Powering a more equitable New York

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Testimony to the Ways and Means Committee
"Reduced Care for Patients: Fallout From Flawed Implementation of Surprise Medical Billing Protections"

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Chairman Smith, Ranking Member Neal, and distinguished members of the committee, thank you for holding today's hearing to examine the impact of the No Surprises Act (NSA). My name is Diane Spicer, and I work at the Community Service Society of New York (CSS). CSS has been an unwavering voice for low-income New Yorkers for over 175 years. CSS administers Community Health Advocates (CHA)—New York State's designated Consumer Assistance Program—through a live-answer helpline and in partnership with over 20 community-based organizations located throughout the state. Since 2010, CHA has helped over 550,000 New Yorkers enroll in and use health insurance, negotiate medical bills, and otherwise access free or low-cost health care, saving them $180 million.[1]

As the Supervising Attorney of Community Health Advocates, I have had the unique opportunity to view the implementation of both the New York State Out-of-Network/Surprise Billing Law and the federal No Surprises Act (NSA). In 2014, the State of New York passed its surprise billing ban, setting up a "baseball-style" arbitration that kept the patient out of the middle of payment disputes—at the urging of CSS on behalf of a coalition of consumer advocates. CSS was encouraged to see Congress follow New York's model in 2020 and ban surprise medical bills for federally regulated plans.

We are grateful for the work done in Congress and in our home state of New York to address surprise bills. Nonetheless, we still field over 20 to 30 calls per month from patients with questions. The health care system can be complicated to navigate for even the most well-versed among us. Advocates spend a lot of time helping patients understand the complicated rules and processes to determine whether they have received a surprise bill and how to appeal to be held harmless.

Prior to the passage of New York's law, CHA fielded hundreds of calls a year from consumers who faced exorbitant surprise medical bills. A typical case involved the admission of a client to the emergency room for painful kidney stones. The emergency room transferred the client to their urology department who performed surgery. All of the providers were in-network,

[1] https://communityhealthadvocates.org/who-we-are/our-impact/

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except the anesthesiologist—leaving our client with the classic "surprise bill." New York's Out-of-Network/Surprise Bill law addressed these classic cases for our state regulated insurers.

We at CHA were delighted to see the enactment of the federal No Surprises Act (NSA) because it made additional improvements to what we had already achieved in New York, including: providing protections against air ambulance bills; addressing network directory misinformation; affording protections to consumers in federally-regulated (ERISA) plans; and, importantly, covering the circumstance of when a provider incorrectly tells a patient they are in-network. Claudia Knafo, a concert pianist who needed neurological surgery, is a classic example of this last issue. Claudia did everything right. She found a hospital and a surgeon who were in-network, cleared everything with her insurance and proceeded with the surgery. But her surgeon's office had misinformed her that he was in-network, when, in fact, he was not—stranding Claudia with a $35,000 bill.[2] Her situation is now covered by the NSA which requires providers to issue a notice and consent waiver form in advance of treatment when they are out-of-network.

That said, our clients still struggle with the implementation of our state law and the NSA. Specifically, the structure of the law leaves patients vulnerable to surprise bills in several ways: (1) the process of determining which bills are covered and appealing a surprise bill is too complicated for many consumers to understand; (2) plans do not automatically hold consumers harmless for surprise bills, and many health care providers remain uneducated about the law and continue to balance bill patients; (3) providers may use the notice and consent form inappropriately; and (4) loopholes remain in the law.

1. **The process of determining which bills are covered by the NSA and appealing them is too complicated for many consumers to understand.**

Patients whose bills should be covered by the NSA may have difficulty exercising their rights. In some cases, patients receive bills that they should be protected from, and it is my job, along with my team, to determine if they should be protected and guide them through complicated appeal processes to ensure they are not responsible for more than their in-network cost-sharing.

In these cases, CHA advocates call health plans and providers to determine the reason why claims are denied and patients are billed. Often, we spend many hours on the phone to understand the circumstances that arose during the episode of care that led to the bill, and the actions the consumer and provider took at that time. These are complicated situations in which consumers are rarely able to determine on their own if their billing situation fits within the letter of the law. For consumers who actually received surprise bills and did not sign the notice and consent waiver, we file appeals and, sometimes, complaints with the regulator.

