



Statement for Hearing on

“Lower Health Care Costs Act”

**Submitted to the
Senate Committee on Health, Education, Labor, and Pensions**

June 18, 2019

AHIP and our member health insurance providers thank Chairman Alexander and Ranking Member Murray for developing a bipartisan discussion draft of the Lower Health Care Costs Act of 2019. We appreciate your leadership in seeking a consensus on bipartisan solutions that would make health care more affordable, improve transparency, and enhance competition.

Costs for medical care, prescription drugs, emergency transport, medical devices, and other treatments continue to rise – escalating the health care affordability crisis for every American. These higher costs affect everyone including consumers, taxpayers, employers, and the states. We are strongly committed to working with the Committee to address this crisis with solutions that ensure everyone has access to affordable choices and the high-quality health care they need and deserve.

As we stated in our comments on the Committee’s May 23 version of the discussion draft, many of these proposals offer significant promise for Congress to provide relief to the American people from rising health care costs.

America’s Health Insurance Plans (AHIP) is the national association whose members provide coverage for health care and related services to millions of Americans every day. Through these offerings, we improve and protect the health and financial security of consumers, families, businesses, communities, and the nation. We are committed to market-based solutions and public-private partnerships that improve affordability, value, access, and well-being for consumers.

Protect Patients from Surprise Medical Bills

We strongly agree that federal legislation is needed to protect patients from surprise medical bills. In fact, last week we joined organizations representing employers, physicians, health insurance providers, and tens of millions of Americans to launch the Coalition Against Surprise Medical Billing. This national advocacy group is advancing common-sense reforms to protect patients from surprise medical bills.¹

As part of our commitment to protecting patients' health and financial security, we have worked with other leading health care organizations to develop recommendations for federal legislation focusing on four priorities:

- Balance billing should be banned in situations where patients are involuntarily treated by an out-of-network provider and patients should be held harmless. This includes situations involving: (a) emergency health care services provided at any hospital; (b) any health care services or treatment performed at an in-network facility by an out-of-network provider not selected by the patient; and (c) ambulance transportation in an emergency.
- Health insurance providers should be required to reimburse non-participating providers an appropriate and reasonable amount in the above scenarios. We support the median contracted rate (Option 3) that was included in the discussion draft.
- States should be required to establish a process to resolve disputes or errors in the calculation of the benchmark that works in tandem with the established payment benchmark.
- Hospitals or other health care providers should be required to furnish advanced notice to patients of the network status of treating providers, but should not require patients to consent to out-of-network care.

Using these principles as a guide, we reviewed the three options included in the draft Lower Health Care Costs Act. Our recommendations reflect our strong belief that policy solutions should ensure premiums and out-of-pocket costs do not go up for patients and consumers. To accomplish these goals, payments to out-of-network providers should be based on a federal standard and not based solely on Independent Dispute Resolution or arbitration processes.

¹ <https://stopsurprisebillingnow.com/leading-employer-physician-and-health-plan-associations-unite-for-national-advocacy-campaign-to-protect-patients-from-unfair-surprise-medical-bills/>

We also believe that a solution to price gouging by air and ground ambulance companies needs to be included in any legislation to end surprise medical billing. Here we recommend a prohibition against balance billing and that Congress establish a payment benchmark. Given the emergency nature of ambulance services, market forces alone cannot protect consumers from price gouging. In most if not all cases, when patients require an emergency medical transport, they require the service regardless of the cost and have little or no control over their choice of ambulance provider. As a result, ambulance providers are not subject to the price competition that would otherwise occur in a competitive market.

One study concluded that among people covered in the large group market, more than 50% of all ambulance cases involved an out-of-network ambulance in 2014 – meaning that patients are highly susceptible to receiving surprise medical bills in these cases.² This is a particularly serious problem for patients who are transported by air ambulances, most of which refuse to participate in provider networks. The Government Accountability Office (GAO) has reported that only 31% of air ambulance transports were in-network in 2017.³ The GAO also reports that the average bill per transport for the largest air ambulance provider increased from \$13,000 in 2007 to \$49,800 in 2016.⁴ These findings clearly demonstrate the importance of ensuring that ambulance providers are included in legislative solutions to protect patients from surprise medical bills.

Reduce the Price of Prescription Drugs

We share your strong commitment to lowering out-of-control drug prices. Our members support market-based solutions that hold drug makers accountable for the high list prices they set. We also support market-based solutions that put downward pressure on prescription drug prices through competition, consumer choice, and open and honest drug pricing.

We specifically support solutions that would: (1) promote competition by removing barriers to the availability of generic drugs; (2) create a robust and competitive marketplace for biosimilars; and (3) increase transparency around pharmaceutical prices.

² Loren Adler, Matthew Fiedler, Paul B. Ginsburg, Mark Hall, Erin Trish, Christen Linke Young, Erin L. Duffy (February 2019). USC-Brookings Schaeffer Initiative for Health Policy. State Approaches to Mitigating Surprise Out-of-Network Billing. <https://www.brookings.edu/research/state-approaches-to-mitigating-surprise-out-of-network-billing>

³ Air Ambulance: Available Data Show Privately-Insured Patients Are at Financial Risk (March 2019). Government Accountability Office. <https://www.gao.gov/assets/700/697684.pdf>

⁴ Air Ambulance: Data Collection and Transparency Needed to Enhance DOT Oversight (April 2017). Government Accountability Office. <https://www.gao.gov/assets/690/686167.pdf>

We appreciate that the discussion draft includes several proposals addressing these priorities: curbing abuses of the citizen petition process that can cause unnecessary delays to the entry of less expensive generic drugs; prohibiting new or extended market exclusivities for products transitioning to the biological pathway; supporting enhanced provider and patient education about the safety and effectiveness of biosimilars; and taking steps to prevent the “evergreening” of patent protections.

