

February 7, 2019

The Honorable Richard E. Neal  
Chairman  
Committee on Ways and Means  
1102 Longworth House Office Building  
Washington, DC 20515

The Honorable Kevin P. Brady  
Ranking Member  
Committee on Ways and Means  
1139E Longworth House Office Building  
Washington, DC 20515

Dear Chairman Neal and Ranking Member Brady:

Patients, physicians, and policymakers are deeply concerned about the impact that unanticipated medical bills are having on patient out-of-pocket costs and the patient-physician relationship. Health insurance plans are increasingly relying on narrow and often inadequate networks of contracted physicians, hospitals, pharmacies, and other providers as one mechanism for controlling costs. As a result, even those patients who are diligent about seeking care from in-network physicians and hospitals may find themselves with unanticipated out-of-network bills from providers who are not in their insurance plan's network, simply because they had no way of knowing and researching in advance all the individuals who are ultimately involved in their care. Physicians and other providers are limited in their ability to help patients avoid these unanticipated costs because they, too, may not know in advance who will be involved in an episode of care, let alone other providers' contract status with all the insurance plans in their communities.

As Congress develops potential legislation to provide relief to patients from health care costs that their insurance will not cover, we urge your consideration of the following policies.

- **Insurer accountability.** Since overly narrow provider networks contribute significantly to this problem, strong oversight and enforcement of network adequacy is needed from both federal and state governments. Robust network adequacy standards include, but are not limited to, an adequate ratio of emergency physicians, hospital-based physicians, and on-call specialists and subspecialists to patients, as well as geographic and driving distance standards and maximum wait times. Provider directories must be accurate and updated regularly to be useful to patients seeking care from in-network providers. In addition, insurers should be held to complying with the prudent layperson standard in existing law for determining coverage for emergency care, so that insured patients are not liable for unexpected costs simply because they were unable to accurately self-diagnose ahead of time whether their symptoms were, in fact, due to an emergency medical condition.
- **Limits on patient responsibility.** Patients should only be responsible for in-network cost-sharing rates when experiencing unanticipated medical bills.
- **Transparency.** All patients who choose in advance to obtain scheduled care from out-of-network physicians, hospitals or other providers should be informed prior to receiving

care about their anticipated out-of-pocket costs. When scheduling services for patients, providers should be transparent about their own anticipated charges, and insurers should be transparent about the amount of those charges they will cover.

- **Universality.** In general, any federal legislation to address unanticipated out-of-network bills should also apply to ERISA plans.
- **Setting benchmark payments.** In general, caps on payment for physicians treating out-of-network patients should be avoided. If pursued, guidelines or limits on what out-of-network providers are paid should reflect actual charge data for the same service in the same geographic area from a statistically significant and wholly independent database. They should not be based on a percentage of Medicare rates, which have become increasingly inadequate in covering overhead costs, nor should they be based on in-network rates, which would eliminate the need for insurers to negotiate contracts in good faith. Any prohibition, whether state or federal, on billing from out-of-network providers not chosen by the patient should be paired with a corresponding payment process that is keyed to the market value of physician services.
- **Alternative dispute resolution.** Legislation should also provide for a mediation or sequential alternative dispute resolution (ADR) process for those circumstances where the minimum payment standard is insufficient due to factors such as the complexity of the patient's medical condition, the special expertise required, comorbidities, and other extraordinary factors. ADR must apply to states and ERISA plans. Arbiters should not be required to consult in-network or Medicare rates when making final determinations regarding appropriate reimbursements.
- **Keep patients out of the middle.** So that patients are not burdened with payment rate negotiations between insurers and providers, physicians should be provided with direct payment/assignment of benefits from the insurer.

The problem of unanticipated out-of-network bills is complex, and requires a balanced approach to resolve. In addition to providing strong patient protections, we believe the principles set forth above would improve transparency, promote access to appropriate medical care, and avoid creating disincentives for insurers and health care providers to negotiate network participation contracts in good faith.

We appreciate your consideration of these policies and look forward to working with you on these matters.

American Medical Association  
AMDA - The Society for Post-Acute and Long-Term Care Medicine  
American Academy of Allergy, Asthma & Immunology  
American Academy of Dermatology Association  
American Academy of Facial Plastic and Reconstructive Surgery  
American Academy of Family Physicians  
American Academy of Neurology

American Academy of Ophthalmology  
American Academy of Otolaryngic Allergy  
American Academy of Otolaryngology—Head and Neck Surgery  
American Academy of Pain Medicine  
American Academy of Pediatrics  
American Academy of Sleep Medicine  
American Association of Child and Adolescent Psychiatry  
American Association of Clinical Urologists  
American Association of Gynecologic Laparoscopists  
American Association of Hip and Knee Surgeons  
American Association of Neurological Surgeons  
American Association of Orthopaedic Surgeons  
American College of Allergy, Asthma and Immunology  
American College of Cardiology  
American College of Emergency Physicians  
American College of Mohs Surgery  
American College of Obstetricians and Gynecologists  
American College of Osteopathic Surgeons  
American College of Physicians  
American College of Radiation Oncology  
American College of Radiology  
American College of Surgeons  
American Epilepsy Society  
American Gastroenterological Association  
American Orthopaedic Foot & Ankle Society  
American Osteopathic Association  
American Psychiatric Association  
American Society for Clinical Pathology  
American Society for Dermatologic Surgery Association  
American Society for Gastrointestinal Endoscopy  
American Society for Radiation Oncology  
American Society of Anesthesiologists  
American Society of Breast Surgeons  
American Society of Clinical Oncology  
American Society of Dermatopathology  
American Society of Echocardiography  
American Society of Hematology  
American Society of Nuclear Cardiology  
American Society of Retina Specialists  
American Urological Association  
American Academy of Ophthalmology  
College of American Pathologists  
Congress of Neurological Surgeons  
International Society for the Advancement of Spine Surgery  
Medical Group Management Association  
National Association of Medical Examiners

National Association of Spine Specialists  
North American Neuro-Ophthalmology Society  
Obesity Medicine Association  
Society for Cardiovascular Angiography and Interventions  
Society for Vascular Surgery  
Society of Cardiovascular Computed Tomography  
Society of Critical Care Medicine  
Society of Hospital Medicine  
Society of Thoracic Surgeons  
The Obesity Society

Medical Association of the State of Alabama  
Arizona Medical Association  
Arkansas Medical Society  
California Medical Association  
Colorado Medical Society  
Connecticut State Medical Society  
Medical Society of Delaware  
Medical Society of the District of Columbia  
Medical Association of Georgia  
Hawaii Medical Association  
Idaho Medical Association  
Illinois State Medical Society  
Indiana State Medical Association  
Iowa Medical Society  
Kentucky Medical Association  
Maine Medical Association  
MedChi, The Maryland State Medical Society  
Massachusetts Medical Society  
Michigan State Medical Society  
Minnesota Medical Association  
Mississippi State Medical Association  
Missouri State Medical Association  
Montana Medical Association  
Nebraska Medical Association  
Nevada State Medical Association  
New Hampshire Medical Society  
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New Mexico Medical Society  
Medical Society of the State of New York  
North Dakota Medical Association  
Ohio State Medical Association  
Oregon Medical Association  
Rhode Island Medical Society  
South Dakota State Medical Association  
Tennessee Medical Association  
Utah Medical Association  
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Medical Society of Virginia  
Washington State Medical Association

Wisconsin Medical Society  
Wyoming Medical Society