of-network bills are the result of a systemic problem in our health care system that places consumers directly in the middle of a tug-of-war between health care providers and insurers over the price of services.[17]

Central to the business model of providers and insurers is the rate negotiated between them for services. Larger hospital systems have significant leverage, allowing them to command top dollar for in-network rates. Insurers are often forced to pay their high charges for in-network status, or insurers may simply walk away from the negotiation.[18] On the other hand, when hospitals are smaller, insurers hold the leverage. Those hospitals must choose between accepting lower negotiated rates than they desire, or walking away from the negotiation and providing care out-of-network. [19] These distorted market incentives lead to out-of-network provider status and ultimately, harmful surprise bills for families. In general, compared to in-network providers, out-of-network providers charge nearly three times as much for care.[20] This leaves families with balance bills that average over $600, but can exceed $20,000.[21]

One significant driver of this problem is the movement by hospitals to off-load staffing requirements for their emergency departments to third-party management companies that have no responsibility to ensure staffing fit with the provider networks otherwise agreed to by the hospital.[22] In fact, two-thirds of hospitals in the US outsource the staffing of their emergency departments to third-party physician management firms.[23] Research shows that out-of-network claims are higher in hospitals that contract with common staffing companies. [24] All too often, these firms use a business model that leverages the higher prices that can be charged with an out-of-network status.[25] As a result, a patient with a medical emergency, who rightly thinks they are going to an in-network hospital, often receives professional services from an out-of-network physician. This is inexcusable behavior on the part of the hospital, doctor, and health insurer. They each know or should know that patients have no real way of understanding the financial

trap they have walked into. In these surprise bill instances, we and many believe it is the providers and payers who should bear the burden of settling on a fair payment. [26]

The Intersection of Hospital Non-profit Status and Surprise Billing

Recent research has found that surprise billing, while widespread, is not evenly distributed among hospitals.[27] Specifically, nonprofit hospitals, teaching hospitals, and government-owned hospital have lower than average rates of out-of-network bills. For-profit hospitals have higher rates of surprise bills and higher out-of-network billing rates.[28] Finally, hospitals in areas with higher rates of economic inequality are more likely to have surprise bills.[29]

However, there are countless exceptions to this overall trend. Sadly, many nonprofit and public hospitals with billions of dollars in favorable tax status and charitable donations are engaging in this egregious balance billing.[30] These hospitals receive a non-profit tax status because of the "community benefit" they purport to provide. In total this nonprofit tax status is worth at least $25 billion to hospitals on an annual basis.[31] What could be a more basic and fundamental community benefit than ensuring that patients who come to these nonprofit hospitals in need of critical care do not end-up experiencing a surprise, financial catastrophe?

For example, in January of this year, news reports revealed that Zuckerberg San Francisco General Hospital, the largest public hospital and only Level 1 trauma center in San Francisco, does not contract with any providers who are in-network whatsoever.[32] While more than 90 percent of the hospital's patients are either uninsured or covered by Medicare or Medicaid, for the thousands of people with private insurance who seek emergency care at San Francisco General, or who *must* visit the hospital due to the severity of their medical need, there is no way to avoid surprise medical billing. Only after being exposed by Vox Media did the hospital decide to change its predatory billing practices.[33] It is unforgiveable that facilities that are exempt from paying taxes and receive large sums of charitable contributions are saddling consumers with thousands of dollars of unexpected medical bills for the provision of critical care. And it its unacceptable that it takes an exposé by a national media outlet to shame hospitals to change their behavior.

Surprise Billing in Self-Insured, ERISA Plans

Given this committee's jurisdiction, it is critical to note that surprise medical bills are caused by systemic issues that pervade the health care system and can be found across health insurance plans. Consumers who receive coverage through self-insured, ERISA health insurance plans are *no less likely* to receive a surprise bill than those in fully insured group or individual plans.[34]

As you know, ERISA pre-empts state law, and thus, only Congress can enact protections that comprehensively reach into ERISA plans.[35] A large majority of working families across the nation— 61 percent-- are enrolled in ERISA health insurance products and are looking to this Committee and Congress for action.[36] Among people with large

employer coverage, nearly one in five (17.6 percent) inpatient admissions includes a claim from an out-of-network provider. And 15.4 percent of inpatient admissions with only in-network facility claims include a claim from a non-network provider. When the inpatient admission includes an emergency room claim, the share of claims that include non-network providers jumps to 24.7 percent (for in-network facilities).[37]

Take, for example, the experience of Stacey Shapiro, a first-grade teacher in the public school system in Austin, Texas. Stacey woke up one morning not feeling well. A short while later, she passed out on the bathroom floor and her boyfriend took her to the nearest hospital. After a few hours of tests, IV fluids, and anti-nausea medications, doctors diagnosed her with hypoglycemia, or low blood sugar. For this relatively simple visit, Stacey received a surprise bill of $6,720. Stacey says she received instruction from her Austin Independent School District insurer to just pay the deductible of $1,275. However, the hospital continued to send her bills for the remaining $5,000. Stacy eventually contacted a local press outlet to tell her story. Only after the local outlet contacted the hospital did the hospital tell Stacy that she had fulfilled her financial obligations.[38]

While it is reasonable to expect consumers to "shop around" for in-network providers when they have the luxury of time, in an emergency situation, no one should have to worry about the financial consequence of taking a loved one to the nearest emergency room.

