

## Families Need Congress to Stop Surprise Medical Bills Now

Even when a family has access to affordable, comprehensive health insurance, out-of-pocket costs can be real burdens. This is especially true when these out-of-control costs are unexpected.

Surprise billing, also called surprise out-of-network balance billing, is a common problem when, through no fault of their own, families receive medical treatment from an out-of-network provider. The surprise comes in the form of doctor bills for the difference between what a provider charges and what the insurer pays that provider. This amount is often many times the consumer's in-network cost-sharing responsibility for the service. Many families are not prepared for the financial hardship of handling these additional costs.

States across the country have worked to address surprise billing for many years. While meaningful protections exist in many states, they generally do not include self-insured plans, which comprise a large share of the health insurance market. Additionally, the majority of states still do not have comprehensive surprise bill protections even for the markets that state regulators oversee.<sup>1</sup> The patchwork of state-based policies regarding surprise billing is not sufficient to guarantee protection to the majority of consumers. Therefore, federal action is urgently needed to address surprise medical bills.

### Actions in Congress to Address Surprise Bills

Families USA is thrilled that in both the House and the Senate, members of Congress are discussing steps to meaningfully address surprise bills. Legislation has been put forward, and committee discussions are underway, including in the House Committee on Education and Labor, where Families USA's Executive Director, [Frederick Isasi testified](#) on the urgent need for Congress to take action.

[Bipartisan draft legislation](#), led by Senators Bill Cassidy (R-La.), Thomas Carper (D-Del.), Charles Grassley (R-Iowa), Michael Bennet (D-Colo.), and Todd Young (R-Ind.) would ban surprise medical bills in emergency situations and from out-of-network providers at in-network facilities. It would prohibit medical bills that exceed the in-network cost-sharing requirement for a service when patients receive surprise bills. The legislation would also set a payment standard, based on a percentage of in-network rates, that determines how insurers would reimburse out-of-network providers in surprise billing situations.

Senator Maggie Hassan (D-N.H.) introduced a bill ([S. 3592](#)) last year to protect patients insured under employer-sponsored health plans from surprise billing for both emergency situations and non-emergency services at in-network facilities. The bill would establish payment between the provider and insurer through a binding, independent “baseball arbitration” process: An arbitrator would review payment amounts suggested by the provider and the insurer and determine which should be the final amount after considering factors including what Medicare pays for the service, the average local in-network rate, and the provider’s level of training and the complexity of the service.

In the previous two Congresses and again this year, Representative Lloyd Doggett (D-Texas) [introduced legislation](#) (H.R. 861) to ban surprise bills from out-of-network providers that treat patients in emergency situations. In non-emergency situations, the bill prohibits an out-of-network provider from balance billing unless the provider gives the consumer 24 hours’ notice that the provider is out of network, with an estimate of total charges for treatment, and the consumer consents to those charges.

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Outside of Congress, economists have proposed a strategy that would require hospitals to bill consumers for all services as a bundle — for example, billing facility and provider fees together for emergency care visits, eliminating the possibility of separate surprise bills from out-of-network providers at in-network facilities.<sup>2</sup> Stakeholders have also discussed another simple solution: requiring hospitals to ensure that all providers delivering care in their facilities are in the network.

Some stakeholders suggest that increased transparency for consumers could be a sufficient way for Congress to address the problem of surprise billing. We disagree; transparency is not enough. In the vast majority of surprise billing cases, the affected patient has little — if any — ability to seek an alternative in-network provider, even if given more information. While we would not oppose greater transparency requirements for plans and providers, such requirements are clearly not enough to meaningfully protect consumers.

## **Families USA’s Recommendations for Addressing Surprise Billing**

Families USA believes it is a top priority for the current Congress to enact surprise bill protection legislation. The ongoing bipartisan dialogue on surprise bills is a positive sign. Families across the country need Congress to conclude that discussion by enacting legislation this year.

Families USA believes surprise bill legislation should reflect two core principles: 1) protect consumers from surprise bills and 2) hold down overall health care costs. Below we describe how legislation should achieve these principles.

## End surprise billing

While we understand that details must be worked out, it is urgent that Congress addresses surprise billing this year. Consumers cannot wait any longer. We support Congress in demanding a good-faith effort from all relevant stakeholders to seek meaningful solutions that put consumers first.

- » **Hold consumers completely harmless.** Most importantly, the legislation must ensure that consumers are held completely harmless from surprise bills. Consumers should neither receive surprise out-of-network bills nor need to take any action to receive protection from surprise out-of-network billing. In a surprise billing situation, insured consumers should never have to pay more than their normal in-network cost-sharing requirement for a service. Legislation should also state explicitly that costs accrue to in-network deductibles and out-of-pocket caps in such situations.
  - » **Protect against rising premiums.** A key consideration for legislation is how to determine the payment system between insurers and out-of-network providers. We believe it is critical that the payment rate — however it is set — does not inflate health care costs across the system. Consumers want protection from out-of-network billing, but they are also deeply concerned about the overall cost of health care. If payment rates in surprise billing situations are inflationary, consumers will see these costs in their monthly insurance premiums.
- We are open to various mechanisms to determine payment that can achieve this goal. Options include setting a payment benchmark rate, such as 125 percent of Medicare, or binding arbitration with appropriate guardrails to ensure that resulting rates are not inflationary. Other approaches to ensure hospitals cannot bill separately for provider services, or contract with out-of-network providers, would also protect consumers.
- » **Protect consumers enrolled in all types of health plans.** Legislation should apply to all commercial health insurance plans, including individual, small group and large group plans, including self-insured plans.
  - » **Apply to all care settings.** Some legislation explicitly lists provider or facility types to which surprise billing protections apply. However, we believe consumers are better protected by a broader standard. This would ensure that consumers are protected from surprise bills for out-of-network care that they receive through no fault of their own, regardless of provider type. For example, if a consumer visits an in-network doctor who sends their lab tests out-of-network to be read, the consumer would not be responsible for a balance bill from the lab.

## Next Steps for Action

Families USA is encouraged by recent bipartisan progress toward advancing legislation to end surprise billing. While we understand that details must be worked out, it is urgent that Congress addresses surprise billing this year. Consumers cannot wait any longer. We support Congress in demanding a good-faith effort from all relevant stakeholders to seek meaningful solutions that put consumers first.

Stakeholders may disagree on the details, but members of Congress must demonstrate leadership on behalf of their constituents. This may require tough choices that may not be uniformly popular among special interest groups. The public has identified health care costs as a top priority for action by this Congress. Addressing surprise billing is a way to demonstrate real leadership to the people. Families USA urges Congress to take swift action by passing legislation that protects consumers from surprise medical bills this year.

## Endnotes

<sup>1</sup> Jack Hoadley, Kevin Lucia, and Maanasa Kona. 2019. "State Efforts to Protect Consumers from Balance Billing." The Commonwealth Fund, <https://www.commonwealthfund.org/blog/2019/state-efforts-protect-consumers-balance-billing>.

<sup>2</sup> Zack Cooper, Ph.D., and Fiona Scott Morton, Ph.D. 2019. "Out-of-Network Emergency-Physician Bills — An Unwelcome Surprise." New England Journal of Medicine, <https://www.nejm.org/doi/full/10.1056/NEJMp1608571>.

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