House Energy and Commerce Committee, Subcommittee on Health
No More Surprises: Protecting Patients from Surprise Medical Bills
June 12, 2019
10:00 AM 2123 Rayburn

Purpose
The purpose of this hearing to consider the No Surprises Act, and to hear from witnesses on the impact of surprise medical bills and possible solutions.

Members Present
Chairman Eshoo, Ranking Member Burgess, Representatives Pallone, Walden, Butterfield, Shimkus, Matsui, Guthrie, Castor, Bucshon, Lujan, Bilirakis, Schrader, Mullin, Cardenas, Ruiz, Welch, Griffith, Blunt Rochester, Carter, and Sarbanes

Witnesses
Ms. Sonji Wilkes, Patient Advocate
Mr. Sherif Zaafran, Chair, Physicians for Fair Coverage
Mr. Rick Sherlock, President and CEO, Association of Air Medical Services
Mr. James Gelfand, Senior Vice President, Health Policy, the ERISA Industry Committee
Mr. Thomas Nickels, Executive Vice President, American Hospital Association
Ms. Jeanette Thornton, Senior Vice President of Product, Employer, and Commercial Policy, America's Health Insurance Plans (AHIP)
Ms. Claire McAndrew, Director of Campaigns and Partnerships, Families USA
Mr. Vidor Friedman, President, American College of Emergency Physicians

Opening Statements
Chairman Eshoo said that the patients receiving surprise medical bills are often the ones playing by the rules. They have insurance, and they go to an in network facility. And yet, it is still incredibly common that they receive an expensive bill they were not expecting. This is especially true for emergency care, ambulance trips, and air ambulance trips. Under current law, providers are allowed to privately bill patients for the costs not covered by insurance. Many states have protections in place for patients, but federal action is needed. It is important not to confuse the issue of surprise bills with other issues like high health care costs, high premiums, and narrow networks. Those are for another day. Today, Congress is working to find a bipartisan solution to end surprise billing.

Ranking Member Burgess said that this is an important topic that every member of Congress is hearing about. While stakeholders might disagree about the best solution, everyone should agree that patients should be held harmless for out of network charges they were not expecting. He hopes that Congress can come to a consensus on how best address this issue.

Rep. Pallone said that it is long past time for Congress to take decisive action to protect patients from surprise billing. The countless stories that members have heard from their constituents demonstrate a clear market failure. It is clear that the private sector is not going to fix this problem on their own, and it is time for Congress to step in. Fortunately,

there is bipartisan agreement on this committee that it is time to act. The No Surprises Act would hold patients harmless for out of network care. Providers would no longer be able to balance bill patients for out of network care they could not anticipate. The discussion draft includes basic transparency requirements that patients need. It also establishes that insurers will have to pay providers the median rate for a service in a given geographic area, ensuring that providers receive at least some payment for their service. His hope is that the witnesses will provide important feedback on this draft and work towards a comprehensive solution.

Rep. Walden said that Congress is committed to putting patients first in any policy to address surprise billing. He is glad that the President is also focused on this issue, and the committee's discussion draft is largely in line with the White House's surprise billing principles. The draft would hold patients harmless while still allowing providers to receive adequate payment for their services. He believes it is a strong starting point for the committee to work from.

Testimony

Ms. Wilkes said that when she had her second child, they made sure that the doctor and facility she gave birth at were in network. Shortly after her son was born, the doctors realized that he had hemophilia. He was taken to the neonatal ICU, and a hemophilia specialist arrived to treat him. A few weeks after they were discharged, the family received a bill for almost $50,000. She did some research, and found out that the neonatal ICU was operated by a third party provider, which was out of network. They refused to pay the bill, which ruined the family's credit. No family should face financial ruin because they are given out of network care without their knowledge.

Mr. Zaafran said that his organization is committed to finding a solution to surprise billing that protects patients, improves care, and increases transparency. Hospital-based physicians prefer to be in network, and are for the vast majority of patients they see. His organization strongly believes that patients should be required to pay no more than their in network cost sharing. However, it is important to understand the factors that have led to an increase in surprise billing – an increase in high deductible plans, and complicated plan designs with tiered and narrowing networks. A federal solution is key to addressing the problem of high out of network costs. However, he is concerned that the median in network benchmark currently in the discussion draft could have the unintended consequence of driving more patients and their physicians out of network. He recommends an interim payment and a method of baseball style arbitration instead.

