May 28, 2019

The Honorable Frank Pallone
Chairman
Committee on Energy and Commerce
House of Representatives
Washington, DC 20515

The Honorable Greg Walden
Ranking Member
Committee on Energy and Commerce
House of Representatives
Washington, DC 20515

Dear Chairman Pallone and Ranking Member Walden:

AARP, on behalf of our nearly 38 million members and all older Americans nationwide, would like to thank you for your bipartisan work to address the issue of surprise medical billing. AARP strongly supports your effort to protect consumers from expensive surprise medical bills in an emergency situation or when they believe they are appropriately seeking care from in-network providers.

Cost is often a key determinate as consumers decide what care to seek, as well as where to receive it. Unfortunately, there are times when an individual makes every reasonable 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. The protections included in your draft No Surprises Act would prevent consumers from being unfairly billed for needed care.

Your draft bill largely addresses AARP’s priority of protecting consumers against surprise bills from non-network providers who provide services without the consumer’s knowledge or consent. In particular, we support several provisions:

- Protecting consumers in both emergency and non-emergency situations;
- Applying consumer protections to ERISA group health plans; and
- Allowing states to establish and enforce their own methods for resolving payments.

However, we urge you to improve several provisions of the draft bill which may not protect consumers to the greatest extent possible. We seek clarification on the following points:
• The draft bill does not appear to apply protections to non-facility based settings, such as physician offices. There are many instances of in-network, office-based providers using non-network labs to process tests, or consulting non-network providers, without the knowledge or permission of the consumer.

• For purposes of non-emergency services performed by nonparticipating providers at certain participating facilities, are laboratories, radiology, and imaging centers regarded as providers or facilities? They are described as health care facilities, which implies that a consumer can choose which one to go to. But often they act as providers, in which a biomedical sample or image taken by an in-network provider or facility is sent to a contracted third-party entity which is out-of-network.

• Allowing exceptions for nonparticipating providers at participating facilities to balance bill if they provide notification may remove the “surprise”, but it can still place an undue burden on consumers. Individuals visiting the facility may see multiple providers. Allowing different providers to bill under different rules, creates confusion and puts a burden on the consumer. Moreover, consent is not meaningful if there is limited or no choice of provider.

Thank you again for your bipartisan leadership on this issue. We appreciate the opportunity to provide feedback, and look forward to working with you to protect consumers and make health care more affordable. If you have any questions, please contact me, or have your staff contact Andrew Scholnick of our Government Affairs team at ascholnick@aarp.org or 202-434-3770.

Sincerely,

David Certner
Legislative Counsel and Policy Director
Government Affairs