



MASSACHUSETTS
MEDICAL SOCIETY



MASSACHUSETTS
Health & Hospital
ASSOCIATION

August 13, 2019

The Honorable Richard Neal
Chairman
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Neal:

On behalf of the 25,000 physicians, residents and medical students of the Massachusetts Medical Society, and the 70 hospitals of the Massachusetts Health & Hospital Association, we are writing to share our position on legislation relating to out-of-network billing, also known as surprise billing, currently under consideration by Congress. Our recommendations stem from basic principles that should be assured to all healthcare stakeholders, most importantly patients, as a result of any legislative action.

Our first priority is protecting patients from surprise bills. Patients should be required to pay no more for care than they would have if the service had been rendered in-network. These protections should apply to all patients, including those who receive coverage under an ERISA-protected plan. Second, a fair and equitable reimbursement structure must be created that does not diminish the incentive for payers to negotiate fair rates or encourage providers to leave a health plan's network. If either situation results, care will be more fragmented, network coverage will be less comprehensive, and patients may struggle to access the care they need. Health plans must create and maintain comprehensive, robust provider networks to minimize instances of out-of-network care. Patients and prospective patients must have easily accessible, accurate, and up-to-date online provider directories so that they can obtain real-time information regarding network status.

We were pleased to see that the approach outlined by Representatives Raul Ruiz and Phil Roe in H.R. 3502, No More Surprise Medical Bills, incorporates two key components of the successful New York State model – a baseball-style independent dispute resolution process and an independent database as criteria for determining a fair price. As you may know, the New York model has significantly reduced surprise billing, incentivized negotiation between providers and insurers without disrupting market dynamics and has not increased healthcare spending.

Unfortunately, the Senate Health, Education, Labor, and Pension Committee passed S. 1895, the Lower Health Care Costs Act, which uses a flawed in-network benchmark rate, and the House Energy and Commerce Committee used a similar approach in the bill it passed several weeks ago, the No Surprises Act, H.R. 3630. A benchmark based solely on in-network rates, which empowers insurers, has been proven in California to exacerbate the problem of out-of-network billing. This model has resulted in a

significant increase in surprise bills, as carriers have refused to renew contracts with providers and have dramatically decreased in-network rates. As a reminder, out-of-network billing is more than a billing problem for patients – it also reflects inadequate insurance network coverage.

Before it passed the Energy and Commerce Committee, H.R. 3630 was amended to include an arbitration process for hospitals and physicians that receive a median in-network payment of more than \$1,250. While we appreciate efforts to include arbitration as a backstop, we remain concerned that structuring any solution around a flawed benchmark or default payment will serve as an incentive for insurers to use an out-of-network business model. Even if we end the practice of sending surprise bills to patients, they will still be left with fragmented coverage and care. **We believe a federal legislative solution should protect patients by prohibiting surprise billing, establishing fair and equitable negotiations to determine reimbursement, and maintaining patient access to care through robust insurance networks.**

We urge you to support the approach employed in New York State, characterized by independent dispute resolution and use of an independently verified data base to determine fair reimbursement. Since the law's passage in 2015, approximately only 600 cases have gone to arbitration each year in a state with 18 million covered lives. The costs of arbitration there have been negligible, and instances of surprise billing have been reduced significantly.

Thank you for your attention to our concerns. We look forward to continuing our work together to ensure access to high-quality healthcare for all patients.

Sincerely,

A handwritten signature in black ink that reads "Maryanne C. Bombaugh MD MSc MBA".

Maryanne C. Bombaugh, MD, MSc, MBA, FACOG
President
Massachusetts Medical Society

A handwritten signature in blue ink that appears to read "Steve Walsh".

Steve Walsh
President & CEO
Massachusetts Health & Hospital Association