



The Benefits of a Benchmark & The Perils of Arbitration

Why Leading Consumer Groups, Employers And Policy Experts Are Urging Congress to Stop Surprise Medical Billing With Strong Patient Protections, Market-Based Reforms

There's a right way and a wrong way to address surprise medical billing. The right way starts with clear safeguards to protect patients, consumers, employers and taxpayers from exorbitant price-gouging from out-of-network providers.

Organizations representing consumers, employers and leading policy experts are encouraging Congress to advance policy reforms – such as a local, market-based benchmark – that would stop discriminatory pricing from bad actors and lower costs for millions of Americans. Importantly, everyone agrees that protecting consumers means avoiding costly, burdensome arbitration proposals that would incentivize price-gouging moving forward.

We “are deeply concerned about any mechanism that uses billed charges as a basis for or factor in setting out of network payment. Billed charges are often several times higher than the rates providers typically receive for delivering care and using charges as a basis for or factor in setting rates would inflate costs throughout the system, ultimately raising premiums for consumers.”

Families USA, AFSCME, American Medical Student Association, Community Catalyst, Consumer Reports, Doctors for America, First Focus Campaign for Children, Health Care for America Now, Mental Health America, MomsRising, National Alliance on Mental Illness, National Association of Social Workers, National Consumers League, National Health Law Program, National Partnership for Women & Families, NETWORK Lobby for Catholic Social Justice, Voices for Progress, 1,000 Days

“Specifically, **we are concerned about proposals for open-ended arbitration, which have been floated as a solution to the problem. If arbitration appears innocuous, it is to a large extent because it is not transparent. Experience suggests that arbitration would be cumbersome to deploy, and highly favorable to those health care providers who charge high prices today.** If Congress were to endorse arbitration, it could potentially open the door to a system quite unintended – establishing an inflationary dynamic that accommodates and encourages the rapid growth of costs.”

American Enterprise Institute, 60 Plus Association, Foundation for Government Accountability, National Taxpayers Union, Galen Institute and Heritage Foundation, Heritage Action for America, Hoover Institution, Center for a Free Economy, Oklahoma Council of Public Affairs, HSA Benefits Consulting, Independent Women's Forum, Hoppe Strategies, American Enterprise Institute, Small Business & Entrepreneurship Council, Alaska Policy Forum, 60 Plus Association, Mark Pauly (University of Pennsylvania), HSA Coalition, Pacific Research Institute, Manhattan Institute, former Idaho state legislator Eric Redman, The Foundation for Research on Equal Opportunity, Council for Citizens Against Government Waste, Mississippi Center for Public Policy, Grace-Marie Turner (Galen Institute), Association of Mature American Citizens, Council for Affordable Health Coverage

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Health Affairs

“...Policy makers should be concerned about any solution—be it baseball-style arbitration or other means—in which a provider’s inflated charges factor into the price that is paid. An arbitration approach leaves the charges mechanism largely in place as a starting point for the arbitration. Furthermore, providers may seek to increase charges to have a more favorable starting position in the arbitration process. **The proposed legislation might move the financial burden from the individual patient to the insurer, but it also increases the leverage of the providers in the negotiating process, thereby increasing the medical costs for the health plan and the premiums for all health plan members.**”

*Kevin A. Schulman & Barak D. Richman, Duke University
Arnold Milstein, Stanford University*



“Families USA believes that the payment mechanism between insurers and providers in a surprise billing situation is a consumer issue: If payments are unduly high, they will be passed on to consumers in their insurance premiums. **We therefore strongly support the establishment of a benchmark payment rate, which will prevent non-transparent and fluctuating payments that may lead to inflationary costs.** In particular, we support the benchmark of median in-network rates because it avoids tying payment to billed charges.”

*Claire McAndrew, Director of Campaigns & Partnerships
Families USA*



“**We do not have a lot of enthusiasm for arbitration.** We believe that that would be disruptive. **We believe that that would get in the way of solving this problem.** And we believe it would be an unnecessary distraction that ensures at the end of the day a lot of potential abuses disguised in a different form would nevertheless still be inflicted against patients and Americans.”