The Range of Care that Results in Surprise Bills

Although the frequency of surprise bills is high in emergency departments and among select physician providers that are involved in facility-based care, consumers are exposed to surprise medical bills in other care settings and from other provider types.[39] Often, ground[40] or air ambulance providers that transport patients for emergency care are out of network.[41] Moreover, new research shows laboratory services also can be a common source of surprise medical bills.[42] For example, the Health Care Cost Institute examined how often a professional claim for various specialties and care types was out-of-network when associated with an in-network admission. Their research found that more than one out five lab claims (22.1 percent) for inpatient hospital care in an in-network hospital were billed as out-of-network.[43] State regulators also report consumer complaints of surprise bills from out-of-network lab work. For example, Pennsylvania Insurance Commissioner Jessica Altman has described multiple consumers in her state receiving surprise bills after visiting their in-network OB/GYN's office because their mammograms were sent to out-of-network labs for review.[44]

Addressing the Problem of Surprise Bills

The ubiquity of surprise medical bills in all types of health plans and in all states warrants immediate federal action. Current federal law enacted as part of the Affordable Care Act (ACA) provides limited protections that apply to families who receive out-of-network care in emergency situations.[45] Specifically, the ACA limits copayments and coinsurance charged *by the insurer* to in-network rates, when families receive services

from an out-of-network emergency provider.[46] Despite these protections, however, *providers* may still balance bill families for additional out-of-network costs. Furthermore, insurers are not required to count copayments or coinsurance paid by a family toward in-network deductibles and out-of-pocket caps.[47] Thus, current federal law leaves families with considerable financial exposure for surprise out-of-network bills for emergency services and no protections for other categories of surprise, out-of-network bills.

Principles for Surprise Bill Legislation

To ensure that surprise bill protections truly put the needs of families first, Families USA and our consumer partners recommend that Congress consider the following principles in crafting legislation:

- **Hold Consumers Harmless:** Most importantly, legislation must ensure that families are held harmless from surprise out-of-network balance bills, which they receive due to no fault of their own. Importantly, families should not have to take any action to trigger such protections and providers should be prohibited from sending such bills. Furthermore, in a surprise billing situation, insured families should never have to pay more than their standard, in-network cost-sharing requirements. Legislation also should be explicit that these capped cost-sharing payments accrue to in-network deductibles and out-of-pocket caps.

- **Protect against surprise bills increasing health insurance premiums:** It is critical that Congress not only consider the immediate impact of surprise bills on families' out-of-pocket costs, but also the impact of these bills on the overall health insurance premiums paid by families, employers, and the government. Thus, some reasonable standard should be established for what insurers must pay providers for surprise out-of-network care. Such safeguards should take into account the importance of protecting the ability of the health insurance market to operate and for healthy negotiations between providers and payers. This payment cap should be limited to instances of true, surprise billing that occur by no fault of the consumer and is out of families' control. Families USA is open to various mechanisms to determine payment limits, including benchmark rates based on Medicare payment or a binding arbitration process with appropriate guardrails. Other approaches could require hospitals to negotiate a bundled payment for all services rendered, including the costs of providers and/or ancillary care.[48]

- **Protect consumers in all health plans:** Legislation should apply protections to all commercial health insurance plans. This includes self-insured plans, as well as fully insured individual, small group, and large group plans. This is important because consumers receive surprise bills indiscriminately across all plan types.[49]

- **Protect consumers in all care settings and from all providers:** While surprise medical bills occur at high frequency in emergency situations and from a specific set of provider types involved in facility-based care, consumers are also exposed to surprise medical bills in other care settings and from other providers.[50]

Surprise bill protections should apply to all care settings and care types from which a consumer could receive an out-of-network bill due to no fault of their own. This will ensure, for example, that if a consumer visits an in-network doctor who sends their labs out-of-network to be read, the consumer will not be responsible for a surprise balance bill from the lab.

- **Transparency alone does not solve this problem**: In discussions of surprise billing, often the question arises of whether increased transparency for families could be a sufficient way for Congress to address the problem. We and many experts believe that transparency is not enough.[51] For example, in many surprise billing cases, the affected patient has little-to-no ability to seek an alternative in-network provider due to the medical urgency of their situation, even if more information were provided. Furthermore, there is strong evidence that the health care sector does not have the ability to provide to consumers actionable, real-time information about provider networks or the true cost of services, including ancillary services.[52] While we support greater transparency requirements for plans and providers, proposing transparency as the solution to surprise medical bills is insufficient and would continue to leave families helpless against this pervasive problem.

A Call to Action

Families USA is grateful to the committee for holding this important hearing today. Families have been trapped for too long in the tug-of-war between providers and payers that leads to surprise medical billing, and without your action it will only get worse.[53] The public has identified health care costs as a top priority for action this Congress,[54] and addressing surprise billing is a chance to demonstrate real leadership to our nation. Families USA urges Congress to swiftly take advantage of this opportunity and to pass legislation to protect consumers from surprise medical bills this year.

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