

March 4, 2020

The Honorable Frank Pallone, Chair
Committee on Energy and Commerce
U.S. House of Representatives
2107 Rayburn House Office Building
Washington, DC 20515

The Honorable Greg Walden, Ranking Member
Committee on Energy and Commerce
U.S. House of Representatives
2185 Rayburn House Office Building
Washington, DC 20515

The Honorable Bobby Scott, Chair
Committee on Education and Labor
U.S. House of Representatives
1201 Longworth House Office Building
Washington, DC 20515

The Honorable Virginia Foxx, Ranking Member
Committee on Education and Labor
U.S. House of Representatives
2462 Rayburn House Office Building
Washington, DC 20515

The Honorable Richard Neal, Chair
Committee on Ways and Means
U.S. House of Representatives
2309 Rayburn House Office Building
Washington, DC 20515

The Honorable Kevin Brady, Ranking Member
Committee on Ways and Means
U.S. House of Representatives
1011 Longworth House Office Building
Washington, DC 20515

Dear Committee Leaders,

On behalf of the undersigned medical organizations, we want to thank you for your efforts to craft a balanced, bipartisan solution to end surprise medical bills for our patients. The medical community remains committed to working with Congress to seek a solution that protects patients from unanticipated (“surprise”) medical bills when their insurer fails to provide them with an adequate network of physicians. At the same time, any solution should facilitate a process to quickly, efficiently and fairly resolve physician and health plan billing disputes.

To this end, we sincerely appreciate the continued improvements to the legislation, including the more **accessible baseball-style dispute resolution process**. As you work to reconcile the different committee approaches, we urge you to build on this structure by ensuring **references to median in-network rates are avoided**, since such a benchmark would be tantamount to a national fee schedule, thereby reducing access to in-network physicians and increasing health care costs by driving consolidation in the health care market. We also urge you to ensure **more balanced dispute resolution guidelines that reflect commercially reasonable rates**.

It is also crucial that any solution not reduce patient access to in-network physicians or erode the safety-net of physicians — regardless of specialty — that patients need in emergencies. Congress should, therefore, heed the unintended consequences of surprise billing laws in states like California, where cost-effective, small, independent physician practices were forced to consolidate, and health care costs doubled. California’s surprise billing law sets out-of-network rates at the median in-network payment rate, which has become the *de facto* benchmark rate. This rate reduction has resulted in dire consequences for patients. For example, anesthesiologists are now leaving the state, which is forcing hospitals to utilize staffing companies and other more costly (often **as high as double the costs**) stopgap arrangements to maintain surgical and specialty on-call coverage. Without anesthesia, it is impossible to perform surgery or deliver babies.

The Congressional Budget Office (CBO) has essentially predicted the same may happen with a federal law that includes a median in-network payment rate. CBO estimates that establishing a median in-network payment benchmark rate may result in a 15-20% payment cut, not only for out-of-network physicians but **also for in-network physicians**. Like you, we are looking to achieve a balanced approach that does not incentivize insurers to cancel contracts or reduce rates to, at or below the median, since a one-size-fits-all payment benchmark will hamper timely access to care.

As the legislative process moves forward, we encourage you to consider the following recommendations, which we believe will protect patients and ensure that Congress does not tip the scales in favor of either the physicians or the health plans.

We urge you to maintain the following essential provisions in any final bill:

- Protect patients from surprise medical bills by ensuring that patients are responsible only for their in-network cost-sharing amounts, including deductibles, when receiving unanticipated medical care;
- Keep patients out-of-the middle of payment disputes between health plans and providers by providing physicians with direct payment/assignment of benefits from the insurer;
- Provide an open negotiation period to encourage physicians and health plans to voluntarily resolve payment disputes in a manner that best suits the parties involved;
- Establish a baseball-style dispute resolution process that allows physicians and health plans to resolve payment disputes;
- Ensure access to dispute resolution by not requiring a dollar amount threshold for physicians to access dispute resolution;
- Allow physicians to batch claims to reduce the administrative burden and the utilization of dispute resolution;
- Require health plans to maintain updated provider directories; and
- Audit health plan claims databases to verify contracted rates.

We also seek inclusion of the following additional improvements in any final legislation.

We very much appreciate that the committee bills allow physicians to submit additional information that the arbiter/mediator may consider when determining the payment rate for out-of-network services. To improve this aspect of your bills, **we urge you to adopt a set of dispute resolution guidelines** that allow for **equal weight to be given to the following elements** to ensure a balanced and fully informed decision:

- Rates for comparable services in the same geographic region considered reasonable based on commercial insurance rates from an independent and transparent database of *all* commercial payer claims data;
- Any previous contracting history;
- Demonstration of good-faith efforts (or lack thereof) made by either party (the out-of-network provider or the health plan) to enter into network contracts;
- Market share held by the out-of-network health care provider or the health plan;
- Level of training, education, experience, outcomes and quality metrics of the physician providing the service;
- Complexity of the services rendered;
- Individual patient characteristics; and
- Any additional relevant factors contributed by either party.

In addition, based on the experience in multiple states where health plans reduced contracted rates in anticipation of the passage of surprise billing legislation, **we urge the committees to adjust the payment rate base year from 2019 to 2018** and include an appropriate mechanism to ensure that future payments keep pace with inflation.

Finally, in addition to ensuring that provider directories are up-to-date, the **committees should mandate that plans provide appropriate physician and provider networks** to meet the medical needs of our patients — including access to specialists and subspecialists on a timely basis and continuity of care for more serious conditions when network changes will threaten patient health. We believe that inadequate networks are the underlying cause of most out-of-network care — and most surprise bills.

We truly appreciate all you have done to work towards a solution to address surprise medical bills, and we hope you will incorporate our recommendations in your final compromise legislation. Our organizations are committed to working with you to find a solution that ultimately protects patient access to high-quality, affordable care.

Sincerely,

American Academy of Ophthalmology
American Association of Neurological Surgeons
American Association of Orthopaedic Surgeons
American College of Emergency Physicians
American College of Obstetricians and Gynecologists
American College of Radiology
American College of Surgeons
American Medical Association
American Osteopathic Association
American Society of Anesthesiologists
American Society of Plastic Surgeons
California Medical Association
Congress of Neurological Surgeons
Florida Medical Association
Massachusetts Medical Society
Medical Society of the State of New York
National Association of Spine Specialists
Texas Medical Association

cc: The Honorable Nancy Pelosi, Speaker
United States House of Representatives

The Honorable Kevin McCarthy, Minority Leader
United States House of Representatives