*Joe Grogan, Assistant to the President for Domestic Policy
Director, Domestic Policy Council
The White House*



“By prohibiting balance billing and establishing a benchmark payment rate based on the median contracted rate for the service in the geographic area, the legislation **would remove the incentive for certain providers of emergency services and those practicing at in-network facilities to remain out-of-network.** In so doing, the legislation would both protect patients from surprise bills and be non-inflationary for all consumers. Additionally, because the benchmark rate would vary by geographic region, this would help ensure providers in rural and frontier areas would receive higher payments.”

*Ilyse Schuman, Senior Vice President, Health Policy
American Benefits Council*



“Our member companies provide comprehensive health benefits, and pay the vast majority of health care costs incurred by plan beneficiaries – as such, they have a significant stake in, and deep commitment to, efforts to end the surprise medical billing crisis, **ensuring providers are paid fairly with a local, market-based benchmark rate, without a new government-mandated binding arbitration regime, and that patients – company employees and their families – are not devastated by surprise medical bills.**”

*James Gelfand, Senior Vice President, Health Policy
The ERISA Industry Committee*



“We believe these market-based negotiated rates, which are already substantially above Medicare reimbursement rates, represent fair compensation for health care providers without potentially imposing rates on employer plans that could be 600 to 800 percent of Medicare rates. We urge members to reject amendments that would force employers into some type of arbitration or independent dispute resolution process that will not solve the surprise billing problem, but instead pass surprise medical bills onto all employees through their employer-sponsored health plans that are already struggling to control costs in the private sector.”

*D. Mark Wilson, Vice President, Health & Employment Policy
HR Policy Association*



“Most important, we support the Committee’s commitment to establish a payment benchmark to resolve out-of-network payment disputes between providers and insurers... This practice limits out-of-network providers from billing patients charges well beyond those billed by in-network providers by taking several measures into account, from geographic location to average provider reimbursement to a percentage of cost sharing.”

*Janet Stokes Trautwein, CEO
National Association of Health Underwriters*

BROOKINGS

USC Schaeffer

“We also believe that a **decision by Congress on an out-of-network payment standard is preferred to arbitration**, which could be unpredictable, lacks transparency, and could involve significant administrative costs.”

*Loren Adler, Paul B. Ginsburg, Mark Hall, and Erin Trish
The Brookings Institution / USC-Brookings Schaeffer Institute on Health Policy*



“Arbitration is not the answer to fix surprise medical billing. Policymakers should not be fooled. Arbitration is neither ‘light touch’ nor a solution to the true problem at hand. Instead of solving the fundamental issue, **it kicks the can down the road to an arbitrator who faces the same challenges of any rate setter.**”

*David Hyman and Benedic N. Ippolito
American Enterprise Institute*

Center for American Progress



“To bring down the overall cost of hospital-based care, laws aimed at curbing the practice ought to not only **provide protection to the patients who would be billed for excessive charges but also prevent providers from charging insurers rates that are far beyond the norm.**”

*Emily Gee
Center for American Progress*



PROTECTING SMALL BUSINESS,
PROMOTING ENTREPRENEURSHIP

“Arbitration is a highly inappropriate and misguided fix to surprise billing. As we note in our joint statement, arbitration is ‘not transparent’ and ‘would be cumbersome to deploy, and highly favorable to those health care providers who charge high prices today.’ The utilization of arbitration for surprise billing ‘could potentially open the door to a system quite unintended – **establishing an inflationary dynamic that accommodates and encourages the rapid growth of costs.**”

*Karen Kerrigan, President & CEO
Small Business & Entrepreneurship Council*



“Having a government-appointed arbitrator pick the price gives, well, arbitrary power to someone with no expertise in health care prices. That lack of expertise leads many arbitrators to side with hospitals, incentivizing even higher emergency care prices.”

*Avik Roy, President
Foundation for Research on Equal Opportunity*