James L. Madara, MD
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April 22, 2022

The Honorable Xavier Becerra
Secretary
U.S. Department of Health and Human Services
200 Independent Avenue, SW
Washington, DC 20201

The Honorable Martin J. Walsh
Secretary
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

The Honorable Janet Yellen
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Secretaries Becerra, Walsh, and Yellen:

On behalf of our physician and medical student members, I write to thank you and your Departments for continued efforts to implement the No Surprises Act (NSA), including drafting regulations and guidance, educating stakeholders, establishing an informative website, and answering questions from physicians and other providers. We recognize the enormous amount of work that has been required. As you know, the American Medical Association (AMA) continues to support the goal of the NSA—to protect patients from the financial burdens of surprise medical bills—and we continue to work closely with physicians and the state and national specialty medical societies to ensure these important patient protections are in place.

As you also know, the AMA has had concerns with a narrow, but important, provision of the Independent Dispute Resolution (IDR) process implementing regulations that created a rebuttable presumption in favor of the insurer-derived Qualifying Payment Amount (QPA) as the correct out-of-network rate. As you move forward with final NSA regulations, we urge the Departments to ensure that IDR entities have the ability to independently determine the most appropriate out-of-network rate by considering all the statutorily allowable relevant factors.

Some stakeholders have suggested physicians' opposition and efforts to remove this rebuttable presumption is akin to exploiting market failure and inflating costs. This is a false narrative offered by those that seek to drive massive policy changes that undercut the ability of all physician practices—large and small, urban and rural—to negotiate fair network contracts. Their push to reinsert into the final rule a rebuttable presumption in favor of the QPA would not correct an imbalance in the system, it would exploit it. Physicians are the backbone of the health care system and ensuring the financial health and sustainability of physician practices, specifically independent physician practices, should be a goal of all stakeholders, including employers truly invested in the health of their workforce and access to care.

As the NSA has been implemented, there has been reduced demand for in-network care, and thus reduced incentives for health plans to engage in meaningful contract negotiations with physicians. Congress

wisely predicted that a balanced IDR process was necessary to allow providers the opportunity to make their case for a fair out-of-network payment. Moreover, Members of Congress recognize the negative implications of an imbalanced IDR process, including that it "could incentivize insurance companies to set artificially low payment rates, which would narrow provider networks and jeopardize patient access to care…[i]t could also have a broad impact on reimbursement for in-network services, which could exacerbate existing health disparities and patient access issues in rural and urban underserved communities."

As the IDR portal opens, we do not anticipate frequent use of the IDR process in the long-term, but we do anticipate that having a meaningful process in place as a final backstop will encourage payers to come to the negotiating table in the first place, offer a reasonable initial payment when an out-of-network bill occurs, and settle most disputes in the open negotiations. We continue to take issue with suggestions from stakeholders that predictability in the IDR process is essential and that the IDR process, so comprehensively debated by Congress and so carefully constructed through negotiations, should be implemented in a way in which the outcome is predetermined regardless of the circumstances, essentially rendering the process meaningless.

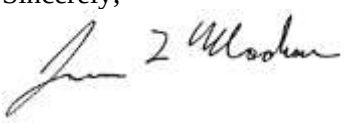
While much of everyone's attention has been directed toward just a few bad provider actors who have taken advantage of their out-of-network status in the past, we urge consideration of the vast majority of physicians who are working tirelessly to provide direct patient care while juggling the pressures of running a business, managing the unknowns of a pandemic, and jumping through the endless administrative hoops of health insurers and payers. It seems disingenuous for payers and other stakeholders to suggest that efforts to ensure that these physician practices can participate in fair contract negotiations exposes patients to harm and inflation, especially as tiered and narrow networks, mid-year formulary changes, prior authorizations, no-cause terminations, and retrospective denials remain favored practices by many of these same stakeholders to reduce costs by reducing access, undercutting every dollar patients spend on premiums.

We urge the Departments to move forward with a final rule on the IDR process that allows the IDR entities to consider all relevant factors when making determinations, thereby helping to ensure the sustainability of physician practices and continued patient access to care.

The AMA appreciates the opportunities that have been provided by the Departments for engagement on implementation of the NSA and hope to continue such engagement moving forward to ensure that the physician perspective is considered as the Departments make implementation decisions, as well as to offer any assistance and resources that may be useful to the Departments.

If you have any questions or would like to discuss these comments further, please contact Margaret Garikes, Vice President, Federal Affairs at margaret.garikes@ama-assn.org.

Sincerely,



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