Looking beyond the drug pricing provisions included in your discussion draft, we urge you to consider additional proposals that would help achieve the Committee’s goals:

- The Creating and Restoring Equal Access to Equivalent Samples (CREATES) Act would prevent the abuse of patient safety protocols and ensure the widespread availability of generic and biosimilar drugs, creating more affordable alternatives to high-priced brand name drugs.
- The Fair Accountability and Innovative Research (FAIR) Drug Pricing Act and similar proposals would promote transparency around how drug makers set and increase prices.
- The Reforming Evergreening and Manipulation that Extends Drug Years (REMEDY) Act would increase access to biosimilars and generics.

Open, Honest, Clear Information in Health Care

We strongly believe that consumers and plan sponsors should have access to information that is clear, helps them make informed decisions about their care or coverage, and leads to lower costs.

Our member health insurance providers have taken significant steps to increase the availability of price information for health care services and promote its use in consumer decision-making. For example, the vast majority of insurance providers make price transparency tools available to their enrollees to help them choose cost-effective health care providers and services. Our members use messaging on plan portals, outreach through employers, digital communications, including email, social media, and text messaging, and postal mail to make their enrollees aware of available price transparency tools.

When providing consumers with this valuable information, it is important to understand how prices are set and what causes prices to increase. Transparency proposals that would disclose competitively negotiated rates should be rejected, as they will make health care more expensive,

not less. When doctors, drug makers, or hospitals know their competitors' negotiated rates, they can bid less aggressively and demand higher rates that lead to higher costs for everyone. The Federal Trade Commission has cautioned: "Too much transparency can harm competition in any industry, including health care. Typically, health care providers (hospitals, outpatient facilities, physician groups, or solo practitioners) compete against each other to be included on a health plan's list of preferred providers... when providers know who the other bidders are and what they have bid in the past, they may bid less aggressively, leading to higher overall prices."⁵

Meaningful transparency means protecting consumers by striking the right balance – giving patients the information they need without raising their costs – and enabling stakeholders to work together to lower prices and costs and ensure access to high-quality care.

Improve Public Health, Including Outcomes for Mothers and Children

As the Committee focuses on public health initiatives, we agree it is important to reduce disparities in care and improve health outcomes for mothers and children. AHIP and our members are committed to ensuring patients receive high-quality care during pregnancy, childbirth and after delivery. Many insurance providers offer targeted programs to engage and assist women with resources before, during and after pregnancy to improve health and to identify possible risks. Additionally, we support provisions that would provide grants for research and/or programs that target the health outcomes of women and children.

Encourage the Secure Exchange of Health Information

We appreciate the Committee's longstanding efforts to make electronic health information more broadly available to patients, health care providers and health insurance providers through improvements in the interoperability of health information technology. By supporting the secure and seamless exchange of electronic health information, we can improve patients' access to and control over their health information while also improving the quality and affordability of the care they receive.

However, we recommend that the implementation of new requirements for commercial plans follow the implementation of such requirements for federal programs. Proposed regulations for

⁵ Price transparency or TMI? (July 2015). Tara Isa Koslov and Elizabeth Jex, Federal Trade Commission Office of Policy Planning. <https://www.ftc.gov/news-events/blogs/competition-matters/2015/07/price-transparency-or-tmi>

federal programs have yet to be finalized and, per our comments to CMS, should align with private market efforts to finalize information sharing standards for use across the health care ecosystem. Allowing for both the establishment of necessary data standards and the full implementation of these requirements in federal programs would allow for the consistency of requirements across plan types, the incorporation of lessons learned in the previous efforts, and would help stagger the use of health IT resources nationally.

All of these improvements to electronic health information must be balanced with consumer privacy, ensuring that this sensitive information is being treated with care and integrity.

Avoid Steps That Would Inadvertently Increase Costs for Americans

AHIP appreciates that the Committee has not included harmful legislation such as the “Prescription Drug Rebate Reform Act” and strongly encourages the Committee to exclude this legislation from the final package. Requiring group health insurance plans to use a drug’s net price instead of list price as the basis for consumer co-payments (e.g., under co-insurance benefit designs) would reduce out-of-pocket spending for a very small proportion of consumers, but result in higher premiums for all consumers and higher health care costs for employer plan sponsors by amounts that would far overshadow any reductions in co-payments. This legislation would also diminish competition and result in higher drug prices and costs by enabling drug makers to reverse-engineer the discounts and rebates offered by their competitors.

We also recommend that the Committee not include any provisions that would extend the Office of Inspector General’s proposed rebate rule to the commercial market. This proposed rule would increase premiums, increase drug spending, increase employer health care costs, and result in a windfall to drug manufacturers at the expense of consumers and taxpayers. Extending this rule to the commercial market would only magnify these negative impacts.

Conclusion

We thank the Committee for focusing attention on the need for solutions that lower health care costs for the American people. We stand ready to provide any additional feedback that may be helpful as you continue to develop bipartisan legislation to help reduce costs and improve health care quality for patients. By working together and building on the strengths of the current system, we can succeed in achieving affordable, high-quality health coverage and care for every American.