2. **Plans do not automatically hold consumers harmless for surprise bills, and many health care providers remain uneducated about the law and continue to balance bill patients.**

[2] https://www.vox.com/health-care/2019/3/19/18233051/surprise-medical-bills-arbitration-new-york

CHA Advocates have noticed that health insurance plans and providers do not automatically hold patients harmless for surprise bills when our clients come to us with their billing problems. The patients we assist are often billed and must file an appeal so that they are only responsible for the in-network cost-sharing. From our perspective, some health care providers are not educated about NSA protections and continue to balance bill consumers. While we are there to help them, not every patient will know they can turn to us for help – or that they do not have to pay the bill to begin with.

For example, one consumer CHA assisted was seen by an in-network provider for abdominal pain. The provider ordered labs, which were done at an in-network facility, but read by an out-of-network radiologist. The consumer was billed $563, when his in-network cost sharing should have been $62. He appealed and complained, asking for relief under the NSA. Both his plan and the NSA helpdesk responded that the NSA did not apply since the services he received were neither emergency nor inpatient. These determinations were patently incorrect: the NSA applies to both non-emergent and outpatient care. This consumer's billing issue has taken more than six months to resolve and will likely go to external appeal. He is still being billed for the out-of-network services of the radiologist.

3. Providers may use the notice and consent form inappropriately.

The NSA also includes a requirement that providers issue patients a notice and consent form to make them aware of their network status and unexpected charges which may result from an out-of-network service. This is an important consumer protection for patients who were misinformed by providers and stuck with the bills (like Claudia Knafo).

But there have been operational issues with the roll-out of this requirement, and many cases we see include instances in which providers use the consent form inappropriately. For example, in one recent case, a consumer whose primary language is not English was told that his varicose vein surgery would not be performed unless he signed the consent form. Because he needed the surgery and did not understand the form, he signed the form shortly before surgery and paid a $6,000 deposit (50% of the surgery's cost) out of pocket. His plan's Explanation of Benefits notice later stated that the claim was reduced and, because it was protected by the NSA, he would owe only the in-network cost-sharing of $18. But the patient had signed the consent form and was thus incorrectly required to pay the $6,000 – which will be nearly impossible to reclaim.

All of us sign numerous pages of forms when we go to the doctor and get procedures—sometimes on an electronic device that fails to adequately display the documents. Few of us have the capacity to understand the ramifications of signing a notice of consent form.

4. Loopholes remain in the NSA.

Even with all the NSA's improvements, loopholes remain.

The federal protections do not apply to consumers who receive a "surprise" medical bill from out-of-network ambulances or out-of-network urgent care facilities. In addition, while NSA

covers ancillary care such as pathology and labs, it only does so in the hospital or ambulatory care setting. Similarly, patients are not protected for post-ER follow-up care with out-of-network providers. For example, one of our CHA clients had emergency kidney stone surgery. She was in a lot of pain when she got to the emergency room and did not know that her surgeon was out-of-network with her plan. The doctor placed a stent. That bill was covered. Unfortunately, she remains responsible for the bill to see the same out-of-network surgeon to remove it.

Another common outstanding loophole is the failure to address ground ambulance cases.

When patients bring these claims to us, we often spend countless hours confirming that consumers are not protected, negotiating discounts and filing financial assistance applications with the ambulance and other service providers. Sometimes, these attempts fail, and we must resort to turning to private health care charities. But these charities quickly run out of funds and not all consumers are able to access them.

Generally, CSS has seen a 64 percent increase in outreach to our office about medical bills since 2019. Many of these consumers are protected by the New York State Surprise Billing Law and the NSA but are unaware that they are being balanced billed. Our New York program handled about 500 cases regarding similar out-of-network bills since the start of the NSA in January of 2022.

We urge Congress and the Administration to work together to improve consumer protections in our health care system offered under the NSA and other laws.

I would like to close by saying, we are deeply proud of the work we do as New York's designated Consumer Assistance Program. Like New York, a dozen states continue to operate these programs—despite lack of federal appropriation. Patient confusion around their health care costs continues to grow, despite federal and state law protections. We also urge Congress to work together to restore funding for these vital Consumer Assistance Programs so that together we can work to improve the patient experience in the health care system.

Chairman Smith, Ranking Member Neal, again thank you both for holding this hearing and including the patient voice as part of this important conversation. I look forward to answering any questions you may have.