

December 15, 2020

The Honorable Mitch McConnell
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Charles Schumer
Minority Leader
United States Senate
Washington, DC 20510

The Honorable Nancy Pelosi
Speaker
United States House of Representatives
Washington, DC 20515

The Honorable Kevin McCarthy
Minority Leader
United States House of Representatives
Washington, DC 20515

Dear Leader McConnell, Leader Schumer, Speaker Pelosi, and Leader McCarthy:

On behalf of our physician and medical student members, the American Medical Association (AMA) welcomes the opportunity to share our views on the recent bipartisan, bicameral efforts to protect patients from surprise medical bills. As we have stated many times before, the AMA strongly supports protecting patients from the financial impact of unanticipated medical bills that arise when patients reasonably believe that the care they received would be covered by their health insurer, but it was not because their insurer did not have an adequate network of contracted physicians to meet their needs. In these cases, patients should be responsible only for cost-sharing amounts they would otherwise have been subject to if the care had been provided in-network, and these costs should count toward their in-network out-of-pocket maximums and annual deductibles.

The No Surprises Act includes improvements over previous proposals, such as additional factors the Independent Dispute Resolution (IDR) entity may consider in determining the most appropriate payment amount. Nonetheless, **we oppose enactment of the bill in its current form because it would significantly disadvantage already stressed physician practices, particularly small physician practices that may not have the resources to take advantage of the IDR process to obtain fair compensation for their services.** Furthermore, we remain deeply concerned that significant reductions of in-network rates predicted by the Congressional Budget Office strain the ability of small practices to keep their doors open, especially in light of the significant financial pressures practices have faced in the last ten months. **We would welcome, however, the opportunity to continue to work with you to address these issues in a timely manner.**

We also have significant concerns with the limited opportunity for stakeholders to thoroughly vet this consequential bill prior to its inclusion in an end-of-the year legislative package and seek meaningful input from our practicing physician members. There remain multiple questions raised by the legislative text that require further clarification before Congress should consider advancing the proposal. For example:

- It is assumed but not clear that when an out-of-network physician submits a claim the health plan will make an initial payment.

- The timeframe (two calendar days) for one party to notify the other party and the Secretary of the Department of Health and Human Services that they are initiating the IDR process is inadequate, especially if notification would fall on a weekend or holiday. Significantly more time should be allowed.
- It appears that the IDR entity could consider payment data from Medicare and Medicaid (which pay physicians and other providers below the cost of providing care because spending for these programs is largely a function of state and federal budgets with no opportunity for negotiation) but is prohibited from considering billed charges or usual and customary charges, further skewing the process in favor of commercial health plans.
- The bill requires out-of-network providers to include a list of in-network providers and information on medical care management, such as prior authorization requirements, as part of the notice and consent agreement. It is unclear how out-of-network providers would obtain this information since they have no contractual relationship with the plan.
- Out-of-network physicians could essentially be penalized when a health plan includes erroneous information in its in-network physician directory, including instances when physicians are listed in plan directories with which they have no relationship and therefore no knowledge that their information is included.
- We fail to see the purpose of requiring physicians to wait 90 days to seek fair compensation—the administrative costs and ability to batch claims is sufficient to encourage small physician practices not to file frivolous claims and to seek to utilize the IDR process in the most efficient way possible.

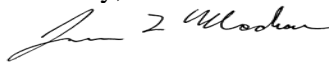
These and other provisions in the bill need further vetting, and we urge you to allow additional time for the AMA and other stakeholders to work with you to address our concerns and come up with a more balanced solution.

Finally, we believe that the urgency of passing surprise billing legislation while these and other issues remain unresolved is unwarranted and unreasonable as our nation's physicians, hospitals, and patients are grappling with the surging COVID-19 pandemic. Physicians' practices are currently financially stressed more than any time in our nation's history. [Survey results](#) demonstrated that 81 percent of physicians surveyed in July and August said their revenue was still lower than pre-pandemic, and average practice revenues were down 32 percent. Many physicians (including those on the COVID front lines such as critical care physicians) are also facing substantial payment cuts in 2021—up to 10 percent for some specialties—due to the redistribution of Medicare payments in the 2021 physician fee schedule rule. Furthermore, the imposition of the two percent Medicare sequester will compound the financial stress on physician practices. It is important to note that physicians receiving grants from the Provider Relief Fund cannot balance bill coronavirus patients, thereby helping to ensure that patients do not receive a surprise medical bill during the pandemic.

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America's physicians strongly agree it is critical to protect patients from surprise medical bills and we firmly believe that a thoughtful, measured federal solution is possible to achieve. **However, now is not the time to adopt flawed surprise billing legislation.** The AMA remains committed to working with you to seek a balanced legislative solution to protect patients from surprise medical bills that can occur when gaps in health insurance coverage lead them to receive care from out-of-network physicians or other providers.

Sincerely,

A handwritten signature in black ink, appearing to read "James L. Madara".

James L. Madara, MD