

House Education and Labor Committee

Markup of H.R. 5800, Ban Surprise Billing Act

February 11, 2020

10:15AM, 21753 Rayburn House Office Building

Purpose:

The purpose of the markup was to consider H. R. 5800, the Ban Surprise Billing Act.

Opening Statements:

During his opening statement, **Chairman Scott** said that the Committee is dedicated to continuing their work on assisting individuals who have insurance and receive an unanticipated medical bill. Even those that are careful to choose an in-network provider can get hit with an unanticipated bill. According to a survey, 57% of consumers have received an unexpected bill and 7 in 10 patients who have received unaffordable bills were unaware that the provider was out-of-network. The legislation being discussed today proposes a two-tier mechanism for resolving payment disputes between providers and payers. For amounts less than or equal to \$750, the reimbursement rate will be determined by a market-based benchmark, which is the median in-network rate for providing similar services in the same geographical area. For amounts more than \$750, providers and payers may elect to use either the benchmark or independent dispute resolution process to determine a fair payment amount. He stated that surprise medical billing is a contentious issue that Congress has been struggling with for years. This bill reflects a genuine compromise and protects patients without tipping the scales for providers. This bill has potential to be enacted into law.

During her opening statement, **Ranking Member Foxx** said that constituents are being harmed by these surprise bills. This bill is supported by members from both sides of the aisle because constituents are the priority. Solutions to this issue include educating the public about the costs and the providers that they can receive care from. This legislation is intended to protect individuals from surprise billing. Some states have implemented a state-level surprise billing protection, however, there have been issues with this as well. This legislation would alleviate these issues as well. This markup is only one of the many steps that Congress needs to take to protect the public, but it is important. The bottom line is that workers and families deserve certainty about their healthcare coverage.

Bill Consideration:

H.R. 5800, the "Ban Surprise Billing Act":

Chairman Scott offered an amendment in the nature of a substitute (AINS). He said that the amendment makes minor, technical changes to the bill. It includes a GAO study to examine the financial relationships of entities including those backed by private equity that use the arbitration process. This will allow Congress to understand the full financial interests that are impacting the arbitration system. **Rep. Davis** commented that when insurers foot the bills, premiums go up. This is not about supporting insurance companies, it is about patients. **Rep. Roe** said he strongly opposes the bill. As it stands, patients will see reduced access to care. By 2030, America will be 120,000 doctors short. He believes that this bill is anti-free market and anti-provider. He believes

that arbitration is helping no one. This bill introduces a new federal system that will have unintended consequences. **Rep. Walberg** said the harmful practice of surprise billing leaves Americans with uncertainty. He thinks that his legislation is not perfect, but it is better than what is implemented now. **Rep. Schrier** said that the Committee can do better because this bill, as written, puts a thumb on the scale. **Rep. Van Drew** said that there are other bills that better address this issue. **Rep. Bonamici** agreed that this is a step in the right direction but not a solution to the entire issue. **Rep. Murphy** said he opposes setting rates. **Rep. Courtney** supports the AINS. **Rep. Allen** will vote no unless there are fundamental changes. **Rep. Jayapal** will support this bill and emphasized there was zero arbitration in the Senate HELP bill. **Rep. Sablan** also supports this bill. **Rep. Morelle** said that there has to be another way to go about this issue given other examples. **Rep. Wilson** said that she is pleased with this bill. **Rep. Shalala** said that she fears that this bill will have more problems than solutions and that is why she opposes it. **Rep. Levin** would have preferred a bill that relied on a benchmark entirely but will vote in favor. **Rep. Guthrie** said this bill is a good faith compromise.

Rep. Shalala offered an amendment to the AINS. The amendment would allow patients undergoing care for complex conditions to keep their in-network cost-sharing if their provider changes network status during treatment. They would be able to continue to see their provider and have coverage for 90 days. **Chairman Scott** said he strongly supports this amendment.

Rep. Shalala's amendment to the AINS was agreed to by a voice vote.

Rep. Murphy offered an amendment to the AINS. The amendment would increase record keeping requirements from the current 2 years to 5 years to foster more trust within the system. This would create better and longer relationships among parties.

Rep. Murphy's amendment to the AINS was agreed to by a voice vote.

Rep. Shalala offered an amendment to the AINS. The amendment would underline the importance of provider nondiscrimination law. This amendment does not change state scope of practice. Consumer choice is important and Congress must ensure they are not taking away these options unintentionally.

