



February 14, 2020

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

Dear Chairman Neal and Ranking Member Brady:

On behalf of the American College of Physicians (ACP), I am writing on behalf of the American College of Physicians (ACP) to congratulate you and your Ways and Means colleagues for successfully advancing the bipartisan Consumer Protections against Surprise Medical Bills Act of 2020, H.R. 5826. This was a very significant and encouraging step toward resolution of what has become a growing and troubling problem for many patients. I am pleased to report that the Ways and Means reported-bill addresses many of the issues ACP has raised in previous communications.

The American College of Physicians is the largest medical specialty organization and the second-largest physician group in the United States. ACP members include 159,000 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.

At the core of this issue is the need to protect patients by holding them harmless from surprise medical bills. The College has been a frequent advocate for Congress enacting such legislation. In particular, ACP has advocated that Congress enact legislation to protect patients from unexpected out-of-network health care costs, particularly costs incurred during an emergency or a medical episode in which services are provided by out-of-network clinicians without the patient's prior knowledge. ACP is gratified that H.R. 5826 as reported by the Ways and Means Committee would bring about such protection for our patients and their families, including the following provisions that we strongly support:

Holds Patients Harmless: The bill will ensure that patients will pay no more than the in-network rate of in circumstance where they are not able to choose an in-network clinician. In emergency situations, there simply is not enough time for the patient to know which clinicians are in-or out-of-network. In non-emergency situations at in-network facilities, absent any prior notice, patients appropriately would assume that all of their care would be considered in-network.

Increase transparency: It is critical that a patient be informed in advance of receiving services, whenever possible, if a clinician is out-of-network so that the patient can make an informed choice before the care is rendered. We are pleased that H.R. 5826 specifies certain categories of information that privately

insured patients must be given access to such as good faith cost estimates for health care services and the network status of applicable clinicians and facilities.

Mediation for out-of-network bills: The bill establishes a fair mediation process to be utilized when the parties cannot agree on a payment amount after when an out-of-network service is provided to the patient. The parties may enter a 30 day open negotiation process with the goal of reducing the information asymmetry to encourage resolution of disagreements. Both parties are required to share specified information with each other at this stage to facilitate an agreement. The mediator is required to consider a wide range of supporting information submitted by a physician and payer in rendering a final determination. Appropriately, the mediator will not consider insurers' in-network rates in making a determination based on the supporting information submitted. ACP has strongly recommended against benchmarking mediation to insurers' in-network rates, since this would allow insurers to essentially impose rates for both in and out of network services. We are pleased that the bill addresses this concern.

In previous communications to Congress, ACP has offered recommendations about a variety of relevant measures that have been introduced in the 116th Congress to address the problem of surprise medical billing. ACP's guiding policy on surprise medical bills is outlined in its [position paper](#) entitled, "Improving Health Care Efficacy and Efficiency Through Increased Transparency." As H.R. 5826 is advanced through the legislative process, along with other bills addressing surprise billing, ACP recommends consideration of additional measures to protect patients:

Establish standards for Network Adequacy: Legislation to hold patients harmless should include provisions requiring network adequacy, similar to requirements specified in the Affordable Care Act. 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.

- ACP has long encouraged strong quantitative network adequacy criteria; ongoing monitoring and oversight of networks; transparent network development criteria; accurate, easily accessible and up-to-date directories of in-network clinicians; 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.

Examine the Relationship between Payment Levels and Network Availability: The relationship between payment levels for services, and in-network availability, should be addressed. Appropriate and fair payment of services by physicians will increase their in-network participation rates and reduce those concerning situations where patients are billed for out-of-network care.

In closing, ACP thanks you for your commitment to addressing the growing problem of surprise medical billing. The College looks forward to continuing to work with you and your colleagues in the Congress to get this vital proposal across the legislative finish line.

We would be pleased to provide additional input as needed.



Robert McLean, MD
President