February 11, 2020

Chairman Richard Neal
Committee on Ways & Means
1102 Longworth House Office Building
Washington, DC 20515

Ranking Member Kevin Brady
Committee on Ways & Means
1139 Longworth House Office Building
Washington, DC 20515

Dear Chairman Neal and Ranking Member Brady,

I am writing on behalf of the National Association of Health Underwriters (NAHU), a professional association representing more than 100,000 licensed health insurance agents, brokers, general agents, consultants and employee benefits specialists. The members of NAHU work on a daily basis to help millions of individuals and employers of all sizes purchase, administer and utilize health insurance coverage.

We appreciate your commitment to pursuing bipartisan reforms to protect patients from surprise medical bills. Our knowledge of health insurance markets and the consumers served by these markets gives us unique insight into this issue. As a result, we are very concerned about the Committee's proposed legislation that relies on arbitration to resolve surprise-billing disputes as it increases healthcare cost inflation and puts an undue burden on small businesses that self-insure. Our position on this is based on our strong desire to protect consumers from flagrant charges from out-of-network providers and we believe this can be achieved by tying out-of-network reimbursement to privately negotiated, in-network rates. Of note is that the most egregious charges are coming from the private equity firms that have purchased these out-of-network provider groups.

Arbitration is a false promise for patients facing surprise medical billing nightmares. Allowing all out-of-network rate-setting decisions to be done by a third party will lead to more bureaucracy, less transparency and roughly $1 billion in additional costs to the health system. Additionally, the Congressional Budget Office projected that an arbitration model would raise costs for taxpayers by $5 billion to $8 billion, as compared to a market-based benchmark. It is not uncommon for our members who are the front line of these issues to spend many months working to resolve issues related to surprise billing. Our agents have found offers to negotiate to 125% of Medicare are routinely refused. The time expended on these negotiations between the carrier and provider can be lengthy for even amounts as small as $300. As a result, potentially expanding the use of arbitration will add to an already cumbersome process that increases costs for patients, businesses and taxpayers. In states that previously enacted legislation to require payments of billed charges similar to arbitration-like models, such as Texas and New York, another layer of red tape is added for the patient because of costly unpredictability. Specifically, the experience of the arbitration process in New York is instructive. According to an analysis of data from New York's Department of Financial Services, the New York model of using "baseball-style" arbitration as a way to settle payment disputes between the carrier and provider is making

healthcare substantially more expensive in the state, as arbiters are typically deciding on dollar amounts above the 80th percentile of typical costs.

Conversely, experience in the states using a benchmark mechanism show that a benchmark based on local, in-network rates is the best way to expand patient access to care and lower costs for families and employers. For example, after Maryland established a benchmark for out-of-network charges, there was a related decline in balance-billing as a share of out-of-network payments (from 21% to less than 10%). Ultimately, benchmarking would avoid an arbitration process that can lead to an increase in premiums that are paid by consumers and employers.

In addition, the growing presence of private equity-backed providers is becoming an all-too-common influence in today's healthcare system and is one of the leading drivers behind surprise medical bills that bankrupt families across the nation. Private equity-owned providers have established a successful business model of balance-billing patients, often operating expressly and exclusively outside of insurance networks. Private-equity firms win with this price gouging, but working families and small businesses pay the costs. It's time to put patients first. This can be achieved by effectively capping how much these firms, which outsource doctors to hospitals, can charge patients and by avoiding a burdensome arbitration process that gives these entities the upper hand.

If you have any questions about our comments, or if NAHU can be of assistance as you move forward, please do not hesitate to contact me at either (202) 595-0639 or jtrautwein@nahu.org. Please also feel free to follow up with our congressional affairs team: Chris Hartmann at chartmann@nahu.org or John Greene at jgreene@nahu.org.

Sincerely,

Janet Stokes Trautwein
CEO
National Association of Health Underwriters

Cc:
Committee on Ways & Means