Testimony of Chuck Bell, Programs Director
Consumer Reports
To the
New York Joint Legislative Budget Hearing on Health
2021-22 Executive Budget Proposal
February 25, 2021

Thank you for the opportunity to submit testimony to the Joint Legislative Budget Hearing on Health. I represent Consumer Reports, an independent nonprofit member organization that works side by side with consumers for truth, transparency, and fairness in the marketplace.

1) "The Fire Next Time" – The Serious Public Health Threat of Antibiotic Resistant Infections

The COVID-19 pandemic has graphically brought home to all of us how a previously unknown disease can wreak havoc not just on our lives in New York, but on human life around the world. One of the key lessons of the pandemic is the importance of prioritizing public health measures. I am testifying today with regard to a public health measure that must be prioritized in New York, and elsewhere, namely preserving the continued effectiveness of antibiotics. If we do not take action now to end antibiotic overuse, which is causing these lifesaving drugs to become ineffective, we will almost certainly face a new public health crisis, the impact of which could equal or even exceed that of the current pandemic.

The State of New York has a critical role to play in preserving the efficacy of antibiotics by virtue of its role regulating the practices of veterinarians. Veterinarians, especially those who deal with food animals, are key stewards of antibiotics. Two-thirds of all medically important antibiotics are sold for use in animals. Following guidelines established by the US Food and Drug Administration, veterinarians prescribe when and where antibiotic drugs can be administered or fed. Those federal guidelines, however, are weak.

Therefore, we urge you to take direct action now against one of the main causes of antibiotic resistance – the misuse and overuse of medically important antibiotics in animal agriculture. The more antibiotics are used, the quicker bacteria evolve into dangerous superbugs. We therefore ask you to incorporate into this year's State Budget the language of A.9632 (L. Rosenthal) / S.2871 (Kavanagh), which prohibits the use of medically important antibiotics in food-producing animals for the purposes of disease prevention (except in very limited circumstances) and allows use *only* for treatment of sick animals and for certain medical procedures. While the bill has budget implications for New York State, they are modest, involved mostly in enforcement and recordkeeping, and very minor compared to the potential public health benefits.

Here are the facts: In the U.S., approximately 65 percent of medically important antibiotics, i.e., those that are important for human medicine, such as tetracycline and penicillin, are also sold for use in food animals – cattle, pigs, turkeys, chickens – typically raised in large-scale industrialized operations, but on smaller farms, too. Surprisingly, most of the animals getting antibiotics aren't actually sick. Instead, antibiotics are routinely administered to the animals at subtherapeutic levels daily, mixed into their food and/or water, so that they can survive their often unsanitary and overcrowded living conditions and unnatural diets. Healthy dairy cows may get antibiotics in the "drying out" period, even though other methods of preventing mastitis, which sometimes occurs in this period, have been developed by Cornell

University among other institutions. Moreover, despite increasing awareness of the antibiotic-resistance crisis, after a promising decrease in usage in 2017 when new FDA guidance went into effect, recent FDA reports show the sale and use of medically important antibiotics in animals is trending upward, increasing 3% from 2017-2018, and another 3% from 2018-2019. This is movement in the wrong direction.

Blanket use of antibiotics on entire populations of animals creates the perfect conditions for the evolution of bacteria that are resistant to those same antibiotics. While antibiotic resistance is a naturally occurring phenomenon, the speed of its evolution is pushed into hyperdrive when bacteria are repeatedly exposed to antibiotics as they are in modern farming. The antibiotics kill off the bacteria that don't have resistance, but the bacteria that already have a mutation or gene that makes them resistant will survive, multiply, and spread. Disease causing bacteria can become superbugs.

Antibiotic-resistant bacteria that originate in farm settings don't stay there -- they travel easily from farms to people. They can contaminate the food we eat, the air we breathe, and the water we drink. They can spread easily between people via direct contact, coughing, sneezing, poor hygiene, and sharing of personal items. Antibiotic-resistant bacteria can transfer their resistance to other bacteria, e.g., those in the human gut, making gut bacteria resistant to medically important antibiotics, too. If there is one thing we have learned from the pandemic, it is that disease-causing organisms spread like wildfire. We need all the tools we can have to fight them, and antibiotics are critical tools. Due to overuse, however, antibiotics, are in danger of losing their effectiveness.

