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Private Equity And Powerful Physician Groups Raise Another Distraction

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This summer, Americans were subjected to a barrage of ads from Doctor Patient Unity claiming that a payment benchmark fix for surprise billing—the cornerstone of the Senate Health, Education, Labor, and Pensions (HELP) Committee's Lower Health Care Costs Act—would destroy insurance networks. These benchmark opponents say they represent everyday provider interests but are backed by private equity companies that game the system to garner the highest price from patients and plans as possible.

As we discussed in our August post, private equity has made a business model out of billing patients out of network. We suspect these claims are really driven by concerns about losing profits derived from exorbitant out-of-network bills, not the strength of networks. Here's why we think fixing surprise billing will not harm—and may even strengthen—networks.

Allowing Out-Of-Network Billing Is Bad For Networks

Before we even get into the merits and effects of Congress' fix for surprise billing, it's worth noting that the status quo is bad for networks. Most markets—particularly in urban areas—are highly concentrated, giving providers such as hospitals and specialists a great deal of market power. The Health Care Cost Institute recently found that in 2016, 72 percent of hospital markets would qualify as

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"highly concentrated per the Department of Justice." This market power allows such providers to demand high in-network rates.

Depending on the market power and type of physician, some providers can choose to move out of network if an insurance plan doesn't meet their demands. The strategy works particularly well for certain facility-based physicians who patients usually do not get to choose, such as anesthesiologists. Furthermore, some private equity–backed providers may even "deliberately [choose] not to participate in insurers' networks so that they can reap higher payments." In a 2017 paper, Yale researchers found that after TeamHealth purchases a practice that practice exits networks and then later moves back in network, "suggest[ing] that the firm exercises the threat of exit to credibly negotiate higher in-network payment rates."

Fixing surprise billing can effectively eliminate this profitable out-of-network option. If private equity–backed providers can no longer earn excessive profits out of network, it means they need to come in network, leading to more robust networks.

Providers' Market Power Doesn't Change

As we already mentioned, many providers are highly consolidated—giving them significant market power. Setting a benchmark payment rate for out-of-network services does not change these providers' existing market power, which they can continue to exercise to negotiate in-network rates. What the legislation does do is make the out-of-network option less desirable, encouraging those providers operating out of network to come to the negotiating table and move in network.

Networks Are Important To Customers

Some have argued that an out-of-network benchmark essentially allows an insurance plan to dissolve its

network and pay all claims at the out-of-network benchmark. That seems unlikely. Networks are an important marketing tool to attract customers. It's hard to imagine employers contracting with plans without networks including high-quality, top-notch facilities. A plan without a network couldn't guarantee that its members would actually be seen by providers. And, since the legislation only protects consumers in specific situations, such as in an emergency, those consumers would still be at risk of being "balance billed" for the difference between provider charges and the benchmark rate. Hospitals, providers, and plans—not to mention consumers—all need each other to operate.

California's Surprise Billing Law Does Not Appear To Have Had A Harmful Impact On Network Adequacy

Opponents of the benchmark approach have pointed to California as an example of the impact on networks, but new evidence seems to indicate the contrary. A recent study from the USC-Brookings Schaeffer Initiative for Health Policy found that California's surprise billing protections—which include a payment standard—have reduced the incidence of surprise bills in California and have not reduced the adequacy of networks.

In fact, the study found that there has been an increase in in-network claims for the specialties affected by the state's law in inpatient settings and ambulatory surgical centers—about 3.5 percent on average across specialties, from 79.1 percent before the law's implementation to 82.6 percent after implementation. The authors argue economic theory supports the assumption that the law would incentivize providers to move in network, given that it "reduces the rewards to staying out of network."

A Payment Benchmark Corrects For Market Failure—And Could Improve