



California Public Employees' Retirement System

Executive Office

400 Q Street, Sacramento, CA 95811 | Phone: (916) 795-3829 | Fax: (916) 795-3410

888 CalPERS (or 888-225-7377) | TTY: (877) 249-7442 | www.calpers.ca.gov

The Honorable Nancy Pelosi
Speaker, U.S. House of Representatives
1236 Longworth House Office Building
Washington, DC 20510

The Honorable Mitch McConnell
Majority Leader, U.S. Senate
317 Russell Senate Office Building
Washington, DC 20510

The Honorable Kevin McCarthy
Minority Leader, U.S. House of
Representatives
2468 Rayburn House Office Building
Washington, DC 20510

The Honorable Charles E. Schumer
Minority Leader, U.S. Senate
322 Hart Senate Office Building
Washington, DC 20510

March 13, 2020

Subject: Surprise Medical Billing

Dear Speaker Pelosi, Minority Leader McCarthy, Majority Leader McConnell, and Minority Leader Schumer,

On behalf of the California Public Employees' Retirement System (CalPERS), I write to urge you to pass bipartisan legislation as soon as possible to end the practice of surprise medical billing. We are committed to ending this practice among medical providers as part of our ongoing efforts to ensure health insurance premiums and out-of-pocket costs are affordable and sustainable for our 1.5 million active and retired state, local government, and school employees and their family members.

CalPERS is the largest purchaser of public employee health benefits in California, and second largest purchaser in the nation, after the federal government. Our high quality, comprehensive health plan offerings include health maintenance, preferred provider, and exclusive provider organization (HMO, PPO, and EPO) plans. In 2019, CalPERS spent an estimated \$10.6 billion purchasing health benefits for our members and employers.

As you know, patients with health insurance are often subject to surprise bills when they receive treatment in hospitals and emergency rooms that are in-network but are treated by out-of-network providers. Two common examples occur when patients needing immediate medical attention go to hospitals that have outsourced all or a portion of their emergency room functions to outside provider groups that enter into few, if any, insurance contracts, and when patients undergoing scheduled medical procedures at in-network hospitals unknowingly receive treatment from individual providers such as anesthesiologists, pathologists and radiologists that have not also contracted to join those insurance networks. These non-contracting providers then charge their patients the difference between what the patients'

health plan reimburses for a service and what the providers charge. According to an analysis by the Kaiser Family Foundation, 26 percent of emergency room visits by Californians with large employer coverage resulted in at least one out-of-network charge in 2017. Congress should act now to protect patients from these charges and provide non-contracting providers and insurers an efficient and equitable means to resolve billing disputes.

Our members and employers have directly benefitted from California's enactment of legislation to protect 26 million HMO plan participants from surprise billing (Assembly Bill (AB) 72, Chapter 492, Statutes of 2016). Specifically, AB 72 requires HMOs, not patients, to reimburse out-of-network providers at an "Average Contracted Rate" as defined in regulation, or 125 percent of the amount Medicare reimburses on a fee-for-service basis for the same or similar services in the general geographic region in which the services were rendered, whichever is greater. In addition, if the non-contracting provider wishes to reject the default payment amount, the provider is able to participate in a fixed-cost Independent Dispute Resolution Process (IDRP).

While AB 72 protects many Californians from surprise billing, approximately 267,000 CalPERS members who are participants in our self-funded PPO plans (excluding Medicare) continue to be unprotected. These PPO plans are the only option for CalPERS members living in 15 of California's 58 counties. In 2017, about 1.3 percent of CalPERS PPO members received emergency room care from non-participating providers. In these cases, CalPERS pays at a higher in-network percentage based on allowed amounts, while we are powerless to stop our members from receiving surprise bills for in-patient care.

We are mindful that Congress is considering several approaches to end balance billing. As a member of the Public Sector HealthCare Roundtable and the Pacific Business Group on Health, we have advocated for a federal solution to the issue of surprise billing that includes linking out-of-network reimbursement to the median in-network rate. In addition, we would encourage you to consider our default payment-first, dispute resolution-second arrangement here in California, where there have been only twenty-two (22) cases where a dispute has risen to the IDRP level since the program launched at the end of 2017. During that time, we have not noted any decrease in the number of individual providers contracting with health plans, nor a discernable drop in patient access to care. While we would prefer a national model like our state model over an arbitration-centric model, above all, we encourage some action to protect patients.

Thank you all for your leadership on this important issue and for considering our views. We are hopeful that ending surprise billing may be included in any package put forward before funding for several programs expires in May and welcome the opportunity to work with you on ways to protect patients by ending the practice of surprise billing. Please do not hesitate to contact me directly at (916) 795-3829, or your staff can contact Danny Brown, Chief of our Legislative Affairs Division, at (916) 795-2565, if we can be of any assistance.

Sincerely,

Marcie Frost
Chief Executive Officer

cc: The Honorable Lamar Alexander, Chairman, Senate Health, Education, Labor & Pensions
Committee
The Honorable Patty Murray, Ranking Member, Senate Health, Education, Labor & Pensions
Committee
The Honorable Bobby Scott, Chairman, House Education and Labor Committee
The Honorable Virginia Foxx, Ranking Member, House Education and Labor Committee
The Honorable Frank Pallone, Jr., Chairman, House Energy and Commerce Committee
The Honorable Greg Walden, Ranking Member, House Energy and Commerce Committee
The Honorable Richard Neal, Chairman, House Ways and Means Committee
The Honorable Kevin Brady, Ranking Member, House Ways and Means Committee