The World Health Organization, the United Nations General Assembly, the U.S. Centers for Disease Control and Prevention, the New York State Department of Health, and many other public health organizations have identified antibiotic-resistant infections as a grave threat to human health. Antibiotic-resistant bacteria are currently estimated to be responsible for at least 2.8 million infections in the U.S. and as many as 162,000 deaths annually, though experts believe the actual numbers are much higher. But these numbers could get much worse. A U.K. government-sponsored study predicted 10 million deaths per year worldwide by 2050 – more than from cancer – if action is not taken now. This prediction was made before the COVID-19 pandemic, during which desperate doctors around the globe liberally dispensed broad-spectrum antibiotics, believing that sick COVID-19 patients were highly susceptible to secondary bacterial infections. While only a small fraction of COVID-19 patients get secondary bacterial infections, experts believe this widespread use of broad-spectrum antibiotics has likely spurred the development of more antibiotic-resistant bacteria.

Although antibiotics overuse in medical settings is the primary contributor to antibiotic resistance, use in animals, accounting for two-thirds of all antibiotic sales annually in the United States, is also a major driver. This can have both a direct and an indirect impact on people. The CDC estimates that approximately 661,000 Americans get sick each year by eating food contaminated with antibiotic-resistant bacteria and that 24% of all antibiotic-resistant infections are caused by germs from food and animals. Unchecked, the growing threat of antibiotic resistance will lead to a world where strep throat, tuberculosis, childbirth, UTIs, tooth infections, skin scrapes, and routine surgery will once again come with a high death risk, as they did before the discovery of antibiotics 100 years ago.

Given these high stakes – and the lack of effective regulation at the federal level – it's up to states to help save antibiotics for humans now and in the future and deflect another looming public health crisis. California and Maryland recently passed laws restricting the use of antibiotics in farm animals. New York should join them in leading the fight against antibiotic resistance by instituting a ban on the use of antibiotics in food-producing animals for the purposes of disease prevention. The Higher Ed Committee

should act to ensure that veterinarians only prescribe antibiotics to those animals that are sick (e.g., dairy cows with mastitis), or in certain circumstances to control the outbreak of disease from a contagious animal(s), or in relation to certain medical procedures (e.g., surgery, castration).

The song goes, "God gave Noah the rainbow sign, No more water, the fire next time." Applied to our current circumstance, we could say "No more COVID – it's bacteria next time". But we have a chance to avert that disaster, and a critical part of that is to end use of antibiotics for blanket disease prevention in food animals.

2) Protections Against Unfair Medical Billing and Debt Collection Practices -- The Patient Medical Debt Protection Act (A3470A/S2521A)

In its Executive budget language for FY 2021 and FY 2022, the Cuomo administration has proposed reducing the maximum interest rate for medical debt judgments from the 9% rate for commercial debts to the US Treasury rate. Such a change would greatly benefit patients, who are struggling already with the high costs of care, in the pandemic and continuing economic recession.

Consumer Reports supports this important provision, and also supports including broader provisions to protect consumers against unfair medical billing practices and medical debt collection. We join with Health Care for All New York in urging the Assembly and Senate to incorporate the language from the Patient Medical Debt Protection Act (A3470A/S2521A) in both one-house bills. The PMDPA provides common sense protections to protect patients from medical debt, by simplifying hospital billing; standardize hospital financial assistance, lessen the interest rate for medical debt, and add network misinformation and balance billing protections to New York's Surprise Bill Laws.

As documented by the Community Service Society of New York, the burden of medical debt in New York state has resulted in over 50,000 lawsuits filed against patients by the state's charitable hospitals in the past five years, including 4,000 filed during the pandemic.[1] Further, some of the patients being sued are low- and middle-income workers who have become unemployed or ill during the pandemic.[2]
This is occurring for several reasons. Healthcare prices are skyrocketing at a faster pace than inflation—– especially inpatient prices, which grew twice as much in New York (32%) as nationally (16%).[3] New Yorkers' wages and benefits cannot keep up. Desperate to control costs, both employers and consumers are buying high deductible plans, further shifting the costs of healthcare to consumers who cannot afford it. To make matters worse, patients are bombarded with confusing and conflicting bills.

