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December 12, 2019

The Honorable Ron Johnson  
United States Senate  
Washington, DC 20510

The Honorable Tammy Baldwin  
United States Senate  
Washington, DC 20510

The Honorable James Sensenbrenner  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Ron Kind  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Gwen Moore  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Mark Pocan  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Glenn Grothman  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Mike Gallagher  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Bryan Steil  
U.S. House of Representatives  
Washington, DC 20515

Dear Members of Wisconsin's Congressional Delegation:

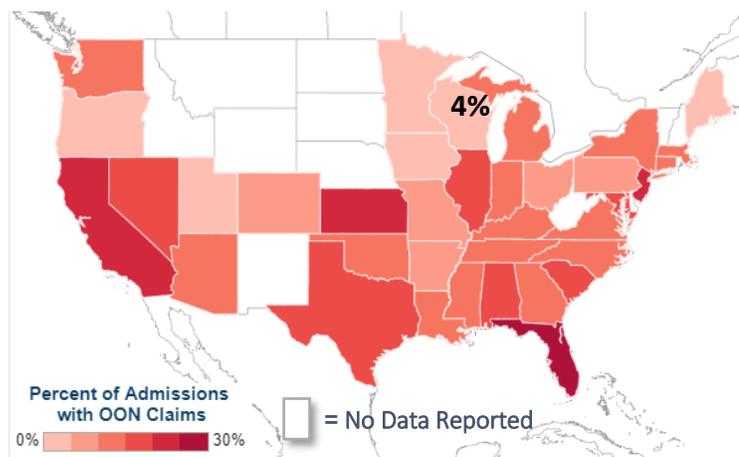
On behalf of the Wisconsin Hospital Association, we write to remind you of our strong support for Congressional efforts to reduce instances of surprise billing, but also to reiterate our strong opposition to mandating government-set benchmark payments as a solution. Recently, Congressional leaders announced an apparent deal on this issue. While we would proudly support compromise legislation that relies on a fair process, such as independent dispute resolution, we have concerns that the government setting benchmark rates will have adverse consequences for hospitals and patients, particularly in rural areas.

**Wisconsin has a proud history of transparency, and a low instance of surprise billing.**

As you know, Wisconsin has long been a leader in health care price transparency. For fifteen years, consumers have been able to access accurate and timely prices for hospital services on the PricePoint website, with an ability to easily compare Wisconsin hospitals' charges side-by-side. Additionally, WHA's Transparency Task Force will soon be releasing a report illustrating many new innovative practices our hospitals are undertaking to give patient's better up-front cost estimates for planned health care services. There is still more progress to be made, but we are committed to working with policy makers and insurers in improving transparency for all consumers, and were doing so well before this issue was taken up by Congress.

Wisconsin’s more integrated health care environment and history of supporting transparency has led to lower rates of surprise billing than most states, in fact, some of the lowest in the country.

According to the Health Care Cost Institute, Wisconsin had one of the lowest rates of hospitals admissions that resulted in an out-of-network surprise medical bill, at 4% in 2016.<sup>1</sup> Additionally, Wisconsin’s Office of the Commissioner of Insurance received only 61 surprise billing complaints over a 15-month period from 2018-2019, the



majority of which (58%) were concentrated among five insurers. While we support action to further protect patients from surprise medical bills, we believe a one-size-fits-all solution from Washington unfairly penalizes providers in states like Wisconsin that are already doing their part.

**Government-set benchmark rates and contracting mandates will benefit insurers but have adverse consequences for hospitals and patients, particularly in rural areas.**

We all know the deleterious effects government-set rates have had on care under Medicare and Medicaid. In Wisconsin, hospitals typically receive only 75% of what it costs to provide care under Medicare and only 65% under Medicaid. The Congressional Budget Office and Joint Committee on Taxation both concluded that using median in-network rates to resolve surprise billing disputes will result in rate cuts for providers of 15-20 percent nationally and that “payments to providers...would converge around those median rates”<sup>2</sup> – another way of saying they will essentially function as a new fee schedule in the commercial market. In both cases, the CBO and JCT agree that both parties will have an incentive to either negotiate to that rate or be out of network to obtain that exact rate.

