



December 8, 2020

Sen. Larry Obhof
Statehouse
1 Capitol Square
2nd Floor
Columbus, OH 43215

Sen. Bob Peterson
Senate Building
1 Capitol Square
1st Floor
Columbus, OH 43215

Sen. Matt Huffman
Senate Building
1 Capitol Square
2nd Floor
Columbus, OH 43215

Insurance and Financial Institutions Committee
Ohio State Senate
Statehouse
1 Capitol Square
Columbus, OH 43215

Re: House Bill 388: “To enact sections 3902.50, 3902.51, 3902.52, 3902.53, and 3902.54 of the Revised Code regarding out-of-network care”

Dear President Obhof, President Pro Tempore Peterson, Majority Floor Leader Huffman, and Members of the Insurance and Financial Institutions Committee:

As leaders of the nation’s seventh most populous state, you have a unique opportunity – and special responsibility – to enact healthcare laws that not only protect Ohio’s patients, but also help set the right legislative tone for the rest of the country. Unfortunately, HB 388 does neither. **I am writing, therefore, to express my grave concern with this bill. If implemented, it will restrict patient access to care, decimate physicians and frontline providers during a surging pandemic, and handsomely reward health insurance plans that are currently generating record profits.**¹

Action for Health is a non-profit patient advocacy organization dedicated to eliminating surprise medical bills the right way. Representing more than 10 million patients nationwide, we educate policymakers, the media, and concerned citizens about solutions to address this critical healthcare issue. Along with our diverse collection of coalition members, we believe that a fair independent dispute resolution (IDR) process is the only viable way to solve surprise medical bills. Most importantly, patients are held harmless. A fair IDR also treats both parties in the billing dispute – physician and insurer – equally by allowing them to submit all relevant information to make their best case in front of a neutral, third party arbiter.

This out-of-network payment legislation, however, uses the direct opposite, and already failed, approach: rate-setting. **By benchmarking physician payment rates to health insurers’ median in-network rate, which is simply a rate of their choosing masquerading as a formulaic CMS fee schedule calculation, or 100 percent of Medicare, you can be assured that you will preside over the crumbling of Ohio’s healthcare system.** One needs to look no further than to the dire consequences in California resulting from the state’s rate-setting surprise medical bill law (AB 72). As a recent study has found, patient complaints in the state have skyrocketed. What is more, “The evidence to date is showing that AB 72 is narrowing patients’ provider networks and

¹ Abelson, Reed, “Major U.S. Health Insurers Report Big Profits, Benefiting From the Pandemic”, The New York Times, August 5, 2020, accessed: <https://www.nytimes.com/2020/08/05/health/covid-insurance-profits.html>.

incenting an acceleration in provider consolidation. Both of these trends threaten to decrease the quality of healthcare and increase its costs.”² Ohio cannot afford to follow in California’s footsteps.

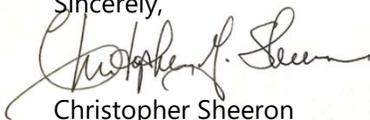
Additionally, it is important to note that **the arbitration process³ proposed in HB 388 is a “rigged” IDR**. The bill’s language states that the arbitrator “shall” consider “the in-network rates.” As constructed, this type of arbitration guarantees that the health insurance plan will win every time. That is not equitable. Also, since this bill intends to address out-of-network payments, its insistence on focusing on in-network rates does not make sense, unless the Senate wants to provide a significant bailout to health insurance companies. In this light, please do not let anyone lead you to believe that having this type of arbitration somehow is a “compromise” or a “win-win” between all parties. It is not.

A disparate national chorus of voices has made clear that benchmarking of payment rates is the wrong solution to surprise out-of-network bills. From the nation’s foremost conservative think tanks and advocacy groups⁴ and hundreds of renowned economists,⁵ to major unions⁶ and prominent progressive leaders,⁷ they all agree: **benchmarking to in-network rates, like the language found in HB 388, is dangerous, full of unintended consequences, and devastating for patients**. I would also encourage you to read a recent letter that we and 42 other patient, medical, and free-market organizations sent to the U.S. Congress which provides a blueprint for the alternative approach, a fair IDR.⁸ This type of out-of-network law has been implemented with great success in Texas, Florida, and New York, among other states.

More than 484,000 Ohioans have fought their battle with Covid-19. Now is the worst possible time to strain your constituents’ medical providers and upend patients’ healthcare delivery. Given the significant harm this bill will cause patients, **I again urge you to oppose this legislation. If passed, you will in effect be socializing medicine across the state**. At the very least, I highly recommend you take up and fully support an amendment to the bill that allows for physicians to be compensated for their services at commercially reasonable rates.

If I can be of any help to you or your staffs, please do not hesitate to contact me: (202) 823-2333. Thank you for your continued leadership in the Ohio Senate during this most challenging time. It is hoped that, for the sake of a healthy Ohio today and well into the future, HB 388 in its current form does not become law.

Sincerely,



Christopher Sheeron
President
Action for Health

² Winegarden, Wayne, “The Menace of Medical Rate Setting: The Case of California’s AB 72”, Pacific Research Institute, August 2020, accessed: https://www.pacificresearch.org/wp-content/uploads/2020/08/AB72_F.pdf.

³ The Ohio Legislature, House Bill 388, pg. 8, accessed: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-388>.

⁴ Patient Daily, “Conservative groups united against price controls”, June 17, 2020, <https://patientdaily.com/stories/539756606-conservative-groups-united-against-price-controls>.

⁵ Coalition Against Rate Setting, “Economists Urge Lawmakers to Reject Healthcare Rate Setting”, April 28, 2020, <https://www.protectingtaxpayers.org/wp-content/uploads/Economist-Letter.pdf>.

⁶ Easley, Jonathan, The Hill, “Union leader asks Pelosi, Schumer to spike ‘surprise’ billing legislation”, April 23, 2020, <https://thehill.com/policy/healthcare/494407-union-leader-asks-pelosi-schumer-to-spike-surprise-billing-legislation>.

⁷ Dennis Jr., Rickey, The Post and Courier, “Rev. Al Sharpton urges SC voters, Democratic candidates to focus on policy, not personality”, February 19, 2020, https://www.postandcourier.com/news/rev-al-sharpton-urges-voters-democratic-candidates-to-focus-on/article_aa0b1dc0-51a2-11ea-bc32-5726eb32a602.html.

⁸ Action for Health, et al, “Coalition of 43 Groups Urges Congress to Adopt Fair IDR”, December 2, 2020, <https://www.action4health.org/fair-idr-letter-to-congress>.

Action for Health Coalition Members



Aimed Alliance



Hispanic Leadership Fund



National Black Chamber of Commerce



Center for Freedom and Prosperity



Institute for Liberty



Practicing Physicians of America



Center for Medicine in the Public Interest



Kleine Levin Syndrome Foundation



Free2Care



Less Government



Taxpayers Protection Alliance