



October 23, 2019

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 in reference to the compromise surprise medical billing plan that Chairman Neal has proposed. ACP strongly supports protecting patients from surprise medical bills and 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.

The College is encouraged by Chairman Neal's efforts to forge a bipartisan compromise on legislation that would hold patients harmless against unexpected medical bills, an objective that ACP shares. We are also encouraged by the chairman's commitment to reach agreement on a resolution of this matter before the first session of the 116th Congress concludes.

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.

As this important legislation is finalized, we urge you and your colleagues to consider ACP's perspective and suggestions as described below.

In previous communications to Congress, ACP has offered its input and recommendations about specific and relevant 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 billing legislation, the following issues merit strong consideration:

Hold Patients Harmless: ACP is pleased with the chairman's statement that the framework he is working on with the ranking member will hold the patient harmless.

Examine Network Adequacy and Increase Transparency: 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. The compromise legislation should reflect this.

Furthermore, ACP strongly supports protecting patients by increasing transparency in pricing. 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 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.

In addition, 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 situations where patients are billed for out-of-network care. Our comments below on a dispute resolution process address this further.

We are pleased by the chairman's statement "This approach would also include related policies that strengthen consumer protections, provide more information and access for patients, and enhance transparency within the health care system" as encompassing the issue of network adequacy. "

Include A Dispute Resolution Process: Chairman Neal has proposed to resolve disputes by means of a negotiated rulemaking process. Three relevant federal agencies (the Department of Health and Human Services (HHS), the Department of Labor (DOL), and the Department of the Treasury and key stakeholders would form a committee to identify standards for rates for surprise bills. The committee would also determine how and if dispute resolution should be included, within certain predefined parameters that ensure health care costs will not increase from the process. The committee's work would conclude when it sends recommendations to the Secretaries of the above agencies, who would then use the committee recommendations to publish a proposed rulemaking with a public comment period.

For a more complete analysis and comparison of Chairman Neal's proposal to the College's positions on this subject, there is a need for further specificity on the chairman's negotiated rulemaking proposal. This will presumably be forthcoming with legislative text. To what extent, for example, will the language on negotiated rulemaking not increasing costs predetermine the outcome since a dispute resolution process would likely cost more without such language? Other issues of interest and concern to ACP include how the proposal would benchmark rates and what would trigger a particular situation being considered an instance of surprise billing.

Several 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 in which the service was

delivered. This approach shields insurers for any responsibility to pay fairly, appropriately and competitively for services and ensure network adequacy. ACP is concerned that leaving this issue to a negotiated rulemaking mechanism may not provide sufficient assurance of protections against insurers imposing anti-competitive and inadequate payment rates.

While ACP prefers that caps on payment for physicians treating out-of-network patients be avoided, we can support 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.

The issue of benchmarking of payment rates is one of great interest to ACP. We are interested in the extent to which payment rates would be benchmarked under the chairman's compromise proposal. 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 Payers 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 were used to set clinician rates, ACP still believes that an independent dispute resolution process is needed.

In closing, thank you for your commitment to addressing 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,

A handwritten signature in blue ink, appearing to read "Robert M. McLean". The signature is fluid and cursive, with the first name being the most prominent.

Robert M. McLean, MD, MACP
President

CC: Committee on Ways and Means, U.S. House of Representatives