

February 13, 2017

Representative Mitch Greenlick, Chair  
House Committee on Health Care  
Oregon State Legislature

Re: HB 2339

Chair Greenlick and Members of the Committee:

OSPIRG strongly supports HB 2339, an urgently needed measure to protect Oregon consumers from large surprise medical bills. We applaud the efforts of the Department of Consumer and Business Services to work with all stakeholders to advance this important measure, which will fill a critical gap in Oregon's existing consumer protections. While all stakeholders acknowledge that the legislation as introduced requires some changes, we urge the committee to make this issue a top priority this Legislative Session.

Consumers receive surprise medical bills in a variety of situations, but one far-too-common scenario occurs when patients receive treatment from a physician or other health care provider that does not participate in their health plan—often without the patient's knowledge or consent—even though the patient sought care at an in-network facility. This leads to situations where patients who have done all that can reasonably be expected to access in-network services are stuck with unexpected balance bills, which can sometimes be extraordinarily large.

Even savvy patients who are aware that there may be out-of-network providers operating in facilities that are in their health plan's network may be unable to avoid receiving a balance bill. One OSPIRG member informs us that he checked well in advance of a scheduled surgery to ensure that all providers involved would be in his health plan's network and was assured that he was protected, but on the day of the surgery, the in-network anesthesiologist called in sick and was replaced by someone who did not participate in the network, leading to a large balance bill.

This simply should not happen. We believe that consumers who do everything that can reasonably be expected of them should not be left on the hook for inadvertent and often unavoidable out-of-network charges. Consumers should be held harmless in these situations and should not be required to pay more than the in-network rate.

States across the country, including Florida, New York and (most recently) California have already taken action to hold consumers harmless and develop mechanisms to ensure fair and reasonable payment for health care providers in these situations, and HB 2339 incorporates critical lessons from the experience in those states.

Protecting consumers from surprise out-of-network bills is not solely an insurance regulatory issue, since it will require changes from the provider community as well. Few in the health care industry truly benefit from a status quo that puts consumers in the middle of reimbursement disputes between insurers and providers, and we believe it should be possible to find a solution that works for all parties.

HB 2339 is a great starting place for this conversation, and we strongly support its emphasis on ensuring that consumers are held harmless and are not required to pay more than the in-network rate in surprise out-of-network billing situations. Of course, the devil is in the details.

For consumers, it is most critical to ensure that the rules banning surprise balance bills are clear and enforceable. The specific details regarding the determination of a fair reimbursement rate in balance billing situations are less critical, but if the mechanism for ensuring a fair rate is too heavily weighted toward the interests of either insurers or providers, it could cause downstream problems for consumers.

Establishing a fair reimbursement rate for providers in a surprise billing situation will likely require both providers and insurers to come to the table and accept a compromise. OSPIRG does not have a specific position on what a fair reimbursement rate benchmark would be, but we do believe it is critical that the benchmark is clearly defined and transparent for all parties. If the benchmark is vaguely defined as a “usual and customary” rate, or defined by reference to billed charges for health care services—which often have little relationship to the actual cost of care—then the result will likely be confusion at best and inflated costs for consumers at worst.

To ensure that HB 2339 succeeds in its goal to protect consumers from surprise medical bills, its provisions must be enforceable. OSPIRG’s primary outstanding concern with this legislation and the amendments proposed so far is that the plan for enforcement remains somewhat unclear. For this legislation to work as intended, consumers who receive a surprise bill despite the prohibition on balance billing patients in these scenarios must have clear recourse. Consumers in these situations must not be subject to debt collection or damage to their credit rating, and if they pay a bill they are not liable to pay under the law, they must have the ability to recoup those funds.

Although surely the overwhelming majority of health care providers will do the right thing, we are also concerned that if the legislation contains no penalties for providers who flout these new protections, it may not achieve its intended goals. In the interest of achieving a consensus solution, we are happy to support legislation without penalties, but if violations of the law prove to be widespread, penalties may need to be added in the future.

We urge your support for this important legislation. Without these protections, Oregonians who do everything right will still have no recourse when they receive a giant bill they could do nothing to avoid. This status quo is unjust and unacceptable, and we urge you to take action.

Thank you for your consideration.

Jesse Ellis O’Brien  
OSPIRG Policy Director