



June 12, 2020

The Honorable Mack White  
Chairman  
Finance Committee  
The Louisiana State Senate  
900 North Third Street  
P.O. Box 94183  
Baton Rouge, LA 70804

Dear Chairman White:

On behalf of The ERISA Industry Committee (ERIC), thank you for accepting comments from interested stakeholders as the Committee considers Senate Bill 7. ERIC is the only national association that advocates exclusively for large employers on health, retirement, paid leave, and compensation public policies at the federal, state, and local levels. You and your constituents are likely to engage with an ERIC member company when you drive a car or fill it with gas, use a cell phone or a computer, visit a bank or hotel, fly on an airplane, watch TV, benefit from our national defense, go shopping, receive or send a package, use cosmetics, or enjoy a soft drink. We speak in one voice for our member companies on their benefit and compensation interests, including many with employees and retirees in Louisiana.

As plan sponsors, our member companies strive to provide the best health care possible to their employees, retirees, and families at an affordable cost. At ERIC, we seek to enhance our members' ability to provide high-quality, affordable health care, and our members are absolutely committed to ending the surprise medical billing crisis. We support market-based, fair regulations to curb unexpected bills, and prevent patient's health insurance premiums from inflating due to unscrupulous practices particularly by physician staffing firms owned by private-equity funds.

**Unfortunately, Senate Bill 7 is still so seriously flawed, even after being amended in the Senate Insurance Committee, that patients in Louisiana would be better with the unacceptable status quo. The language of this legislation is written in a manner that lacks transparency and is overly favorable to the very providers who have created the surprise billing crisis. It is likely to lead to skyrocketing costs for Louisianans and the state's budget. As such, ERIC and our large employer member companies cannot support this legislation unless it is significantly amended.**

#### **(1) Surprise billing situations to address**

ERIC strongly supports legislation to end surprise billing, protecting patients from balance bills generated by out-of-network providers at in-network facilities, **in emergency situations**, and in cases of referrals and handoffs during which the patient is not given a meaningful choice. **This legislation already fails our metrics by separating out emergency treatments, rather than addressing them in a like manner to other surprise bills.** We understand that America's emergency rooms have become deeply intertwined with for-profit private equity and Wall Street firms, however, this is no excuse to allow them to continue taking advantage of patients when they are most vulnerable.

## (2) Payment mechanism for providers

ERIC supports legislation to pay physicians fairly. That means payments should be market-based; in a situation that otherwise would have generated a surprise bill, a provider should be paid based on what other similar doctors, in similar geographies, have freely negotiated with insurance carriers for similar services. **There should be absolutely no role for providers' fake "list prices," also known as "billed charges," which no patient or payer in their right mind would ever pay.** Further, there should similarly be no role for historical payments made to out-of-network providers, which are marred by duress and pressures, rather than based upon a meeting of the minds between two parties. **This legislation should eliminate all references to charges and out-of-network payments, and instead develop a payment methodology based on average in-network payments.**

## (3) Arbitration mechanisms

Employers do not believe that government-mandated binding arbitration is the correct solution for surprise medical bills; rather, we believe that a provider who has chosen not to engage in networks, should accept a median payment rate and be done with it. However, if legislators insist upon including arbitration mandates, that arbitration should be limited and designed in a way that prevents excess costs. **The arbitration mandate in this legislation fails this test.** Some of the problems include:

- Although the legislation was amended to add a dollar threshold for arbitration of \$650 per CPT code, this amount is so low compared to (for instance) the average surprise facility fees from a hospital in an emergency situation, or the average charges from a Wall Street-owned provider staffing firm in an emergency room, it would do little to stem a flood of arbitration claims. Arbitration should be limited to high-cost claims that justify the significant time and legal expenses employers and insurers will have to invest to defend themselves.
- Information considered in arbitration should be confined to reasonable information about a particular patient's specific episode of care, and market-based health care cost information. That means references to billed charges (including when considered as part of a "usual and customary" definition), and out-of-network settlements should not be permitted. Further, providers should not be permitted to justify arbitration by issues related to "payer mix" (such as, a large amount of low payments from government programs), or other extraneous expenses not specific to this patient, and this episode of care.
- Providers should not be permitted to seek additional money based on issues like "level of education" or "severity of the case," because these factors are already built into medical billing codes. This is purely a gambit for increased reimbursement, to increase health care costs for patients.
- Providers who take payers to arbitration should be publicly disclosed, and when the arbitration claim is found to be without merit, the provider should be required to reimburse the payer for costs.

We believe that Louisiana can get this right – just as other states have. However, in its current form, the legislation is worse than the status quo, and the legislature should not advance this bill. Thank you for accepting our input on Senate Bill 7. ERIC is pleased to represent large employers with the goal of ending the surprise medical billing crisis for millions of workers, retirees, and their families. If you have any questions concerning our written testimony, or if we can be of further assistance, please contact me at [jgelfand@ERIC.org](mailto:jgelfand@ERIC.org) or 202-789-1400.

A handwritten signature in blue ink that reads "James P. Gelfand". The signature is written in a cursive, flowing style.

James P. Gelfand  
Senior Vice President  
Health Policy

CC: Louisiana State Senate