Mr. Sherlock said everyone in America should have access to lifesaving air medical services when they need it most. These services are highly effective for getting patients the critical care they need. However, increased rural hospital closures have meant that air ambulances have had to fill the gaps. Air ambulance providers respond within minutes when they are called, with no thought to the patient's ability to pay. They are also a unique part of the health care industry in that they are highly regulated by states as ambulances and by the federal government as air carriers. To prevent balance billing, members of his

organization actively negotiate with insurers to secure in network rates. However, 70 percent of the patients air ambulances transport each year are on Medicare, Medicaid, or are uninsured. This results in an ongoing imbalance between actual costs and reimbursement. His organization strongly supports legislation that would increase transparency and reform the Medicare system for reimbursement of these services.

Mr. Gelfand said that surprise billing fundamentally frustrates the goal of providing quality, affordable, employer-sponsored coverage. Patients are being faced with impossible complexities, and employers are ready to work with Congress to fix the problem. Too many providers work for outsourced, contracted firms that have adopted a strategy of staying out of networks so that they can bill patients. The No Surprises Act is exactly what we need. In addition, Congress could consider requiring that any provider working at an in network facility must accept the in network rate. Too many stakeholders do not want to actually solve the problem. Employers are committed to protecting patients.

Mr. Nickels said that the bottom line is that we must protect patients from surprise bills. His organization agrees with the approach of the discussion draft that balance billing should be prohibited. Once the patient is protected, providers and payers should be able to determine fair reimbursement. His organization opposes setting a benchmark rate, in part because they believe it will create a disincentive for providers to establish broad networks. Rather, a Congress should pursue a baseball-style arbitration process. The discussion draft provides important transparency requirements, but it does not go far enough. Plans should also be included in these requirements.

Ms. Thornton said that her organization is committed to ending surprise medical bills. The discussion draft takes important steps to protect patients and ensure adequate provider payment in a market-based way. Surprise bills are hurting patients, and federal action is needed. Her organization supports several proposals. First, balance billing should be banned in situations where a patient is involuntarily treated by an out of network provider. Second, plans should be required to reimburse out of network providers an appropriate amount in these situations. Third, states should be required to establish a dispute resolution process. However, arbitration is not the way to go. It imposes undue administrative costs on the entire system and fails to address the root cause of surprise bills – exorbitant bills from a select group of specialty providers. Fourth, hospitals and other facilities should be required to provide advanced notice to patients of network status. These standards must apply for all Americans.

Mr. Friedman said that patients should not have to worry about their insurance coverage when they go to the emergency room. Unlike most physicians, emergency physicians are prohibited by federal law from discussing any costs of care with patients before they are treated. This is an important patient protection. However, it means that many patients may not understand the limits of their insurance coverage until they receive a bill. His organization agrees with the committee's principle of keeping patients out of payment disputes. They also support treating deductibles for out of network services as though they were in network, increasing transparency, including on the part of insurers, and a fair and

transparent dispute resolution process for providers and insurers. A baseball-style arbitration process has already proven effective, and that is the method Congress should establish. It is the model that would be least disruptive to the current system.

Ms. McAndrew said that surprise bills are a particularly egregious form of high health care costs. They are the result of a systemic problem in the health care system that puts patients in the middle of a fight between providers and insurers. Despite what some stakeholders say, narrow networks are not the driving factor of surprise bills. Another common misperception is that this is a new problem. It is not. The No Surprises Act takes important steps to address the issue, holding patients harmless and setting a reasonable rate for providers. However, her organization recommends broadening the scope of providers covered by the legislation so that no loopholes remain, and strengthening the bill's notice requirements.

