Physicians Caring for Texans

June 21, 2019

The Honorable Lamar Alexander
Chairman
Health, Education, Labor,
and Pensions Committee
U.S. Senate
Washington, D.C. 20510

The Honorable Patty Murray
Ranking Member
Health, Education, Labor,
and Pensions Committee
U.S. Senate
Washington, D.C. 20510

RE: S. 1895 The Lower Health Care Costs Act of 2019

Dear Chairman Alexander and Ranking Member Murray,

On behalf of the nearly 53,000 physician and medical student members of the Texas Medical Association (TMA) and the millions of patients we serve, I am writing to offer our informed recommendations for your consideration as the Senate Health, Education, Labor, and Pensions Committee begins your markup of S. 1895.

We applaud the sincere efforts that you, President Trump, and the U.S. House of Representatives are taking to solve the problem of surprise medical bills. Since 2009, Texas has been a leader in devising and implementing patient protections for surprise bills. We urge you to consider our experiences and that of states such as New York and California as you develop a federal solution.

In a nutshell, we recommend:

- Take the patient "out of the middle" of out-of-network billing disputes between insurance companies and physicians, hospitals, and providers.
- Adopt a dispute resolution system, such as New York's and Texas' baseball-style arbitration approach, that does not give an unfair advantage to either side.
- Allow market forces acting through arbitration, not government price controls such as the local median contracted commercial amount referenced in the introduced version of S. 1895, to determine fair compensation for medical care delivered out of network.

Currently, when insurers fall short on their ability to pay for a covered service due to inadequate networks, the patient is left to make up the balance. Medicine feels our patients deserve protection in these instances, but not at the expense of allowing health plans to control the health care market unilaterally. It is imperative that (1) very robust network adequacy standards be promulgated and enforced to facilitate in-network contracting, and (2) insurers be held accountable for the deficiencies in products they sell when enrollees are forced to go out of network.

New York

The state of New York's arbitration system has been in place since 2015. Numerous reports indicate it is working well for patients, physicians, hospitals, providers, and insurers.

According to a May 2019 report by the Georgetown University Health Policy Institute's Center on Health Insurance Reforms[i], "State officials report a 'dramatic' decline in consumer complaints about balance billing," and "[t]he emergence of baseball-style arbitration as a mechanism to solve provider-payer disputes was critical to the bill's passage."

"Insurer, provider, and consumer stakeholders generally agree that the implementation of New York's Surprise Billing law went smoothly, was relatively fair to all parties, and is working as intended to protect consumers from a significant source of financial hardship," the Georgetown report concluded.

In addition, a May 2018 study by health economists at Yale University[ii] [REFERENCE] found:

- A 34% drop in out-of-network billing in New York since the law was in effect, and
- A 13% average reduction in physician payments since the law was enacted.

California

Conversely, the troubling price-control aspects of the introduced version of S. 1895 mirror the 2016 surprise billing law passed in California. While that law seemingly protected patients from surprise medical bills, its approach to the issue exacerbated many deep-seated problems in our health care delivery system.

As our colleagues at the California Medical Association have noted, "While California patients were successfully protected from surprise medical bills, the rest of the law has not worked. As a result, insurers are terminating long-standing contracts with physicians, and therefore, patient access to physicians is diminishing, and patient out-of-pocket costs will increase. California premiums continue to rise."

Texas

In its recently concluded 86th biennial session, the Texas Legislature also passed a bill that takes the patient out of the middle of surprise billing situations. After extensive negotiation and evaluation of multiple approaches, bipartisan majorities in both our Senate and House of Representatives agreed that baseball-style arbitration/dispute resolution would be the best and fairest way to remove the patient from the balance billing process while allowing both the physician and the health plan to make the case for their charge or payment. This patient protection was largely inspired by the process put in place in New York in 2015.

Our experience in negotiating this legislation led us to develop the following key concepts, which we strongly urge you to incorporate as you markup S. 1895.

1. Baseball style arbitration/dispute resolution is a fair method to determine payment for out-of-network services. This allows both the health plan and the physician to submit their best offer and, based on an independent, geozip, market benchmark rate, allow an arbitrator to determine what should be paid for the health care service rendered.

2. Payment needs to be market-based and not government-set. Through Medicare and Medicaid, the government already establishes payments to physicians, hospitals, and providers for care provided to more than 35% of the U.S. population. As has been noted many times, these rates are set arbitrarily and fall below the actual cost of providing care and are unsustainable. Extending government price controls to out-of-network services – especially using an unfair and inadequate rate such as the local median contracted commercial amount in the introduced version of S. 1895 – further threatens the viability of our practices and our patients' access to the care they need.

3. Market rates need to be determined by an independent, not-for-profit, geozip database that collects not only physicians' billed charges and health plans' payments but also contract rates between physicians and health plans. Any rate used in the arbitration process should be based only on commercial market rates to accurately reflect the actual cost of care.

4. Hospitals should play a major role in combating surprise out-of-network hospital bills. When hospitals are out of network, the amount of a surprise hospital bill can be staggering and far exceed out-of-network physician bills. In-network hospitals can combat surprise out-of-network billings by facility-based physicians by informing patients that not all facility-based physicians are in the same networks as the hospital. Additionally, for scheduled procedures, hospitals can make efforts to accommodate requests from insureds to use preferred providers.

5. Finally, insurance companies should be required to ensure their networks contain an adequate number of in-network physicians and providers of all specialties. Patients should not have to delay receiving care due to an insufficient number of in-network physicians. Health plans should be responsible for helping their enrollees navigate the in-network and out-of-network systems, and be held accountable especially for scheduled procedures in ensuring appropriate access to in-network providers.

In closing, I once again commend you for your willingness to tackle this complex problem that is a significant source of pain and frustration for physicians and our patients. I urge you to address the insurance company business strategies that comprise the root cause of surprise medical bills. I reiterate our request that you consider closely the experience in Texas and states such as New York and California as you devise legislation to move forward in the Senate.

As Rep. George Holding of North Carolina recently stated in endorsing the Ruiz-Roe proposal under consideration in the U.S. House, "It is important that in solving the issue of surprise billing for patients, Congress does not create long-term access problems or drive further consolidation in the health care industry. A federally established payment/benchmark for out-of-network services based on Medicare rates or in-network averages would do just that."

The Texas Medical Association and the physicians of Texas stand ready to assist you and your committee in this important endeavor.

Sincerely,

David C. Fleeger, MD
President
Texas Medical Association

Cc: The Honorable John Cornyn
The Honorable Ted Cruz
The Honorable Texas Members of the U.S. House of Representatives

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[i] "New York's 2014 Law to Protect Consumers from Surprise Out-of-Network Bills Mostly Working as Intended: Results of a Case Study," Georgetown University Health Policy Institute Center on Health Insurance Reforms. <ay 2019. https://georgetown.app.box.com/s/6onkj1jaiy3f1618iy7j0gpzdoew2zu9

[ii] Cooper Z, Scott Morton F, et al. Surprise! Out-of-Network Billing for Emergency Care in the United States. New Haven, CT: Yale University, March 2018, https://isps.yale.edu/sites/default/files/publication/2018/03/20180305_oon_paper2_tables_appendices.pdf