

# GNYHA POSITION PAPER

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## SURPRISE BILLING

GNYHA strongly supports eliminating surprise medical bills. New York was the first state to adopt comprehensive, effective surprise billing legislation, and GNYHA was closely involved in the negotiation of New York's successful law. Federal surprise billing legislation to address surprise bills should be similar to the "New York Model," which has proven to be fair to both providers and insurers while fully protecting patients from surprise bills.

But surprise billing proposals that rely on benchmark rate setting will result in enormous profits for the commercial insurance industry on top of their current massive windfalls due to the COVID-19 pandemic. National insurers are doubling their earnings due largely to decreased hospital utilization during the emergency. At the same time, the American Hospital Association projects that *hospitals across the country will lose more than \$320 billion this year*. It is essential that Congress reject harmful benchmark rate setting proposals and enact surprise billing legislation that is fair to financially struggling hospitals.

### GNYHA'S Surprise Billing Principles

GNYHA began circulating a set of surprise billing principles in 2019 that outline what Federal legislation should seek to accomplish.

- **Patients should be held harmless from surprise bills.** This means they should not be responsible for costs above their in-network cost-sharing responsibility in emergency situations when they receive services from out-of-network providers, and in non-emergency situations when they inadvertently

receive services from out-of-network providers at in-network hospitals.

- **Patients should not be placed in the middle.** Negotiations between insurers and providers over appropriate out-of-network reimbursement should not involve the patient.
- **Determining the appropriate payment for out-of-network services should be left to negotiation between providers and insurers, with an independent arbitration process to resolve disputes.** The government should not dictate a default out-of-network payment amount, as this would have significant unintended consequences in terms of provider/insurer contract negotiations and result in diminished provider networks that would limit consumer choice and access.
- **Reducing the number of surprise medical bills should be an important component of any legislation.** This will require the establishment of reasonable disclosure requirements for providers and insurers on network participation and cost expectations, which should take place whenever possible in advance of scheduled services.



*GNYHA is a dynamic, constantly evolving center for health care advocacy and expertise, but our core mission—helping hospitals deliver the finest patient care in the most cost-effective way—never changes.*

- Federal law should not preempt state laws that address surprise medical bills. As long as state laws hold the patient harmless for additional out-of-pocket expenses, Federal law should only apply to self-insured, employer-sponsored plans governed by ERISA.

### New York State's Successful Surprise Billing Law

New York State's surprise billing law is widely considered to be the best in the country, and GNYHA believes it should serve as the template for any Federal legislation. Under New York's law, if the provider and insurer cannot agree on the appropriate payment when a patient goes out of network, they can enter a "baseball style" arbitration process in which the arbiter considers multiple factors, including past charges. Patients are only liable in these situations for what they would have paid if they had been treated in-network.

While many of the bills under consideration by Congress would maintain a state's ability to implement its own surprise billing laws, these state laws only apply to state-regulated plans and do not apply to self-insured or other federally regulated plans. The Federal legislative proposals would apply to self-insured plans, which cover a significant number of New Yorkers.

### GNYHA Opposes Benchmark Rates

GNYHA strongly opposes a benchmark rate for surprise bills, particularly one that is pegged to the median in-network contract rate. Allowing health plans to pay the same out-of-network (OON) as in-network, as many of the proposals moving through Congress do, would upset the balance between America's community hospitals and national for-profit insurance companies. If health plans incur no higher cost for OON care, they will have enormous leverage over hospitals in contract negotiations. This will lead to a downward spiral in commercial insurer payment rates to hospitals and especially damage the financial stability of hospitals that serve large Medicare and Medicaid populations, where payment rates do not come close to covering costs. The end result of a benchmark rate will be to limit patients' choice and access to care.

Fortunately, the House Ways and Means Committee's *Consumer Protections Against Surprise Medical Bills Act of 2020* (H.R. 5826) creates a fairer, more effective way of eliminating surprise medical bills. The legislation doesn't needlessly harm providers for the benefit of for-profit insurers. GNYHA appreciates that the House Ways and Means Committee responded to the concerns of hospitals and physicians, especially during the greatest public health emergency in decades.

#### GNYHA Position:

- Patients should be held harmless from surprise bills
- State laws that address surprise bills should not be preempted by any Federal law.
- Legislation dealing with surprise billing should not include benchmark rates, and instead should adopt a dispute resolution process similar to New York's successful model, which considers several factors in determining reasonable payment, including customary charges