

June 2, 2020

The Honorable Mitch McConnell
Majority Leader
United States Senate
317 Russell Senate Office Building
Washington, DC 20510

The Honorable Charles Schumer
Minority Leader
United States Senate
322 Hart Senate Office Building
Washington, DC 20510

The Honorable Nancy Pelosi
Speaker
United States House of Representatives
H-232 Capitol Building
Washington, DC 20515

The Honorable Kevin McCarthy
Minority Leader
United States House of Representatives
H-204 Capitol Building
Washington, DC 20515

Dear Leader McConnell, Leader Schumer, Speaker Pelosi, and Leader McCarthy:

On behalf of the membership of the National Association of Insurance Commissioners¹, we write again to urge you to pass legislation to protect Americans from surprise medical bills. Congress has already acted in past COVID-19 stimulus bills to protect consumers from surprise bills related to testing, so you know how important this protection is. Now is the time to protect all insured Americans from unfair out-of-network charges. As part of a pandemic response package or on its own, we look to you to provide leadership to move legislation that protects against surprise bills, helps maintain affordable and accessible insurance markets, and balances the interests of consumers, insurers, and health care providers.

Our top priority in addressing surprise medical bills is to remove consumers from billing disputes between insurers and providers, in a manner that does not raise health care costs. Too many consumers have faced unexpected expenses and financial hardship through no fault of their own because of surprise bills. While many states have acted already to protect consumers from surprise bills, millions of Americans are still at risk. Our other priorities include protecting these state surprise bill laws and regulations from federal preemption and applying surprise bill protections to consumers served by air ambulances. We ask you to help guide final legislation that delivers on each of these fronts.

Effective regulation to prevent surprise bills requires authority over both health insurers and care providers. While states are the primary regulators of health insurance and the professional practice of health care providers, we support action at the federal level to address surprise bills. Only federal regulation can reach self-funded health care plans governed under the Employee Retirement Income Security Act (ERISA), and these plans cover a large share of Americans. Even with surprise bill protections in place in state-regulated markets in several states, a federal fallback offers protection for consumers in states without their own laws or regulations on this topic and in situations where the consumer, payer, and/or provider are based in different states. While state insurance regulators closely supervise insurers in their states, they have fewer tools to enforce requirements on health care providers—the federal relationship with providers through Medicare offers a useful means of incentivizing compliance with billing standards.

¹ Founded in 1871, the NAIC is the U.S. standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia and the five U.S. territories. Through the NAIC, state insurance regulators establish standards and best practices, conduct peer review, and coordinate their regulatory oversight. NAIC members, together with the central resources of the NAIC, form the national system of state-based insurance regulation in the U.S.

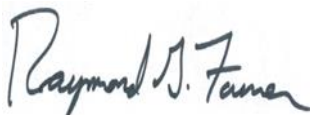
Any federal legislation to address surprise bills must allow flexibility to accommodate state laws on the topic - it should not prevent states from adopting their own protections or setting their own methods for determining a payment amount to providers. State laws in place today as well as those that may be enacted in the future should be protected. It's important not to simply grandfather existing state laws, but to allow states to innovate and adjust their billing protections as necessary in the future. Some states may find that a federal standard works well for them, but others may choose to set a different standard based on market conditions in the state - any Federal law should provide states the flexibility to do so.

Further, we support the principle that state protections should be considered first, and only when no state protection applies should the federal protection apply. While the Secretary of Health and Human Services (HHS) may be the most appropriate authority to issue regulations to implement the federal protections, we request that federal legislation require consultation with state insurance regulators and/or the NAIC in setting the boundaries between state and federal laws in this area. In addition, consumers and health care providers should know what billing protections are in place for a particular service. Federal law should establish notice requirements that allow consumers and providers to understand whether state or federal protections apply to a specific situation.


We also strongly support federal legislative action in the area of air ambulances. States have been unable to implement meaningful legislation to protect consumers from surprise air ambulance bills because certain courts have interpreted the federal Airline Deregulation Act of 1978 (ADA) to preempt state regulation of air ambulance providers. As dozens of state regulators wrote to House and Senate leaders last fall, "prohibiting balance bills and establishing a process for determining out-of-network payment amounts would be a prudent, fair, and equitable way to resolve the crisis consumers are facing at the hands of a few bad actors in the air ambulance industry." We continue to reject the argument that ending surprise billing will leave rural Americans without access to air ambulance services. Rural residents are at risk for excessive surprise bills under the status quo and deserve protection that can only be provided by federal legislation. Committees in both the House and Senate have extended surprise bill protections to air ambulance services and we request your support in making this critical provision a part of the final bill in both chambers.

As you work to finalize legislation on surprise bills, we urge you to maintain these key priorities—remove consumers from the middle, preserve state authority, and include air ambulances as covered providers. Consumers need relief from surprise bills as quickly as possible, so we support quick action by Congress and offer any assistance state regulators can provide to move it over the finish line.

Sincerely,



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