

July 24, 2019

The Honorable Lamar Alexander
Chairman
Committee on Health, Education,
Labor and Pensions
428 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Patty Murray
Ranking Member
Committee on Health, Education,
Labor and Pensions
428 Senate Office Building
Washington, DC 20510

Dear Chairman Alexander and Ranking Member Murray:

Congress is currently engaged in an important debate over protecting patients from unanticipated medical bills received in situations where no in-network physician was available to provide necessary care. In situations where a coverage gap occurs and patients unknowingly or without a choice receive care from an out-of-network physician or other provider, all stakeholders agree that patients should be held harmless for any costs above their in-network cost-sharing, and that patients should be completely removed from any payment disputes between their health insurance company and their physician or other health care provider.

Stakeholder positions diverge, however, once the overriding goal of protecting patients is addressed, with some seeking to obtain market-disrupting financial advantage through deceptive claims and advertisements.

One of the concepts being considered is the provision of an independent dispute resolution (IDR) or appeals process to resolve questions of appropriate payment amounts by health insurers when no agreement can be reached with the physician who provided the care. Such models have been successfully implemented in several states and are a proven solution to resolving these disputes while fully protecting the patient. In fact, despite political advertisements stating otherwise, the patient is in no way involved or affected by a decision by either party to engage in the IDR process.

Last week, the House Committee on Energy and Commerce reported the “No Surprises Act” as part of a broader package of bills. During that mark up, the Committee adopted an IDR process as a backstop should the bill’s underlying payment methodology not result in a resolution that is acceptable to both parties. While there are additional improvements that can be made going forward, the American Medical Association commends the Committee for this important step toward maintaining balance in the health care marketplace.

It is discouraging, however, that America’s Health Insurance Plans (AHIP) declared that the Committee’s actions would allow providers to “price gouge patients.” This is a clear mischaracterization of the actions taken by the Committee. Under the Committee’s bill, no patient who receives a surprise bill would be obligated to pay more than if they received care by an in-network provider—identical to the protection provided by a previous version of the bill supported by health plans. AHIP’s angst apparently results from the fact that the “baseball style” arbitration adopted by the Committee, like New York’s successful

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system, would allow an independent third party to determine whether the plan payment amount or the provider bill represents the most appropriate resolution to the claim. This mischaracterization of the Committee's actions is doubly confusing because the language adopted by the Committee is still heavily skewed to the benefit of health plans.

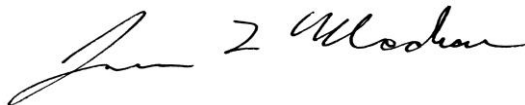
These views are clearly not shared by all health plans, however. Health plans in New York have spent much of the year advocating for an expansion of New York's system to additional providers, with the New York Health Plan Association (NYHPA) noting in a May 17 release its support for the proposal to expand the IDR system to hospitals. NYHPA stated that the proposal "Takes a balanced approach to address the issue of out-of-network emergency services, requiring hospitals to utilize the IDR process in the same manner that out-of-network physicians must follow, prohibiting balance billing by hospitals for emergency room services and holding the consumer harmless."

In Texas, where baseball style arbitration was adopted earlier this year, Blue Cross Blue Shield of Texas declared that "Texas now boasts the nation's strongest laws to shield patients from surprise bills." In the July 16 statement, the CEO of BCBS of Texas went on to call the bill "milestone legislation" and "courageous" and suggested that it should "serve as a beacon for other states looking for an answer to the issue of balance billing."

Others, such as the Blue Cross Blue Shield Association, have criticized the proposed IDR process as "cumbersome." To the contrary, the New York process essentially involves visiting www.dfs.ny.gov and filling out a two-page form. This contrasts with the often voluminous filing requirements necessary for physicians and other providers to obtain prior authorization from many health plans just to provide covered benefits to their patients needing health care services and prescriptions.

The actions of the Committee on Energy and Commerce are an important acknowledgement that the Committee's original proposal will benefit by adding a backstop process should the underlying methodology fail to arrive at a resolution that was fair to both parties. The Committee took no action that in any way weakened the crucial patient protections enshrined in the original proposal. It is a critical step and we look forward to working with Congress to further refine this key element of the bill as the process moves forward.

Sincerely,

A handwritten signature in black ink, appearing to read "James L. Madara". The signature is fluid and cursive, with a large initial "J" and "M".

James L. Madara, MD