Of course, that also has the dual effect of reducing choices for patients, as more providers are moved out of current networks. This will create more challenges for patients across Wisconsin, but especially in rural communities. Rural hospitals already deal with significant provider shortages and falling margins. At a time when rural hospitals are under historic stress, this provision will further threaten the stability, if not viability, of rural Wisconsin hospitals.

Additionally, we request the removal of language in section 202 of the announced legislation that bans so-called “anticompetitive terms” in contracts between insurers and providers. Right now, rural providers can freely negotiate in a give-and-take style to ensure insurers do not cherry-pick providers from their network in a way that steers away services from rural facilities. Banning this type of free negotiation tips the scales in favor of insurers and could lead to longer distances for patients to travel and less stability for rural facilities.

**Wisconsin voters overwhelmingly support using IDR to fix this issue.**

A much better approach to fixing surprise billing is to continue allowing providers and insurers to negotiate an agreement, while using an independent dispute resolution (IDR) system – like arbitration – as a backstop if

<sup>1</sup> Health Care Cost Institute. (2019) *Surprise out-of-network medical bills during in-network hospital admissions varied by state and medical specialty, 2016*. Retrieved from: <https://www.healthcostinstitute.org/blog/entry/oon-physician-bills-at-in-network-hospitals>. Kevin Kennedy, Bill Johnson, and Jean Fuglesten Biniek.

<sup>2</sup>Congressional Budget Office. (2019). S.1895, Lower Health Care Costs Act: As ordered reported by the Senate Committee on Health, Education, Labor, and Pensions. Retrieved from: [https://www.cbo.gov/system/files/2019-07/s1895\\_0.pdf](https://www.cbo.gov/system/files/2019-07/s1895_0.pdf)

agreement cannot be reached. This protects patients without creating an incentive to keep providers out of networks.

Notably, Wisconsin voters overwhelmingly support this approach. A poll done in late August<sup>1</sup> analyzing Midwest swing-states including Wisconsin found that while Wisconsin voters support Congressional efforts to reduce surprise medical bills, they are very much opposed to using a benchmark rate. In fact, nearly 75% supported using an IDR process to fix surprise billing, but only 6% of Wisconsin voters supported having the government set prices to address this issue. Most see their insurance plan as the party most responsible for this issue and recognize that government-set rates would just reward insurance companies without benefitting them as patients.

### What do Wisconsin Voters Think About Surprise Billing?

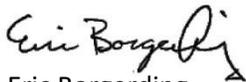
- ✓ **56%** - Think Health Insurance Plan Should Pay
- ✓ **Only 6%** - Favor Government-Set Benchmark
- ✓ **More than 75%** Support WHA Position – Independent Arbitrator to Resolves Disputes

\*Source – Fabrizio, Lee & Associates

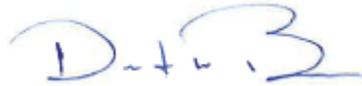
***For all these reasons, we ask you to oppose legislation that institutes a median in-network rate approach. Even a so-called “compromise” that keeps benchmark rates only for payments under a certain tier (reportedly, \$750) would continue to have the same fundamental issue of creating a fee schedule for rates that fall under that threshold, and incentives to keep more providers out of network.***

***Wisconsin is not the problem; please protect us from this kind of “solution” and fight for changes to this legislation to ensure fair treatment for everyone.***

Sincerely,



Eric Borgerding  
President and CEO, WHA



Damond Boatwright  
Regional President, SSM Health – Wisconsin  
Chair, WHA Board of Directors



Dan Meyer  
President, Aurora BayCare Medical Center  
Chair Elect, WHA Board of Directors



Bob Van Meeteren  
President, Reedsburg Area Medical Center  
Immediate Past Chair, WHA Board of Directors



Brian Stephens  
CEO Door County Medical Center  
Chair, WHA Transparency Task Force

<sup>1</sup> The Hill. (2019) *EXCLUSIVE: Swing-state voters oppose 'surprise' medical bill legislation, Trump pollster warns*. Retrieved from: <https://thehill.com/homenews/campaign/461780-exclusive-swing-state-voters-oppose-surprise-medical-bill-legislation-trump>.

Jonathan Easley