Lawsuits are just the most extreme outcome New Yorkers face when they cannot afford medical care. A 2019 poll found that 16 percent of New York adults surveyed had to take out loans or racked up credit card debt to pay for medical care, 15 percent had used up all or most of their savings, and 12 percent had been put into collections. [4] People of color are disproportionately impacted by affordability burdens

[1] Elisabeth Benjamin and Amanda Dunker, "Discharged Into Debt: New York's Non Profit Hospitals Are Suing Patients, Community Service Society of New York, March 2020, https://www.cssny.org/publications/entry/discharged-into-debt and "Discharged Into Debt: A Pandemic Update," January 2021, https://www.cssny.org/publications/entry/discharged-into-debt-a-pandemic-update

[2] Brian Rosenthal, "One Hospital System Sued 2,500 Patients After Pandemic Hit," The New York Times, January 5, 2021, https://www.nytimes.com/2021/01/05/nyregion/coronavirus-medical-debt-hospitals.html

[3] Health Care Cost Institute and New York State Health Foundation, "Health Care Spending, Prices, and Utilization for Employer-Sponsored Insurance in New York," July 2019, available at https://nyshealthfoundation.org/2019/07/30/health-care-spending-in-new-york-growing-faster-than-rest-of-u-s/

[4] Altarum Healthcare Value Hub, "New Yorkers Struggle to Afford High Healthcare Costs; Support a Range of Government Solutions Across Party Lines," Data Brief No. 37, March 2019, https://www.healthcarevaluehub.org/advocate-

and their negative repercussions.[5] Consumers are increasingly frustrated with medical stakeholders—holding hospitals, insurance carriers and pharmaceutical companies responsible for out-of-control costs.[6]

In an investigative report on confusing medical billing practices and surprise billing published in 2018, Consumer Reports similarly found that "hospital, doctor and insurance bills are riddled with incorrect or unexpected charges are surprisingly common." The report noted that because medical bills themselves are so confusing—filled with specialized terms and lacking clarity about whether patients or their insurer is responsible for payment—millions of Americans actually give up trying to fight them.

According to the CR survey, more than one-third of respondents said they paid bills they weren't sure they owed—20 percent of that group paid more than $1,000. Among the reasons they gave for doing this: The bill was too confusing, they were uncertain their efforts would make a difference, and they were concerned not paying would hurt their credit record.

In our 2018 report, CR called for a Patient Bill of Financial Rights to reduce unfair billing practices, which can result in the imposition of medical debts that are reported to credit bureaus and sent to collection. We urged policymakers to require provisions that are very similar to those in A.3407A and S.2521A – including that medical bills should be presented in itemized formats and plain language; that hospital charity care forms should be standardized; and that the accuracy and accountability of provider directory information be should improved to prevent surprise billing.[7]

A3470A/S2521A would clarify and simplify medical billing to protect patients from unfair billing practices and medical debt and improve the patient experience of care. Its key provisions include:

1. **Requiring hospitals to issue one consolidated, itemized bill for all the fees incurred during a single visit, written in plain language, delivered within seven days.**

   Hospital visits produce bills that can keep coming for years, using administrative codes that are unique to individual facilities, and often do not track what charges have already been paid. It is common for patients to receive multiple bills for the same service long after they or their insurer has already paid for that service. Florida has enacted laws to protect consumers by ensuring that hospital bills are clear, follow standard formats, and are provided in a timely manner. [8] Patients in New York should receive those same protections.

2. **Reducing the maximum interest rate from 9% to the U.S. Treasury Rate (around 1**%). As mentioned above, the Cuomo administration has proposed that this change be made in its Executive Budget language for FY 2022. The interest rates charged by nonprofit hospitals, who

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resources/publications/new-yorkers-struggle-afford-high-healthcare-costs-support-range-government-solutions-across-party-lines/

[5] Elisabeth Benjamin and Amanda Dunker, "How Structural Inequalities in New York's Health Care System Exacerbate Health Disparities During the COVID-19 Pandemic: A Call for Equitable Reform," Community Service Society of New York, June 2020, https://www.cssny.org/publications/entry/how-structural-inequalities-in-new-yorks-health-care-system-exacerbate-heal.

