

November 7, 2019

The Honorable Bobby Scott
Chairman
House Committee on Education and Labor
2176 Rayburn House Office Building
Washington, DC 20515

The Honorable Virginia Foxx
Ranking Member
House Committee on Education and Labor
2462 Rayburn House Office Building
Washington, DC 20515

The Honorable Frank Pallone, Jr.
Chairman
House Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Greg Walden
Ranking Member
House Committee on Energy and Commerce
2185 Rayburn House Office Building
Washington, DC 20515

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

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

Dear Chairmen Scott, Pallone, and Neal and Ranking Members Foxx, Walden, and Brady:

Thank you for your efforts to move legislation to lower health care costs and protect consumers from surprise bills. We write today to urge you to include in any surprise bill legislation crucial protections against surprise billing by air ambulance providers. As regulators of state insurance markets, we want to reassure you that preventing surprise bills from air ambulances will benefit rural Americans and maintain their access to needed medical transport. Rural Americans today face the risk of a bankrupting surprise air ambulance bill and deserve protection from these excessive bills.

State insurance commissioners have been fighting for years to protect consumers from outrageous surprise bills from some air ambulance providers. After conducting extensive investigations, numerous state insurance regulators have determined that many air ambulance operators who are not affiliated with hospitals choose not to negotiate contracts with insurance carriers. Negotiating contracts with insurance companies would result in fair payment rates, reasonable costs for the consumer, and no surprise bills. Currently, states have very limited authority to regulate air ambulances; states have been unable to enact meaningful legislation to protect consumers because certain courts have interpreted that the federal Aviation Deregulation Act of 1978 (ADA) preempts state regulations on air ambulance providers. This interpretation of the ADA protects air carriers' prices, routes, and services from state regulation. That's why a federal solution is needed.

We are encouraged that your committees are seeking to protect consumers in cases when they cannot choose their health care provider. An air ambulance transport is not something any consumer arranges for themselves; choice of providers based on network status is all but impossible. Prohibiting balance bills and establishing a process for determining out-of-network payment amounts would be a prudent, fair, and equitable way to resolve the crisis consumers are facing at the hands of a few bad actors in the air ambulance industry. We urge you to act in the best interests of consumers and add provisions to surprise bill legislation that provide reasonable payment to air ambulance providers, incentive for entering into network agreements, and for the first time, offer the consumer protections our citizens need.

We reject the argument that ending surprise billing will leave consumers in our states without access to needed air ambulance services. Commissioners from across the country have learned from the experience of North Dakota—the state faced the same claims about access in rural areas in 2015 and 2017 when it debated state law protections. Upon

passage of those laws in 2015 and 2017, no air ambulance providers left the state. North Dakota is about as rural as you can get and we write to tell you from our perspective, the air ambulance companies themselves have dispelled the myth that they will flee from the rural areas if these reasonable regulations are passed by Congress.

Rural Americans are the most at risk under the status quo that allows surprise bills. With air ambulance charges unconstrained, rural residents are paying more and more of their health care dollars to air ambulance operators, through surprise bills for those who need air medical transport and through premiums for everyone else. With all the strains our rural health care system is facing, we cannot allow these providers to charge unlimited amounts, particularly as Congress works to limit balance bills generally.

Provisions like those in the Senate's *Lower Health Care Costs Act*, and specifically section 105 regarding air ambulance protections, allows the marketplace to work. Under this legislation, the providers can negotiate contracts with health insurers at rates the market deems appropriate. If an air ambulance company chooses not to negotiate with health insurers or is unable to reach agreement, this legislation ensures the market average rate of payment is provided for their services, meaning this legislation allows those rates to move over time and adjusts as the marketplace changes.

Should a state find that it has an inadequate number of providers under this market-based solution, an outcome we find very unlikely, state insurance regulators would be happy to work with federal officials to make geographic adjustments to the required payment rates. We suggest establishing geographic regions in consultation with the National Association of Insurance Commissioners. We would also support amendment to allow individual insurance commissioners to request an adjustment to their state's geographic regions or payment methodology. Allowing for such adjustments would enable states and the federal government to work together to assure that rural areas continue to receive the air ambulance services they need.

Our states have a mix of air ambulance providers; some are independent, stand-alone operators and some are hospital-affiliated providers. Most of these providers are good actors and provide necessary service to our consumers. The bad actors in our states tend to be stand-alone operators who use the balance billing method as a business model to prey on people during their most vulnerable time. Under current laws, they pass on massive surprise bills to private market consumers and expect them to make up the claimed difference. It is not the government's job to keep bad business models in business. It's the government's job to protect consumers, particularly when they have no choice of the provider who serves them. This is precisely what surprise bill legislation gives you the opportunity to do for our rural consumers and all Americans.

The time to act on this issue is now, even with the coming deliberations of the Air Ambulance and Patient Billing Advisory Committee. Further inaction by Congress will only continue to put our rural consumers at risk. If an air ambulance section is not a part of this legislation, Congress will leave an enormous loophole in balance billing protections. The tactics that are being employed by the bad actors within the air ambulance industry are nothing but a delay strategy to allow them to continue to use balance billing as a business model. We know that is wrong, you know that is wrong, and consumers desperately need your action to protect them from these massive surprise balance bills.

We recognize the challenge of balancing consumer protection and effective markets for highly regulated services—insurance commissioners do this every day for insurance products. We strongly believe that, in this case, the need for greater consumer protection is pressing and the risk of market exit by providers is small and manageable. Please add the air ambulance surprise billing prohibition to the legislation and take swift action to pass it.

We would like to offer support for these needed consumer protections in any way possible. If we can be of assistance, please do not hesitate to reach out to any or all of us.

Sincerely,



Jon Godfread
Commissioner
North Dakota Insurance Department



Lori K. Wing-Heier
Director
Alaska Department of Commerce, Community &
Economic Development



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Commissioner
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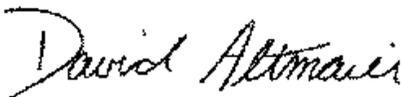
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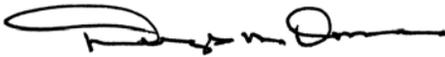
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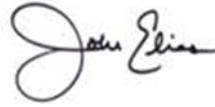
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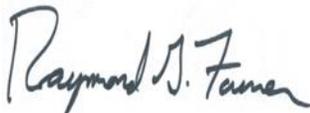
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