Questions and Answers

Chairman Eshoo asked if everyone agrees that patients should not receive surprise bills. All the witnesses said yes. **Chairman Eshoo** asked Mr. Nickels if any hospital in his organization sends surprise medical bills. **Mr. Nickels** said to his knowledge, San Francisco General is the only one that previously did that. **Chairman Eshoo** asked Mr. Zaafran if he has ever issued a surprise bill to a patient. **Mr. Zaafran** said that the company he works for has a policy of not sending surprise bills. **Chairman Eshoo** asked if there are any members of AHIP that do not protect patients from surprise bills. **Ms. Thornton** said that patients that receive coverage through an employer are not protected by state laws. **Chairman Eshoo** asked Ms. Wilkes what the committee should know. **Ms. Wilkes** said one of the biggest problems is how difficult insurance is to understand. Patients should not have to worry about the details when they need care.

Ranking Member Burgess asked Mr. Zaafran if his facility does anything to try to mitigate surprise bills. **Mr. Zaafran** said that they have a billing customer service line, and if a patient accidentally receives a surprise bill, they work with them to address that situation. Part of the problem is high deductible plans. **Mr. Friedman** agreed.

Rep. Pallone asked if medical bills are easy for patients to understand. **Ms. Wilkes** said no. **Rep. Pallone** asked who determines provider charges. **Mr. Zaafran** said that his charges are based on the aggregate cost of delivering a service. **Mr. Friedman** said that emergency services are billed by E&M codes, which apply to different levels of service. **Rep. Pallone** asked how much hospitals charge for facility fees. **Mr. Nickels** said that the charging system needs reform. However, the vast majority of patients do not pay facility charges.

Rep. Walden asked how benchmark solutions work and why they are effective. **Ms. Thornton** said that California has implemented a benchmark rate, and there has been no decrease in network participation. **Mr. Zaafran** said that he disagrees. He has heard from groups that want to be in network, but are unable to be. **Rep. Walden** asked how regularly plans update their network directory. **Ms. Thornton** said that plans are working very hard to make sure they have accurate information for patients.

Rep. Butterfield asked how setting benchmark rates would impact small, rural hospitals. **Mr. Nickels** said one-size fits all won't work. National rates do not take into account local conditions. **Mr. Friedman** said that health care access is vital. Whatever Congress does should not limit access in rural areas. Consumers in rural areas are particularly vulnerable to surprise bills. **Rep. Butterfield** asked what role a lack of network adequacy plays in surprise bills. **Ms. Thornton** said that plans depend on adequate networks, but that is not the driver of surprise bills.

Rep. Shimkus asked if free standing emergency centers need to abide by the same federal standards regarding discussing costs. **Mr. Zaafran** said yes. **Rep. Shimkus** asked if Mr. Zaafran's organization has supported state efforts to strop surprise bills for emergency services. **Mr. Zaafran** said yes. A consensus bill recently passed in Texas.

Rep. Matsui asked how using a median in network rate as a benchmark could put downward pressure on future contracted rates offered by insurers. **Mr. Zaafran** said that some physicians have high paying contracts because they are offering more value. It is important to be able to differentiate for quality metrics. **Rep. Matsui** asked what benchmark metric Congress should consider. **Mr. Friedman** said his organization supports an arbitration process rather than a benchmark rate. **Mr. Nickels** said he also supports arbitration rather than a benchmark rate. **Rep. Matsui** asked if federal law should supersede state laws. **Ms. McAndrew s**aid yes, unless a state law is more comprehensive.

Rep. Guthrie asked how plans can better communicate with providers and patients to make sure everyone knows who is in network. **Ms. Thornton** said that there is an important role for transparency and notice as part of a surprise billing solution. **Rep. Guthrie** asked what role Congress should play in overseeing an arbitration process. **Ms. Wilkes** said that as a consumer, she doesn't really care how the reimbursement process works. She wants quality care that is covered by the insurance she pays for.

Rep. Castor asked if there should be a dispute resolution process or a benchmarked rate. **Ms. McAndrew** said her organization prefers a benchmark approach. It would produce the largest cost savings for consumers. **Mr. Zaafran** said that state experiences have demonstrated that a benchmark rate creates challenges for network participation. In New York, arbitration has worked very well.

Rep. Bucshon said that the No Surprises Act, as drafted, is not the right solution. He is afraid it would lead to a reimbursement "race to the bottom" and encourage narrow networks and further physician shortages. He asked why some physicians choose not to be part of an insurance network. **Mr. Friedman** said physicians want to be in network. For the vast majority, they are only out of network if they cannot reach a reasonable contracted rate with an insurer. **Rep. Bucshon** asked what leverage physicians have when negotiating reimbursement rates. **Mr. Zaafran** said not much. That is why network adequacy is so important.

