

**House Education and Labor Committee, Subcommittee on Health, Employment,
Labor, and Pensions**

"Examining Surprise Billing: Protecting Patients from Financial Pain."

April 2, 2019

10:15 AM, 2175 Rayburn

Purpose

The purpose of this hearing was to examine the issue of surprise billing and potential federal solutions.

Members Present

Chairman Wilson, Ranking Member Walberg, Representatives Scott, Roe, Wild, Meuser, McBath, Allen, Underwood, Foxx, Courtney, Taylor, Shalala, Banks, Morelle, Watkins, and Trahan.

Witnesses

Ms. Christen Linke Young, Fellow, USC-Brookings Schaeffer Initiative on Health Policy, the Brookings Institution

Ms. Ilyse Schuman, Senior Vice President, Health Policy, American Benefits Council

Mr. Frederick Isasi, Executive Director, Families USA

Mr. Jack Hoadley, Research Professor Emeritus, Georgetown University, Health Policy Institute, McCourt School of Public Policy

Opening Statements

Chairman Wilson said that surprise billing is a serious issue that can disrupt, if not devastate, the lives of patients and their families. Hopefully this will be the first of many productive, bipartisan conversations. The victims of surprise medical bills often have no control over whether their provider is in or out of network. In emergency situations, the patient is often not able to choose the facility they are taken too. Even when patients are able to take precautions to make sure they are at an in network facility, they can be treated by out of network providers without knowing it. This issue requires bold action to protect patients. States have taken innovative steps by enacting surprise billing laws that either protect the patient from surprise charges or prohibit the practice of balanced billing. These state solutions are promising. However, only Congress can fully close the gaps and loopholes that leave patients vulnerable to financial stress.

Ranking Member Walberg said that Republicans agree that this is an issue Congress should be addressing. Concerns about high health care costs are known and well-documented. But the issue of surprise billing is quickly rising to the top of patients' list of worries. Surprise medical bills are one of the leading health care concerns for Americans, and the frequency of surprise medical bills is far too high. The fear of an unexpected bill can be paralyzing. And Americans should not forego the care they need out of fear of the bill. Most Americans are insured under employer-sponsored plans. This coverage is important to workers across the country. But state rules and regulations do not apply to employer-sponsored plans. That is why Congress is hearing from stakeholders about potential federal

solutions to the issue of surprise billing. Republicans are committed to policies that lower costs, improve choice, and end surprise billing for insured individuals.

Testimony

Ms. Linke Young said that surprise bills often occur when a patient is seen by an out of network provider at an in network facility. A common example is an out of network anesthesiologist at an in network hospital, but these bills can arise from many different situations. Studies show that about 20 percent of emergency department visits and 10 percent of elective, inpatient care stays involve at least out of network provider, and about half of ambulance rides are out of network. These surprise bills represent a market failure. For most physician types, average charges are about double what Medicare pays. But for anesthesiologists and emergency room physicians, charges are about five times greater than the Medicare payment. These physician types have an incentive to stay out of network, and when they do go in network, they receive some of the highest rates in the industry. The impact is felt broadly by health care consumers, whether it is through surprise bills or high premiums passed on by the insurance companies. Policymakers need to correct this market failure. They can do so by either establishing out of network prices, or preventing providers from billing patients directly at all. Rather, they would be paid by the hospital or facility where they practice. Many states have already taken steps to correct this market failure, but states are limited in what they can do.

Ms. Schuman said that there must be federal solutions to protect patients from the pain of surprise medical bills. Employers are deeply concerned about the burden these bills place on employees and their families. While many states have taken steps to address this problem, ERISA exempts self-insured plans from state insurance regulations. Accordingly, the problem of surprise billing cannot be left to states to solve. The ability of specialties like anesthesiology to set high rates incentivizes these providers to stay out of network. Congress should take steps to protect patients from these overly high charges. However, simply shifting the cost to payers is not the way to go. There are also concerns about federal legislation mandating binding arbitration. Rather, federal legislation should protect patients from surprise bills. Facilities and providers should provide upfront information about out of network care and costs. Congress should establish a cap for emergency room services at 125 percent of the Medicare rate, which would facilitate competition. Legislation should require all providers at an in network facility to accept in network rates. Finally, legislation must also address ambulance services.

