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Testimony from:
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In OPPOSITION to SB 198, "A BILL regarding out-of-network care."

December 11, 2019

Senate Insurance and Financial Institutions Committee

Chairman and members of the committee,

My name is Alan Smith. I am a long-time resident of Bexley, Ohio, and the Midwest Region Director for the R Street Institute—a nonprofit, nonpartisan, public policy research organization based in Washington, D.C. I previously served in a variety of public policy and government relations capacities, many of them for the property and casualty insurance industry.

At R Street, 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. Thus, SB 198 is of special interest to us. In addition, our organization's president has extensive personal experience dealing with surprise bills and has a passion for the issue.

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." In the case of "balance billing"—or "surprise billing," as it has come to be called—we see a clear role for the government. However, SB 198 is not the answer to the crisis.

As my organization has testified before, 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.[1] This frequently happens when a patient checks in to an in-network hospital but an out-of-network contractor treats them. As a result, at no fault of their own, patients are often stuck with a tab that is

[1] Kaitlyn Shroeder, "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/

thousands of dollars higher than the expected in-network charges. This is a clear market failure that the government needs to resolve.

SB 198 is reputed to be a solution to this problem, but while it is well-intentioned and sounds promising on the surface, it would produce minimal net benefits to consumers and simply will not resolve the problem of out-of-network charges that can border on the unconscionable.

Under the current language, SB 198 would ban surprise billing unless providers inform patients of the out-of-network charges in advance, and it would also require that medical facilities submit such bills to insurers, not patients.

However, if the bill is less than $700, then the insurer would be required to either pay the claim in full or an amount that equates to the 80th percentile of provider charges in the region for similar care – whichever is less. For charges $700 and over, insurers would be allowed to attempt to negotiate the charges, and if unsuccessful, the parties would go to arbitration. Yet, there are serious problems with these proposals.

First, mandating that providers inform patients of out-of-network charges before proceeding won't always benefit patients. Although the specific waiver provisions probably mean that many patients will not be asked to pay such charges, those in need of emergency medical care are hardly in a position to refuse lifesaving procedures because one or more doctors are out-of-network and will charge extraordinary sums of money. Rather, if they are facing life-and-death situations—or even significant discomfort—patients will agree to almost any amount placed before them.

Second, requiring that out-of-network bills under $700 be paid in full or at the 80th percentile does little good. The 80th percentile of similar provider charges can still be three to four times as much as in-network costs for the same care. Thus, insurers and ultimately policyholders would be stuck with either the original inflated charge or that of the 80th percentile, which is still overly inflated.

Third, the most serious medical charges are well over $700. SB 198 permits insurers to negotiate with providers in these cases, but this will still result in unfair charges. If the starting point in these negotiations are greatly inflated charges, then the compromise settlement, in the best-case scenario, will be a charge that is much higher than common in-network charges. In cases in which no settlement is reached, then the dispute will go to arbitration, and the arbiter will consider a few variables to determine the final bill amount, including what the 80th percentile of similar care would be. Again, this will still result in higher bills, given the variables considered and that the arbiter cannot consider Medicare or Medicaid rates for the same care.

This last exclusion is particularly silly: Medicare and Medicaid, together, account for nearly 40 percent of all medical care in the United States.[2] All admitting hospitals of any size and over 90 percent of primary care doctors receive payments from these programs.[3] Excluding the rates that they pay slants the entire exercise very strongly in favor of those medical practices and their owners that send unreasonably high bills to many patients.

In short, this means that, if passed, SB 198 will still permit incredibly expensive medical bills. However, they will first be charged to insurers who will subsequently have to pass the costs on to policyholders via increased premiums in order to offset the expenses. In the end, rather than surprise consumer medical bills, SB 198 would raise costs enormously. This would inevitably result in some combination of higher premiums, higher deductibles and higher copays for consumers.

Ohioans are suffering, and some of society's most vulnerable people—those seeking emergency medical care—desperately need the Legislature to act. Providers that send balance bills to their patients are not being fair to patients or helpful to anyone but themselves.

Unfortunately, SB 198, while well-intentioned, will allow providers to continue taking advantage of the ill. The Legislature can and must do better than SB 198.

Thank you for your time.

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[2] Center for Medicare and Medicaid Services, "Historical National Healthcare Expenditures," 2018. https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/NHE-Fact-Sheet

[3] Cristina Boccuti et al, "Primary Care Physicians Accepting Medicare: A Snapshot," Kaiser Family Foundation, 2015. https://www.kff.org/medicare/issue-brief/primary-care-physicians-accepting-medicare-a-snapshot/