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February 11, 2020

The Honorable Bobby Scott
Chairman
Committee on Education and Labor
House of Representatives
Washington, DC 20515

The Honorable Virginia Foxx
Ranking Member
Committee on Education and Labor
House of Representatives
Washington, DC 20515

Dear Chairman Scott and Ranking Member Foxx:

On behalf of our members and all older Americans nationwide, AARP thanks you for holding a hearing to markup H.R. 5800, the Ban Surprise Billing Act. We are supportive of enacting safeguards to protect consumers against surprise bills from non-network providers who provide services without the consumer's knowledge or consent in an otherwise in-network setting, and we believe this bill takes steps in the right direction to address the problem of surprise billing.

Cost is often a key determinant when consumers decide what care to seek, as well as where to receive it. Unfortunately, there are times when an individual makes every effort to obtain affordable care under their insurance coverage, but is surprised to receive a bill from a non-network provider whom they did not choose or were not given the opportunity to choose.

Throughout the debate to end surprise billing, AARP has urged Congress to prioritize the consumer experience and follow these three principles:

1. Consumers must be held harmless.

Individual out-of-pocket cost-sharing must be limited to the in-network amount when a consumer receives emergency care, chooses to receive care at an in-network facility, or has not elected to receive care from a non-network provider. This applies to any copay, coinsurance, or deductible under the individual's insurance coverage. Disputes about payment, once the in-network coverage obligation has been met, are between the provider and the payer. The consumer has fulfilled their responsibility and should not be subject to further bills or penalties. Furthermore, notifying an individual at an in-network facility that a provider or service is out-of-network does not provide sufficient protection. Notification may remove the "surprise", but it is not a substitute for full and fair choice.

AARP Real Possibilities

2. Protections must apply to all sites of care and providers of care.

An individual seeking care in a medical emergency should not be expected to research provider directories or check network status before calling an ambulance or going to the nearest emergency room. Likewise, we must not penalize consumers for making good choices, or when they are given no choice at all. An individual who does their due diligence and seeks care from an in-network facility or an in-network provider's office, should not be saddled with a bill from a separate provider or lab for which they had no choice. Once at the facility or doctor's office, the discretion is with the provider – not the consumer – to consult specialists, order tests, and process images.

3. Protections must apply to all payers.

Surprise balance billing must be prohibited across all payers – individual, small group, large employer, and self-insured plans. This issue impacts all consumers, regardless of their type of coverage. While states should be allowed to have more protective laws, a federal standard or baseline is necessary to prevent loopholes and exceptions.

We are pleased that H.R. 5800 follows these principles and takes steps to provide clarity on the application to all sites and providers of care, including all important air ambulance services.

In addition, we are very encouraged by the inclusion of Section 6; Improving Provider Directories. AARP has been very concerned about the reports of shortcomings of insurance plan provider directories, including their lack of availability, confusion as to which directory applies to which plan, outdated information, and lack of standardization among plan directories (including different website search functions that make it hard to compare providers across plans). The language in H.R. 5800 requires real-time updates and regular audits of provider directories by insurance carriers, begins to standardize provider directories across health plans in both the individual and group markets to improve the consumer experience when comparing benefit packages, and requires insurance carriers to notify consumers if a provider they have visited has left the network. AARP has previously provided these suggestions to Congress, and we are pleased to see them included in this bill.

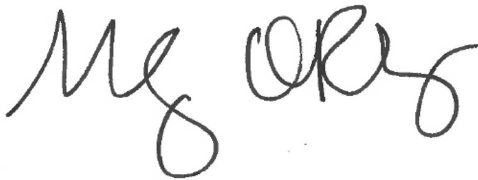
We also appreciate the transparency requirements included in Section 7 that insurance carriers make public the amount of money paid to producers (health insurance brokers and agents) to incentivize enrollment into plans in both the employer and individual markets. These costs are often reflected in premiums charged to enrollees without any context and add to the many factors that routinely drive up health care costs for all Americans. The bill should also provide that the information will be included in annual financial filings (Form 5500), on applicable websites, and available to participants on request.

We also recognize the language and requirements around patient notifications. It is absolutely essential that individuals have clear, concise, and full information on their rights and responsibilities related to potential surprise medical bills. However, we do have recommendations around strengthening the notification language in the bill. The bill relies frequently on notices to be provided to participants, beneficiaries, and enrollees, but needs to be

clear that providers and plans must ask individuals how they want to receive these disclosures and provide them in the preferred format. In addition, on any form on which a signature is required, the enrollee must be provided an identical copy of the signed form. The bill should more clearly specify who provides notices; that all plan information will not only be updated on public websites, but also on all required plan documents; how and when participants will be notified of the availability of disclosures; and specify how long documents must be retained by both plans, providers, and participants. The bill also should clearly state that covered former employees and dependents have full rights to all information, updates, and disclosures.

We thank you again for your bipartisan leadership on this issue. We appreciate the opportunity to provide feedback in advance of the markup and look forward to continuing to work together to protect consumers and make health care more affordable. If you have any questions, please contact me or have your staff contact Andrew Scholnick (ascholnick@aarp.org) or Brendan Rose (brose@aarp.org) on our team.

Sincerely,



Megan O'Reilly
Vice President, Government Affairs
Federal Health and Family