Rep. Shalala's amendment to the AINS was agreed to by a voice vote.

Rep. Murphy offered an amendment to the AINS. The amendment would add an additional independent dispute resolution reporting requirements to publicly list the average time it takes for insurers to respond to providers after first contact has been made in a billing dispute to better mediation. The purpose is to ensure that this process occurs in a more timely manner.

Rep. Murphy's amendment to the AINS was agreed to by a voice vote.

Rep. Omar offered an amendment to the AINS. The amendment would require the Secretary to create a template for 24-hour notification that is worded in an easily understandable manner and offered in multiple languages.

Rep. Omar's amendment to the AINS was agreed to by a voice vote.

Rep. Roe offered an amendment to the AINS. The amendment would strike all provisions reforming air ambulance payments in the bill today. He is concerned about the impact that the current provisions would have on patients' lives. A benchmark on these services could disincentivize providers. **Chairman Scott** strongly opposed this amendment. **Rep. Sablan** opposed this amendment as well.

Rep. Roe's amendment to the AINS was defeated by a vote of 37-8.

Rep. Roe offered an amendment to the AINS. The amendment would ensure that providers receive some kind of compensation after an incident of care and do not have to wait until the IDR process is complete to receive payment, even if the provider decides on arbitration with the insurer. Allowing the market to decide what "commercially reasonable" means is the most fair market approach. This mirrors the New York State model. **Rep. Shalala** supported this amendment. **Chairman Scott** strongly opposed this amendment.

Rep. Roe's amendment to the AINS was defeated by a vote of 30-15.

Rep. Lee offered an amendment to the AINS. The amendment would require the GAO to study this bill's impact on American's access to healthcare providers, especially in those areas that have provider shortages. **Rep. Sablan** clarified if territories would be included. **Rep. Lee** said yes.

Rep. Lee's amendment to the AINS was agreed to by a voice vote.

Rep. Roe offered an amendment to the AINS. The amendment would strike all references to contracted median rates and instead replace them with a more reasonable and prior contracted rate. This amendment does nothing but maintain the right to privately contract. He believes that government price-fixing never works. **Rep. Schrier** stated that she would support this amendment. **Rep. Morelle** would also support this. **Ranking Member Foxx** opposed to this amendment. **Chairman Scott** strongly opposed this amendment.

Rep. Roe's amendment to the AINS was defeated by a vote of 29-16.

Rep. Schrier offered an amendment to the AINS. The amendment would ensure that the provider and insurer have made a good faith effort to be in-network. **Rep. Roe** said that the New York State model allows both providers and insurers to negotiate prices and then it would go to arbitration. **Rep. Morelle** supported this amendment.

Rep. Schrier's amendment to the AINS was agreed to by voice vote.

Rep. Smucker offered an amendment to the AINS. The amendment would ensure that when there are providers and insurance companies that have entered into those agreements on their own, that those agreements will not be superseded by the federal law.

Rep. Smucker withdrew his amendment.

Rep. Morelle offered an amendment to the AINS. The amendment would ensure direct negotiations as set forth in the Ways and Means proposal. He presented his legislation,

“Consumer Protections Against Surprise Medical Bills 2020” in full, which he believes is a better approach to this surprise billing issue. **Ranking Member Foxx** opposed this amendment. **Rep. Stevens** supported it. **Rep. Roe** said he believes that the Ways and Means bill is closer to goal than H. R. 5800 as it stands. **Rep. Shalala** preferred the Ways and Means bill over this one. **Rep. Schrier** said she supports the Ways and Means bill because it lets insurance companies and doctors figure it out but protects patients.

Ranking Member Foxx insisted on a point of order that the amendment was not germane.

Rep. Morelle withdrew his amendment.

Rep. Roe offered an amendment to the AINS. The amendment would allow all providers access to the IDR process. He believes that if there is an IDR process, people should be able to use it. **Rep. Shalala** said that if there is an arbitration process, it should be available to everyone. **Rep. Murphy** spoke in favor amendment. **Rep. Levin** opposed this amendment. **Rep. Jayapal** also opposed this amendment. **Rep. Schrier** spoke in favor of this amendment.

Rep. Roe’s amendment to the AINS was defeated by a by a vote of 30-15.

H.R. 5800, the Ban Surprise Billing Act, was reported favorably to the full House by a vote of 32-13.