Mr. Isasi said that surprise medical bills are an egregious and all too common example about how distorted incentives in the health care market are overwhelming the interests of patients and families. Addressing this problem is a nonpartisan issue. One contributor to the problem is hospitals offloading emergency room staffing to third party companies. The hospitals often make no requirement that these staffing companies provide in network staff for the emergency room. As a result, a patient who does their homework and chooses to go to an in network hospital can be treated by an out of network physician and still receive a surprise bill. Families USA has developed five key principles for legislative action by Congress. First, providers should be prohibited from billing for surprise out of network

services. Second, legislation should prevent surprise out of network payments from increasing insurance premiums. Third, these protections should be applied to all health insurance plans, including ERISA plans. Fourth, protections should apply to all care settings and care types. Finally, there needs to be increased transparency across the health care sector, but transparency cannot be the primary way to deal with this problem.

Mr. Hoadley said that research he conducted has shown that 25 states have taken action to address surprise billing, and nine of these states meet the standard for offering comprehensive protection. Comprehensive protections refer to those that apply in both emergency and inpatient settings, apply to all types of insurance plans, address the behavior of both insurers and providers, and adopt some kind of payment standard. Combined, these factors can protect patients from most of the surprise bills that the state can address, but federal action is needed. Congress can learn from the state experiences. First, some state laws apply only to some care settings and leave gaps in areas like ambulance rides. Second, some states addressed only certain plan types, like HMOs but not PPOs. Third, some states have considered making protections dependent on whether the patient received some kind of disclosure about the possibility of surprise bills. Fourth, setting a payment rate for out of network providers may be the most challenging issue, and states have tried various approaches. Finally, states have faced the challenge of enforcement. The key unifying principle for states has been that consumers should be protected from surprise medical bills, and Congress should follow that principle as well.

Questions and Answers

Chairman Wilson asked who is responsible for making sure that a doctor or hospital is in network under current law. **Mr. Isasi** said that the patient themselves is responsible, and that is an unrealistic expectation. **Chairman Wilson** asked if patients are aware of the all the providers treating them when they undergo a surgery or procedure. **Ms. Schuman** said no, and there is no obligation for a hospital or provider to disclose that information. **Chairman Wilson** asked if provider directories are accurate. **Mr. Hoadley** said that they can often be inaccurate. **Chairman Wilson** asked why it is important to establish a federal payment standard. **Ms. Linke Young** said that notice is not enough. Even if a patient has perfect information about their providers, they often can't do anything about it.

Ranking Member Walberg asked if the trend of surprise billing will continue if steps are not taken. **Ms. Schuman** said yes. The fundamental problem fueling surprise billing is the market failure that allows specialty providers to charge higher rates. It will only worsen if action is not taken. **Ranking Member Walberg** asked how patients can better protect themselves. **Ms. Schuman** said that patients should be entirely protected, but there has to be comprehensive reform to the whole process. Capping payment for out of network services at 125 percent of the Medicare rate would restore competition. **Ranking Member Walberg** asked how in network rates differ from out of network rates. **Ms. Schuman** said the out of network rate is about three times higher, and that gap is widening.

Rep. Scott asked why section 1311E of the Affordable Care Act (ACA) is important. **Ms. Linke Young** said that transparency is important. HHS has taken some steps to require

disclosure of basic information by qualified health plans under section 1311E of the ACA. That has been in place for a few years, and the first year data just recently became available. **Rep. Scott** asked how useful that information is. **Ms. Linke Young** said she doesn't think it is particularly useful for consumers trying to navigate the issue of networks.

Rep. Roe said that the issue of surprise billing is very important. He is concerned that setting a benchmark rate based on Medicare would discriminate against states with lower Medicare wage indexes. He asked what needs to be done to make sure that patients are protected but that providers are also treated fairly. **Ms. Schuman** said that all stakeholders need to be part of the solution.

Rep. Wild asked why it is important to promote competition. **Ms. Schuman** said that competition leads to better outcomes, and that specialty providers are immune from competition and able to charge high rates. **Rep. Wild** said she doesn't think competition has much effect on patients' ability to understand their bill. She asked if the real problem is that the medical system is being run by private market forces. **Ms. Schuman** said that private market forces are the best way to increase quality and lower costs. **Rep. Wild** said that by that logic, patients in New York City with many facilities and providers to choose from shouldn't get surprise bills. **Ms. Schuman** said that there has been a market failure that Congress needs to respond to. But when the market works properly, it is the best solution. **Mr. Isasi** said that the concept at the root of this problem is what it means to be in network. It doesn't mean much if a hospital is in network but the services a patient receives there end up being out of network. It shouldn't be up to patients to figure that out.

Rep. Meuser asked if patients would choose to go to an in network provider if they learned ahead of time that their provider was out of network. **Ms. Schuman** said yes. But there are times when the patient has knowledge, but not choice. There must be both.