Rep. Lujan asked what the average charge is for air ambulance services. **Mr. Sherlock** said the median cost is $10,199. **Rep. Lujan** asked if the median cost and average charge is the same thing. **Mr. Sherlock** said not exactly. He does not know what the average charge would be, given how much of air ambulance services is uncompensated. **Rep. Lujan** said that multiple

studies have found that the average charge is tens of thousands of dollars. He asked what the break even point is. **Mr. Sherlock** said it depends on the area of the country. The high cost of uncompensated care raises the cost of the service.

Rep. Bilirakis asked what the key differences are between the existing laws in New York and California. **Ms. Thornton** said that the main difference is whether there is a benchmark rate or a dispute resolution process. **Mr. Zaafran** said arbitration has been proven effective in New York. He worries about the unintended consequences of a benchmark rate. **Rep. Bilirakis** asked if any states have tried to create standards for network adequacy. **Mr. Zaafran** said yes. Texas recently passed a law on this.

Rep. Schrader asked how much reimbursement is accounted for by surprise bills. **Mr. Zaafran** said it is fairly low. But one surprise bill is one too many. **Rep. Schrader** asked what percentage of the insurance industry's business results from surprise bills. **Ms. Thornton** said there is certainly an economic impact.

Rep. Mullin asked if there is a higher incidence of surprise bills in rural areas. **Ms. McAndrew** said yes, over 10 percent of inpatient visits in many rural state result in a surprise bill. **Rep. Mullin** asked why there has been such a big increase in surprise billing. **Ms. McAndrew** said there hasn't actually been a big increase, there is just better data today. **Rep. Mullin** asked if government should provide average cost data for services to aid arbitration. **Mr. Nickels** said in many cases, government could assess average cost, but there are many other factors involved.

Rep. Cardenas asked what processes patients have available to them to dispute or better understand charges. **Ms. Wilkes** said in her case, she felt she had no recourse. **Rep. Cardenas** asked if this is a new problem. **Ms. McAndrew** said no.

Rep. Ruiz said that he is concerned that the discussion draft has too many loopholes. His bill has the most robust patient protections out there. He asked how the existing models have impacted inflationary costs. **Mr. Zaafran** said neither model has led to increased inflationary costs.

Ranking Member Burgess asked how surprise billing protections could have helped Ms. Wilkes. **Ms. Wilkes** said it may have saved her family from their bad credit. **Ranking Member Burgess** asked Mr. Gelfand to comment on the discussion. **Mr. Gelfand** said that many of the comments he's heard lack the proper context. Administration costs for arbitration are much higher than other witnesses would suggest. **Mr. Zaafran** said that in New York, arbitration costs $300, split between the insurer and provider.

Rep. Welch asked how the discussion draft would affect the situation in Vermont. **Mr. Nickels** said the bill would expand the current protections in Vermont. **Rep. Welch** asked if it would help people who cross state lines to get care. **Ms. McAndrew** said yes. That is one of the main reason there needs to be federal action.

Rep. Griffith asked what drives the high cost of air ambulance transport. **Mr. Sherlock** said it is the gap in Medicare reimbursement. But air ambulance carriers have systems in place to work with every individual patient to resolve a balance bill.

Rep. Blunt Rochester asked if patients delay their care out of fear of the cost. **Ms. Wilkes** said yes. **Rep. Blunt Rochester** asked how Congress can increase transparency for consumers. **Mr. Zaafran** said the insurance industry needs to publish accurate and up to date network directories.

Rep. Carter asked how a set rate might impact networks. **Mr. Zaafran** said that the vast majority of providers want to be in network because it is in their interest. **Mr. Friedman** said that doctors want to provide the best care to patients. They do not consider the billing issues.

Rep. Sarbanes asked if setting a benchmark rate would do a lot to help patients. **Ms. McAndrew** said yes. **Rep. Sarbanes** asked if there is any evidence that benchmarks harm networks. **Ms. McAndrew** said no, there has been no evidence of that so far.