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*Every physician matters, each patient counts.*

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December 18, 2020

The Honorable Richard E. Neal
Chairman
Ways & Means Committee
U.S. House of Representatives

The Honorable Kevin Brady
Ranking Member
Ways & Means Committee
U.S. House of Representatives

The Honorable Frank Pallone, Jr.
Chairman
Energy & Commerce Committee
U.S. House of Representatives

The Honorable Greg Walden
Ranking Member
Energy & Commerce Committee
U.S. House of Representatives

The Honorable Robert C. "Bobby" Scott
Chairman
Education & Labor Committee
U.S. House of Representatives

The Honorable Virginia Foxx
Ranking Member
Education & Labor Committee
U.S. House of Representatives

The Honorable Lamar Alexander
Chairman
Health, Education, Labor & Pensions Committee
U.S. Senate

The Honorable Patty Murray
Ranking Member
Health, Education, Labor & Pensions Committee
U.S. Senate

Dear Chairman Neal, Chairman Pallone, Chairman Scott, Chairman Alexander, Ranking Member Brady, Ranking Member Walden, Ranking Member Foxx, and Ranking Member Murray:

On behalf of the 25,000 physician, resident, and medical student members of the Massachusetts Medical Society (MMS), I would like to commend you for your work on the "No Surprises Act" and for putting our patients first. The MMS has long held the position that patients should be protected and held harmless from surprise medical bills. We are glad to see many stakeholders in Congress coming together on a compromise that protects patients and takes into consideration the concerns of health care providers. The MMS recognizes the hard work Congressional leaders have undergone to reach this compromise. **I am writing to convey the Society's support for the overall direction of the bill but hope to continue our productive dialogue with Congress to improve the bill before its enactment.**

This bill includes significant improvements from some of the previous proposals in Congress, and we appreciate that several provisions from the Ways and Means Committee bill, the "Consumer Protections Against Surprise Medical Bills Act of 2020" (that the MMS has endorsed), are included in this compromise. In particular, we appreciate that the legislation:

- Holds patients harmless from surprise medical bills.
- Promotes fair payment by establishing a baseball-style independent dispute resolution (IDR) process for physicians and insurers to resolve payment disputes.

- Ensures physicians receive a payment for out-of-network care and that those payments are made directly to the physicians.
- Removes a provision which set the median in-network payment rate benchmark as the initial payment rate, which would have led to de facto rate-setting.
- Removes a monetary threshold to access the IDR process, ensuring that all physicians—regardless of billing patterns—can access the dispute resolution process.
- Simplified the process administratively by allowing physicians to batch similar claims.
- Allows physicians to submit many important factors during the IDR process, including relevant payment and clinical information to the arbiter.
- Increases transparency by requiring insurers to provide information about deductibles and copayments for in-network and out-of-network care on policyholders' insurance cards.
- Requires insurance plans to maintain accurate provider directories.
- Includes a study to assess whether insurers have adequate physician networks, so that patients are able to receive in-network care in their community.

While we support many of the provisions in this bill and the direction of the negotiation process, we have concerns about some provisions in the bill that would inadvertently disadvantage physicians—and could have an impact on long-term patient access to care. We look forward to continuing working with you to improve the legislation, and we appreciate that you and your staff have been open to feedback on improving the bill. Our primary areas of concern include:

- **The timelines outlined in the bill are both too short for certain provisions and too long for others.**
    - For example, **our primary concern is that physicians only have two days to initiate the IDR process.** It is not clear from the legislative text whether this is two business or calendar days. Regardless, this provision would create a system where physicians get bogged down in trying to track payment issues so they can meet the tight deadlines, when physicians should, first and foremost, be focused on giving care. We want to ensure that any bill enacted is logistically practical and does not place undue burden on physicians. Physicians should maintain their focus on giving quality care to their patients. For that reason, **we urge you to significantly extend the timeline for physicians to initiate the IDR process and clarify that they are business, not calendar, days.**
    - In addition, the 90-day "cooling off" period is problematic, since it could delay payments to physicians and hospitals for several months. Many small and medium-sized physician practices operate on small margins and will not be able to sustain their practices while waiting for payment for many months. **We urge the bill sponsors to either remove the cooling off period or shorten the timeline, ideally to 30 days.**
- We are also **concerned that this bill does not prohibit Medicare and Medicaid rates from being included in the IDR process**, as those rates are set to meet the budget constraints of government—which are not an appropriate valuation of the services provided, and thus are lower than private market rates. We worry that this will have the effect of government rate-setting in a manner that is unfair to physicians and skews decisions in the favor of insurers.
- In addition, we understand that the intent of the legislation is to allow only batching of claims by an individual physician and not the provider group. This adds undue burden to physicians and is not in line with current billing processes, since billing is customarily done by physician group. **We hope that future clarifications on this provision allow for claims to be batched by the provider group**.

- Lastly, the bill requires providers who are out-of-network to include with their notice and consent agreement a list of in-network providers and other information on medical care management, like prior authorization requirements. Since out-of-network providers have no contractual relationships with the insurance plans, it is unclear how they will be able to obtain this information. **We encourage you to remove the requirement that out-of-network providers furnish this additional information that is outside of their purview.**

Again, we commend you for prioritizing the needs and well-being of our patients. We look forward to continuing to work with the bill sponsors on improvements to the bill and enacting balanced legislation in the near future that holds patients harmless from surprise medical bills.

Sincerely,

David A. Rosman, MD, MBA
President
Massachusetts Medical Society