American College of Physicians
Leading Internal Medicine, Improving Lives

July 2, 2019

The Honorable Lamar Alexander
Chairman
Committee on Health, Education, Labor and Pensions
United States Senate
Washington, DC 20510

The Honorable Patty Murray
Ranking Member
Committee on Health, Education, Labor and Pensions
United States Senate
Washington, DC 20510

The Honorable Richard Neal
Chairman
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

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

The Honorable Frank Pallone
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

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

The Honorable Bobby Scott
Chairman
Committee on Education and Labor
U.S. House of Representatives
Washington, DC 20515

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

Dear Chairmen and Ranking Members:

On behalf of the American College of Physicians (ACP), I am writing in reference to the important work being done by several congressional committees to address the issue of surprise medical billing. As these various committees work to finalize these bills, we urge you and your colleagues to consider ACP's perspective and suggestions where we have established policy and where it has an impact on the care our members provide patients as internists. We commend the bipartisan process and cooperation that the drafting and introduction of these bills in each chamber of Congress represents.

The American College of Physicians is the largest medical specialty organization and the second-largest physician group in the United States. ACP members include 154,000 internal medicine physicians (internists), related subspecialists, and medical students. Internal medicine physicians are specialists who apply scientific knowledge and clinical expertise to the diagnosis, treatment, and compassionate care of adults across the spectrum from health to complex illness.

In previous communications to Congress, ACP has offered its input and recommendation about specific legislative proposals, including to the House Committee on Energy and Commerce and the Senate Health, Education, Labor and Pensions Committee. ACP's guiding policy on surprise medical bills is outlined in its position paper entitled, "Improving Health Care Efficacy and Efficiency Through Increased Transparency." Specifically, with regard to any potential surprise medical legislation, ACP urges Congress to:

Hold Patients Harmless: ACP strongly supports legislative efforts to provide protections for patients from unexpected out-of-network health care costs, particularly for costs incurred during an emergency situation or medical situation in which additional services are provided by out-of-network clinicians without the patient's prior knowledge. ACP strongly supports legislative efforts protecting health care consumers/patients and is supportive of proposals where patients are responsible only for in-network cost sharing. In emergency situations, there simply is not enough time for the patient to know which clinicians are in- or out-of-network. In nonemergency situations at in-network facilities, without any prior notice, patients would assume that all of their care would be considered in-network. It is critical that a patient be given the knowledge up front that a clinician he/she will see is out-of-network so that the patient can make an informed choice before the care is rendered.

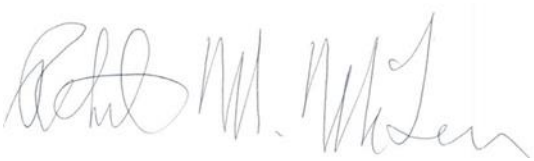
Examine Network Adequacy: How network adequacy and the fair payment of services for physicians may contribute to the increase in patients receiving out-of-network care should also be examined by Congress to ensure an appropriate number of available in-network physicians, especially in the emergency setting. Health plans also have an affirmative obligation to pay fairly and appropriately for services provided in- and out-of-network, and regulators should ensure network adequacy in all fields, including emergency care. Evidence exists that narrow networks contribute to surprise out-of-network costs. Adequate access to all types of care in the health plan's network could help reduce surprise billing and the need for out-of-network services. Many patients may have no choice but to utilize out-of-network facilities and services, such as in emergency situations. ACP has long encouraged stringent quantitative network adequacy criteria; ongoing monitoring and oversight of "provider" networks; transparent "provider" network development criteria; accurate, easily accessible and up-to-date "provider" directories; and requirements that Qualified Health Plans should be prohibited from excluding health care clinicians whose practices contain substantial numbers of patients with expensive medical conditions. Further consideration of proposals to ensure levels of network adequacy is needed.

Include A Dispute Resolution Process: Several of the discussion drafts have proposed the establishment of a minimum payment standard set at the median contracted (in-network) rate

for the service in the geographic area the service was delivered. This approach shields insurers for any responsibility to pay fairly, appropriately and competitively for services and ensure network adequacy. ACP policy reaffirms the right of physicians to establish their own fees and to choose whether or not to participate as an in-network physician. ACP prefers that caps on payment for physicians treating out-of-network patients be avoided, preferably by establishing an arbitration process that would allow an independent arbitrator to establish an appropriate and fair payment level between the insurers' in-network rate and the clinician's charge. Payment rates to clinicians should not be based on in-network rates, which would eliminate the need for insurers to negotiate contracts in good faith. If Congress were to require benchmark rates be part of the process of determining payments for out-of-network services, ACP believes an independent data source, such as a state All Payer Claims Database (APCD), would be a fairer and more appropriate way to benchmark reimbursement instead of the median in-network rate. However, even if an independent data source such as an APCD was used to set clinician rates, ACP would still be concerned by the lack of an independent dispute resolution process. Instead, we reaffirm our recommendation that legislation establish a process to allow an independent arbitrator to establish an appropriate and fair payment level between the insurers' in-network rate and the clinician's charge.

In closing, thank you for your shared commitment in wanting to address the growing problem of surprise medical billing. We appreciate that lawmakers in both chambers, as well as the administration, are working in a bipartisan fashion to develop legislation to address this issue and protect patients. We look forward to providing additional input as needed.

Sincerely,



Robert M. McLean, MD, FACP
President

CC:
United States House of Representatives
United States Senate