

Congress of the United States

Washington, DC 20515

December 19, 2019

Larry J. Merlo
President and CEO
CVS Health
P.O. Box 1459
Minneapolis, MN 55440-1459

Dear Mr. Merlo:

Pursuant to Rules X and XI of the U.S. House of Representatives, the Committee on Energy and Commerce is investigating practices surrounding surprise billing. Our investigation is joined by the U.S. Senate Committee on Health, Education, Labor and Pensions. We write to request information regarding CVS Health's policies and practices to help ensure that plan enrollees do not receive surprise medical bills. We are particularly interested in your company's experiences negotiating reimbursement rates with physician staffing companies and how you protect enrollees from receiving unanticipated bills from an out-of-network physician at an in-network facility. In recent years, the Committee has heard countless heart-wrenching stories from individuals who have received thousands of dollars in medical bills after inadvertently receiving care from out-of-network providers. These surprise medical bills have led to patient confusion and financial hardship, and have inspired the Committee to act through bipartisan legislation.

Over the past year, the Committee has taken several bipartisan steps to hold patients harmless in situations where they, through no fault of their own, receive a surprise bill from an out-of-network health care provider. On July 17, 2019, we demonstrated this commitment by unanimously passing H.R. 3630, the No Surprises Act, out of the full Committee.¹ Among other things, our bill protects consumers with all types of private insurance plans from surprise bills by increasing transparency and empowering patient choice, establishing benchmarks to resolve out-of-network billing disputes, creating an independent dispute resolution process, and encouraging the development of state all-payer claims databases.² Similarly, on June 26, the HELP Committee reported S.1895, the Lower Health Care Costs Act, 20-3. The HELP Committee also protected consumers with all types of insurance from surprise bills, established a benchmark to resolve out-of-network billing disputes, and created a federal all-payer claims database.

Surprise billing has devastated the finances of households across America and this practice is increasing at an alarming rate.³ Every day we hear stories about families who have

¹ H. Comm. on Energy and Commerce, *Pallone & Walden on Committee Passage of No Surprises Act* (Jul. 17, 2019), available at energycommerce.house.gov/newsroom/press-releases/pallone-walden-on-committee-passage-of-no-surprises-act.

² *Id.*

³ *No More Surprises: Protecting Patients from Surprise Medical Bills: Hearing Before the Subcomm. On Health of the H. Comm. on Energy and Commerce*, 116th Cong., Testimony of

endured financial and emotional devastation as a result of surprise bills. For example, Sonji Wilkes carefully confirmed before giving birth that the hospital where she delivered her son was covered by her insurance plan. Yet, after her son required emergency care in the hospital's neonatal intensive care unit (NICU) shortly after birth, she received a \$50,000 surprise bill for his NICU stay. Unbeknownst to Ms. Wilkes, the hospital had subcontracted the NICU out to a third-party provider that was not part of any insurance company's network.⁴

Stefania Kappes-Rocha from California went to the emergency room for a kidney infection at Zuckerberg San Francisco General Hospital. After spending the night in the emergency room and being sent home a day later with ibuprofen, she received a surprise bill for more than \$27,000.

Drew Calver from Dallas, Texas received emergency treatment at St. David's Medical Center for a heart attack. To Mr. Calver's astonishment, he subsequently received a \$108,000 surprise medical bill. Unfortunately, these stories are far too common. Research has found that around one in five emergency department visits and about nine percent of elective inpatient care at in-network facilities result in a surprise bill.⁵

Surprise bills occur primarily in two scenarios—when an individual receives emergency services and has no ability to ensure they are treated by in-network providers, or when an individual goes to an in-network hospital, but certain providers at that same hospital, that the patient may not have been aware would be involved in their care, are out-of-network. According to the American Enterprise Institute and Brookings Institution, surprise bills are most likely associated with services provided by an out-of-network emergency physician or ancillary clinician—such as a radiologist, anesthesiologist, pathologist, hospitalist, or assistant consulting surgeon—at an in-network facility.⁶

Many of the services that are often associated with surprise bills are also areas where hospitals have increasingly outsourced patient care.⁷ This occurs because physician staffing

Jeanette Thornton, Senior Vice President, Product, Employer, and Commercial Policy, America's Health Insurance Plans (June 12, 2019).

⁴ *No More Surprises: Protecting Patients from Surprise Medical Bills: Hearing Before the Subcomm. On Health of the H. Comm. on Energy and Commerce*, 116th Cong., Testimony of Ms. Sonji Wilkes, Patient Advocate (June 12, 2019).

⁵ Christopher Garmon and Benjamin Chartock, *One in Five Inpatient Emergency Department Cases May Lead to Surprise Bills*, HEALTH AFFAIRS (Jan. 2017), www.healthaffairs.org/doi/abs/10.1377/hlthaff.2016.0970.

⁶ Loren Adler, et al., *Network matching: An attractive solution to surprise billing*, American Enterprise Institute (May 23, 2019), www.aei.org/publication/network-matching-an-attractive-solution-to-surprise-billing/.

⁷ Press reports discussing areas where hospitals have outsourced clinical services include: *Outsourcing is Exploding in Healthcare – Will the Trend Last?*, *Becker's Hospital Review* (Oct.

companies and hospitals independently negotiate contracts with insurers—at times, a hospital may have negotiated rates with major health insurers while the physicians associated with the physician staffing company are not part of those networks.⁸ Indeed, a study by researchers at Yale found that hospitals that contract with physician staffing companies have higher rates of out-of-network billing.⁹

Some stakeholders, including some physician staffing companies, have argued that some insurance companies have refused to negotiate reasonable reimbursement rates with providers, increasing the likelihood that providers will be out-of-network and balance bill patients.

