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Written Testimony from:
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In SUPPORT of HB 388, "A BILL To enact sections 3902.50, 3902.51, and 3902.52 of the Revised Code regarding out-of-network care."

Nov. 13, 2019

House Finance Committee

Chairman and members of the committee,

Our names are Marc Hyden and Eli Lehrer, and we are, respectively, the Director of State Government Affairs and President of the R Street Institute, a nonprofit, nonpartisan, public policy research organization based in Washington, D.C., with operations around the country, including here in Ohio. Our mission is to engage in policy research and outreach to promote free markets and limited, effective government in many areas. We began as an organization focused on insurance reforms and have long worked on such issues in Ohio and elsewhere. One of us, Lehrer, also has a great deal of personal experience with surprise billing, and that is why HB 388 is of interest to us.

As an organization, we stand unapologetically for free markets and capitalism. But we have never argued against all regulations. Indeed, our mission statement says that we seek to promote "limited, *effective* government."[1] The case of "balance billing"—or "surprise billing," as it has come to be called—is a case where we see a clear role for the government. [2]

As it stands, roughly 18 percent of Ohioans' emergency medical care visits will result in one or more out-of-network charges, which are not fully covered by their health insurance. This frequently happens when a patient checks in to an in-network hospital but an out-of-network contractor treats them. As a

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[1] "About R Street," The R Street Institute. https://www.rstreet.org/about-r-street.
[2] Adam Crowther, "Out of Control," *Public Citizen*, April 16, 2014. https://www.citizen.org/article/balance-billing-report.

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result, at no fault of their own, patients are often stuck with a tab that is thousands of dollars higher than expected.[3] This is a clear market failure that the government needs to resolve.

Let us provide some background as to why. Markets work based on information. Whether the product being sold is a loaf of bread, a home or an auto insurance policy, providing customers with information about the prices and characteristics of the product allows them to make a decision on whether to purchase it. Either the prices of these products are directly negotiable (as is the case with nearly all real estate transactions) or multiple providers sell the product (as with auto insurance or bread) at varying prices. Customers who do not like the price charged for a product can vote with their feet and simply decline to buy it.

Not all products that customers buy are simple. When a product is complicated, intermediaries—who run the gamut from insurance agents to interior designers—are there to help consumers understand the product's prices and characteristics.

For markets to work, a few prerequisites must be met: Consumers must have good information about what they are buying, knowledge of how much it costs and, perhaps most importantly, the ability to say "no" to purchasing it.

When a person receives medical care in an emergency room or as a hospital inpatient facing an emergency, none of these prerequisites are met. Patients cannot be expected to understand the intricacies of every potential medical treatment decision; it is therefore necessary for them to trust professionals' decisions—particularly when time is limited. Furthermore, the prices of care are seldom known, even to the professionals providing the treatments. Finally, since so many undertakings in hospitals are literally matters of life and death, and patients have no idea whether providers are in or out of network, patients have no meaningful ability to say "no" to recommended treatment. As such, there is simply no way that pure market mechanisms can work for emergency medical care.

Of course, nearly all members of the committee agree with this premise. Indeed, nearly every member of the Legislature has voiced support for some effort to prevent surprise billing. Given that we agree on the problem, Ohio should find a solution.

In deciding on a solution, we suggest that the committee keep one thing in mind: A price can only be fair if it can be negotiated or if the person offered the price has the ability to say "no" to purchasing it. Yet

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[3] Kaitlin Schroeder, "Ohio bill proposes 'surprise billing' solution," *Dayton Daily News*, Oct. 12, 2019. https://www.daytondailynews.com/news/local/ohio-bill-proposes-surprise-billing-solution/kTGqMgQdvywoSIFjYjduFP.

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the amounts charged in surprise bills are not negotiated and are *never* negotiated by patients; they are simply decided by the providers. *All* these providers could choose the joint networks and negotiate with the networks over the prices. *All* these providers could also choose to accept Medicare and Medicaid. And finally, *all* these providers can simply decline to work for the amounts offered by any network or public program and simply bill patients out of pocket at whatever prices they choose to charge.

The question before you is whether to accept providers' ability to set prices unilaterally with no input or exposure to market forces and then, when a dispute arises, enter into an arbitration process that uses these non-market prices as a starting point; or to choose an alternative. The former is the approach providers would prefer, and the reasons are clear: Research has shown that these rates are invariably far higher than those paid by insurance plans, including Medicare or Medicaid.[4] Requiring patients to accept these arbitrary prices will invariably cause insurance premiums to rise. Some patients will find their budgets stretched, others will need to forgo insurance altogether. Government spending on subsidies for plans offered on the exchanges will soar.

The alternative—a good middle ground—is the bill before you. HB 388 will aid Ohioans and safeguard them from the most pernicious effects of surprise billing. It bans balance billing for emergency care and protects against surprise premium increases by ensuring that out-of-network physicians are only paid the market rate, not an inflated amount. Providers will still be able to charge out-of-network rates in non-emergency settings, but in emergency settings, they will be limited to previously negotiated in-network payments. The bill also provides an arbitration process to ensure that the proper rates are paid and that insurers do not short providers. This is a fair system that allows markets to work.

Ohioans are suffering, and some of society's most vulnerable—those seeking emergency medical care—desperately need the Legislature to act. Providers sending balance bills to their patients are not behaving in a way that is fair to patients or helpful to anyone but themselves. HB 388 simply provides a level playing field.

The bill is a modest step toward treating consumers fairly. If anything, we feel it does not go far enough to prevent surprise bills. The Legislature should consider going further, but HB 388 is a very good start. Legislators who support free markets should support the bill.

Thank you for your time.

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[4] Loren Adler et. al., "Network matching: An attractive solution to surprise billing," Brookings Institute, May 23, 2019. https://www.brookings.edu/blog/usc-brookings-schaeffer-on-health-policy/2019/05/23/network-matching-an-attractive-solution-to-surprise-billing.

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