[6] Altarum Healthcare Value Hub, "New Yorkers Struggle to Afford High Healthcare Costs; Support a Range of Government Solutions Across Party Lines," Data Brief No. 37, March 2019, https://www.healthcarevaluehub.org/advocate-resources/publications/new-yorkers-struggle-afford-high-healthcare-costs-support-range-government-solutions-across-party-lines/

[7] Penelope Wang, "Sick of Confusing Medical Bills?" Consumer Reports, August 1, 2018, https://www.consumerreports.org/medical-billing/sick-of-confusing-medical-bills/

[8] Florida Title XXIX Public Health § 395.301

have a charitable mission to serve their communities, should be fair and reasonable, not the 9% rate that is charged for commercial debts.

3. **Holding patients harmless for surprise bills that result from provider and plan misinformation.**

   The legislature should amend New York's surprise bill law to ensure that when a patient relies on incorrect information provided by a provider or health plan that the provider or facility is in-network, when in fact, it is not. Under current law, the patient is still responsible for the cost of care when such postings are incorrect. It is estimated that 35 percent of surprise billing disputes fall into this category. Other states, such as California, have adopted provider directory consumer protections to clarify that the responsibility belongs with the party (payer or provider) who supplied the incorrect information – not with the patient.[9]

4. **Banning facility fees that are unreimbursed by insurance and hold patients harmless for the payment of these fees.**

   Facility fees are charged separately from payments for medical services to subsidize hospital and clinic operations. This bill would allow insurers to negotiate with providers and pay facility fees through their contracts, but would not allow providers to charge individual patients for facility fees not covered by their health plan. It would also ban facility fees altogether for preventive care to make sure that there is no financial disincentive for patients to receive care that is proven to improve their health.

5. **Mandating the use of a uniform hospital financial aid form for uninsured patients and modernize New York's financial assistance eligibility rules to be consistent with the Affordable Care Act.**

   The lack of standardization in how hospitals implement the Hospital Financial Assistance Law results in patients who should receive assistance going without that assistance and even going without care. The state's audits have repeatedly found that hospitals are not complying with the law, as have audits conducted by consumer advocates.[10] A proven income eligibility verification process already exists in The New York State of Health exchange insurance program which can also be used to determine eligibility for hospital financial assistance.

6. **Standardizing patient financial liability waiver forms.**

   It is increasingly common for providers to present patients with liability forms to sign before providing care that ask patients to take on financial liability for services that they cannot foreseeably budget for. These forms can mislead patients into believing they must pay bills even when they are protected against those bills under New York State Law, for example in the event of a surprise bill. A standard form would ensure patient-friendly language that complies with existing New York laws protecting patients from unfair financial liability for medical care.

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[9] CA SB 137, amending the Health and Safety Code and the Insurance Code, 2016 available at: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB137

[10] Elisabeth Benjamin, Amanda Dunker, and Carrie Tracey, "Unintended Consequences: How New York State Patients and Safety-Net Hospitals Are Short-Changed," Community Service Society of New York, January 2018, available at: https://www.cssny.org/publications/entry/unintended_consequences

7. **Requiring hospitals to allow insurance carriers to report cost data to the state and allow patients to easily compare prices on common procedures.**

   The state's All-Payer Database (APD) is meant to become an important information tool to support policymaking and a tool that will help consumers plan ahead for expensive medical care. The State cannot adequately know billing practices if it does not have accurate information, yet some providers are asking health plans to exclude their data from APD submissions. Additionally, the public has yet to see the benefits of New York's investment in the All-Payer Database. This section would affirm that the All-Payer Database should be developed to meet the needs of consumers, who pay much of the direct cost of their care through deductibles, co-pays, coinsurance and premium cost-sharing.

Taken together, these important provisions in the Patient Medical Debt Protection Act would help to greatly reduce unfair and confusing practices in medical billing, limit the frequency and severity of medical debts, and prevent and reduce the harms of harsh collection practices. Consumer Reports urges you to add similar provisions to the one-house bills in both chambers to accomplish these critically important goals.

Thank you very much for the opportunity to present our views. We look forward to working with you on these issues and would be happy to respond to any questions.

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