June 25, 2019

The Honorable Lamar Alexander, Chair
Senate Health, Education, Labor and Pensions Committee
455 Dirksen Office Building
Washington, D.C. 20510

The Honorable Patty Murray, Ranking Member
Senate Health, Education, Labor and Pensions Committee
154 Russell Senate Office Building
Washington, D.C. 20510

Dear Chairman Alexander and Ranking Member Murray:

I am writing on behalf of the members of the American Society of Anesthesiologists (ASA) to express our strong opposition to the surprise billing provisions included in S. 1895, "The Lower Health Care Costs Act." We believe that patients should be protected from surprise medical bills; however, rate setting out-of-network payments to the median in-network rate will have unintended consequences for patients, resulting in decreased access and increased costs across the delivery system.

Over 90 percent of physician anesthesiologists claims are in network. Accordingly, ASA believes that any solution to surprise medical bills must align with the magnitude of the problem. The solution included in S.1895 far exceeds a reasonable solution. It will address out-of-network physicians and other providers but it will also seriously adversely impact those physicians and other providers who have made a good faith effort to successfully negotiate in-network agreements.

Under a federally imposed benchmark or essentially a “payment cap”, insurance companies will be emboldened to create and maintain even more narrow networks than those that have currently caused this problem. Any incentive for insurance companies to create adequate networks of providers will be eliminated. As a result, it is expected that patients receiving health care from out-of-network providers will only increase.

This proposal completely disrupts market driven negotiations between insurance companies and providers. We urge the Committee to drop this proposal from S. 1895, “The Lower Health Care Costs Act,” and replace it with an independent dispute resolution process that resembles the proposal authored by Senator Cassidy and the Bipartisan Workgroup and has already been proven and successful in New York and several other states.

New York has implemented a “baseball style” arbitration process and the literature has identified it as both fair and successful. To illustrate, in New York, the patient is removed from the process of determining out-of-network payment. An out-of-network provider or health insurer may submit
a dispute regarding payment, which is resolved through an independent arbitration model in which the loser pays.

A May 2019 study from Georgetown University found that the New York IDR process was fair to all parties and is working as intended to protect consumers from a significant source of financial hardship. Additionally, a NYS Health Foundation found that the percent of out-of-network emergency department services that were billed decreased from 20.1 percent in 2013, before the law was passed, to 6.4 percent in 2015, after the implementation of the New York surprise billing reforms. Moreover, the number of disputes that went to arbitration totaled around 1,200—a tiny percent of all claims filed in the state of New York. Also, there has been no evidence that this model increases insurance premiums for consumers.

We encourage the Committee to implement market based solutions, ensure adequate networks, and preserve access to high quality care through the proven successful arbitration model.

Sincerely,

Linda Mason, M.D.
President
American Society of Anesthesiologists