We are concerned about the impact of surprise billing on the nation's rising health care costs and the devastating effect that the practice is having on Americans. Therefore, we request your assistance to understand better why surprise billing occurs, the policies and practices that help protect individuals from surprise billing, and the current incentives behind the negotiations between providers and insurers.

To assist the Committee in its efforts, we request you answer the following questions:

1. Please provide the following information about each plan offered by your company for each year for the past five years:
 - a. The total number of beneficiaries enrolled in the plan;
 - b. The number of beneficiaries that have been responsible for paying for out-of-network charges while receiving care at an in-network facility;
 - c. The number of beneficiaries that have been responsible for paying for out-of-network charges while receiving care at an out-of-network facility;
 - d. A comprehensive list of hospitals or health systems that the plan has contracted with and negotiated in-network rates with, including information about:

4, 2013), available at www.beckershospitalreview.com/human-capital-and-risk/outourcing-is-exploding-in-healthcare-will-the-trend-last.html; Ron Shinkman, *The outsourcing explosion: Hospitals turn to outside firms to provide more clinical services* [Special Report], FIERCEHEALTHCARE (Apr. 21, 2015), available at www.fiercehealthcare.com/finance/outourcing-explosion-hospitals-turn-to-outside-firms-to-provide-more-clinical-services.

⁸ Zack Cooper, et al., *Surprise! Out-of-Network Billing for Emergency Care in the United States*, THE NATIONAL BUREAU OF ECONOMIC RESEARCH WORKING PAPER (last revised Jan. 2019), available at www.nber.org/papers/w23623.

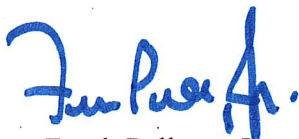
⁹ *Id.*

- i. The physician staffing companies providing services at that hospital that the plan has not negotiated in-network rates with; and
 - ii. The physician staffing companies providing services at that hospital or health system that the plan has negotiated in-network rates with.
 - e. The average in-network reimbursement rate paid by the plan for each of the physician services covered by the plan that are provided by physicians affiliated with a physician staffing company;
 - f. The average in-network reimbursement rate paid by the plan for each of the physician services covered by the plan that are provided by physicians that are not affiliated with a physician staffing company;
 - g. The average out-of-network reimbursement rate paid by the plan for each of the physician services covered by the plan that are provided by physicians affiliated with a physician staffing company;
 - h. The average out-of-network reimbursement rate paid by the plan for each of the physician services covered by the plan that are provided by physicians that are not affiliated with a physician staffing company; and
 - i. The average out-of-network billing rate charged to beneficiaries of the plan for each of the physician services provided to beneficiaries by an out-of-network provider affiliated with a physician staffing company when the beneficiary was receiving care at an in-network facility.
2. Please describe how you determine the reimbursement rate for out-of-network physicians, and please describe any changes that have been made to these policies and practices over the past ten years.
 3. Do you have any policies or practices to protect beneficiaries of your plan from surprise billing? If so, please elaborate and provide copies of any policy documents.
 4. Do you regularly track the number of beneficiaries that get services at an in-network hospital or health system that also receive a bill from an out-of-network doctor at that facility? If so, please describe how your company uses this information and any documents and communications pertaining to such tracking.
 5. Do you have any policies or practices to ensure beneficiaries enrolled in your plans fully understand the limitations of their coverage, responsibility for certain out-of-pocket costs, and whether a physician is in-network or out-of-network? If so, please elaborate and provide copies of any policy documents.

6. Do you have any policies and practices to help ensure that beneficiaries know if an in-network facility is staffed at least in part by out-of-network physicians? If so, please elaborate and provide copies of any policy documents.
7. Have you terminated any in-network contracts during a plan year with a physician group or physician staffing company over the past three years? If so, please describe the number of contracts that were terminated and the reason that the contracts were terminated.
8. Please describe how your plans reimburse, if at all, for any emergency transport services, including information about how plan coverage for emergency transport services has changed over the past decade and how you determine reimbursement rates for emergency transport services.
9. Please describe all state laws and regulations that you must comply with to meet balance billing prohibitions and the impact that they have on beneficiaries enrolled in your plans.
10. Please describe all network adequacy laws and regulations that you must comply with and the impact that they have on beneficiaries enrolled in your plans.

Please provide the requested information as soon as possible, but no later than January 9, 2020. An attachment to this letter provides additional information about responding to the Committee's request. If you have any questions, please contact Kevin McAloon with the Energy and Commerce Majority staff at (202) 225-2927, Natalie Sohn with the Energy and Commerce Minority staff at (202) 225-3641, Kristin Spiridon at (202) 224-6770 with the Senate HELP Majority staff, or Elizabeth Letter at (202) 224-0767 with the Senate HELP Minority staff. Thank you in advance for your cooperation.

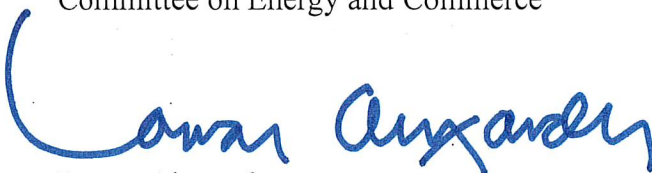
Sincerely,



Frank Pallone, Jr.
Chairman
Committee on Energy and Commerce



Greg Walden
Ranking Member
Committee on Energy and Commerce



Lamar Alexander
Chairman
Committee on Health, Education,
Labor, and Pensions



Patty Murray
Ranking Member
Committee on Health, Education,
Labor, and Pensions