Rep. McBath said it is outrageous that over half of Americans have received a surprise medical bill. Congress has to do something. She asked what data exists that could help Congress understand the scope of these expenses to consumers. **Mr. Isasi** said that one in five emergency room visits involve a surprise bill. Many Americans cannot meet their basic health care needs due to cost. Families are overwhelmed by health care costs.

Rep. Allen asked what Congress should learn from the laws that states have passed. **Ms. Schuman** said that the main takeaway is that a national approach is needed that will include ERISA plans. **Rep. Allen** asked if hospitals should have a role in addressing surprise billing. **Ms. Schuman** said absolutely. Hospitals play a critical role. **Rep. Allen** asked what employers are doing to help their employees avoid surprise bills. **Ms. Schuman** said that employers are concerned and many are working to provide more information and assistance to their employees. But that is not enough to solve the problem.

Rep. Underwood asked what Illinois has done right to address this issue. **Mr. Hoadley** said that the Illinois law is comprehensive and addresses surprise billing in a variety of contexts. **Rep. Underwood** asked how surprise bills arise from neonatal care. **Ms. Linke Young** said that once

a provider like a neonatologist is practicing in a hospital, they will receive a flow of patients, regardless of whether they are in network or not. They thus have a very limited incentive to join a network and accept a lower rate.

Rep. Foxx asked what happens after a patient receives a surprise bill. **Ms. Schuman** said that patients generally have little recourse after they receive a bill. In some instances, employers will try to protect their employees by negotiating with an out of network provider, but this often increases plan costs reflected in higher premiums for everyone. **Rep. Foxx** asked what influences a provider's decision to participate in a network. **Ms. Schuman** said that the incentive to participate is to have access to a group of patients. The volume makes up for receiving a lower rate. But for specialists in the hospital setting, they get patients no matter what and therefore have little incentive to join a network.

Rep. Courtney asked if it's necessary to pass national legislation that applies to ERISA plans. **Ms. Schuman** said yes. **Rep. Courtney** asked what the pluses and minuses are of setting a payment standard. **Mr. Hoadley** said that a benefit is that it makes payment clear and predictable. But it's also possible that the benchmark rate has consequences. Some states have used a Medicare based rate, and others have based the rate on charges. On the other hand, the advantage of an arbitration process is that it allows cases to be dealt with on an individual basis. But that can also involve costs.

Rep. Taylor asked what states have done that could conceivably pass at the federal level. **Ms. Schuman** said that California's law includes a cap on out of network payment at 125 percent of Medicare or the in network rate. Congress should consider applying that cap to emergency services at out of network facilities. Along with that, providers practicing at an in network hospital should be required to accept the in network rate. **Rep. Taylor** asked if there is bipartisan support for those two ideas. **Ms. Schuman** said that these are potential solutions. Congress should debate these ideas and find the best direction.

Rep. Shalala asked if the frequency of surprise bills has decreased in the states that have passed these laws. **Mr. Hoadley** said that many of these laws have only been on the books for a short time, so the full effect is not yet known. But there has been success. **Rep. Shalala** asked how this issue applies specifically to air ambulances. **Ms. Linke Young** said this is an acute problem in the air ambulance space because their services will be used regardless of whether they are in network or not. The solution here is the same. Congress needs to create conditions that incentivizes providers to be in network.

Rep. Banks said consolidation in the hospital market is a problem for consumers, and Congress should be careful not to encourage more hospital consolidation through its surprise billing legislation. He asked how bundled payments would work. **Ms. Schuman** said that patients would receive one bill for all the services received at a hospital. **Rep. Banks** asked if it is fair to worry that a bundled payment model could encourage more consolidation in the hospital market. **Ms. Linke Young** said surprise bills arise most often from out of network providers practicing in an in network hospital. So there's less reason to be worried about increased consolidation. **Ms. Schuman** agreed.

Rep. Morelle asked if there are areas in the New York surprise billing law that could be improved or areas that Congress should learn from. **Ms. Linke Young** said that the strength of the New York law is that it is very comprehensive, but a drawback is that the arbitration provision has the potential to be inflationary over time. **Ms. Schuman** agreed.

Rep. Trahan asked how Congress can best protect people with chronic illnesses from surprise bills. **Ms. Linke Young** said that the first step is to take patients out of the middle. Step two is to change the market incentives to end high out of network billing. **Rep. Trahan** asked how common surprise bills are among enrollees in employer sponsored plans. **Mr. Isasi** said that they are just as common as in other types of plans.