

## COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES

WASHINGTON, DC 20515

September 27, 2019

Dear Ways and Means Democratic Colleague,

As we have discussed, Ranking Member Brady and I have been working for many months to identify a path forward on legislation to protect patients from unexpected medical bills. I want to update you on the compromise that I have recently offered the Ranking Member that will leverage a negotiated rulemaking process to protect patients without increasing health care costs or raising patient premiums.

As we have heard in countless examples from constituents, more and more frequently many doctors who work in hospitals aren't employed by them. Physicians, including those providing anesthesia, laboratory, and emergency department services in hospitals (among other items), have become independent contractors, separately negotiating reimbursement with insurers. In some cases, the doctors seek to extract payment rates that insurers won't accept (and thus do not enter networks), in other cases they may make a business decision (as in the case of some private-equity-backed providers) to remain out of networks entirely. These out-of-network doctors then have the latitude to bill patients directly for their services at incredibly high rates, leading to surprise medical bills. The patient has little choice in the matter.

The framework the Ranking Member and I have been working toward will, first and foremost, hold the patient harmless in these situations. The question then remains how to address the disputes between the other parties. We have consistently encountered disagreement among stakeholders over reimbursement rates for out-of-network surprise bills and the extent to which a dispute resolution process can determine those rates.

To address the disagreements, I have proposed that we include a negotiated rulemaking process to require the stakeholders to work out their differences. This process has already been successfully used in the health care context, most recently in Medicare for the clinical laboratory fee schedule improvements and for the design of the durable medical equipment payment system. It is a structured process, allowing for the agreements to be reached and finalized in a timely manner.

In the context of surprise medical bills, a negotiated rulemaking process would require the three relevant agencies (the Department of Health and Human Services (HHS), the Department of Labor (DOL), and the Department of Treasury) and key stakeholders form a committee to identify standards for rates for surprise bills. The committee would also determine how and if dispute resolution should be included, within certain predefined parameters that ensure health care costs will not increase from the process. The committee's work will conclude when it sends recommendations to the Secretaries of the agencies, who would then use the committee recommendations to publish a proposed rulemaking with a public comment period.

During the public comment period, other stakeholders will have the opportunity to use data and facts to make their case.

In the context of establishing standards for addressing surprise medical bills, negotiated rulemaking would require all parties to come to the table to agree on a resolution, increasing administrative efficiency and giving all parties an equal voice. This approach would also include related policies that strengthen consumer protections, provide more information and access for patients, and enhance transparency within the health care system.

I am optimistic that Ranking Member Brady will agree this is the way forward to address out-of-network surprise bills. Please consider this new approach that addresses our initial goals for stakeholders to work together to find a solution that protects patients.

Staff will work over recess to develop legislative language that meets these goals and the committee is scheduled to consider a measure during the next work period. It's imperative to resolve this matter before the first session of the 116<sup>th</sup> Congress concludes.

Beyond surprise billing, the Committee must also address H.R. 3 in October. As you know, this legislation levels the playing field for patients and taxpayers by allowing Medicare to negotiate prices with drug companies and also allows private insurance plans to access these negotiated rates. As you know this legislation has received many positive endorsements. I welcome your co-sponsorship, as well as ideas for additional improvements.

As we have discussed in caucuses, the Committee will also take up Medicare investments like adding dental, vision and hearing benefits and improving the Extra Help programs that assist with Medicare premiums and cost sharing among other items. I also would like to address some of the inadequate patient protections for hospice and nursing home residents identified in recent Office of the Inspector General Reports.

I welcome your input on these matters and look forward to continuing to work with you on legislation to end surprise medical billing, lower drug costs, and make other important patient improvements this fall.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard E. Neal". The signature is fluid and cursive, with a long horizontal stroke at the end.

Richard E. Neal  
Chairman