American College of Emergency Physicians®
ADVANCING EMERGENCY CARE

December 15, 2020

The Honorable Mitch McConnell
Majority Leader
U.S. Senate
S-230, The Capitol
Washington, D.C. 20510

The Honorable Charles Schumer
Minority Leader
U.S. Senate
S-221, The Capitol
Washington, D.C. 20510

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-232, The Capitol
Washington, D.C. 20515

The Honorable Kevin McCarthy
Minority Leader
U.S. House of Representatives
H-204, The Capitol
Washington, D.C. 20515

Dear Majority Leader McConnell, Minority Leader Schumer, Speaker Pelosi, and Minority Leader McCarthy:

On behalf of the American College of Emergency Physicians (ACEP) and our 40,000 members, thank you for your hard work and continued leadership to find a solution to protect patients from surprise medical bills that provides an equitable solution to reimbursement disagreements between emergency physicians and insurers. It is vital that the best interests of the patients be foremost in the development of this legislation, and ACEP appreciates your leadership to ensure that this has been the case throughout this process.

Many aspects of the "No Surprises Act" have undergone considerable deliberation and evolved throughout the legislative process. We commend you especially for ensuring that:

- patients' financial responsibility when seeking emergency treatment would be no more than their in-network deductible and cost sharing, regardless of whether that care was provided by an in- or out-of-network physician;
- providing transparency on policyholders' insurance cards so patients have a better understanding of what their deductibles and out-of-pocket maximums are;
- guaranteeing reimbursements for care are paid directly to the physician;
- establishing an independent dispute resolution process for arbitrating disputed claims;
- ensuring emergency physicians can access this process by removing the threshold on the dollar amount of claims that can be arbitrated;
- providing equal consideration of all factors evaluated by the arbiter in rendering a determination; and,
- allowing claims to be batched for administrative efficiency.

However, we still have concerns about several provisions of the proposed legislation as well as some additional recommendations for improvement.

Of significant concern is the "cooling off" period that would prevent physicians from bringing subsequent claims for the same item or service for that insurer to IDR for 90 days following a determination by the IDR entity. Depending on the level of reimbursement made by the health plan as part of its initial "response" upon receiving a claim, it is quite possible that a physician

WASHINGTON, DC OFFICE
901 New York Ave, NW
Suite 515E
Washington DC 20001-4432

202-728-0610
800-320-0610
www.acep.org

or practice may go up to 165 days before they can be fairly remunerated for having provided that service. This lack of adequate reimbursement will prove challenging to emergency physicians and their practices, given that the vast majority of their claims are submitted using one of only five available codes. This impact will be even more severe for smaller practices, many of which are in rural areas, that may not have sufficient cash flow to wait such a long period of time for adequate reimbursement. We therefore urge you to eliminate this cooling off period, or at least shorten it to 30 days in order to mitigate some of the negative impacts it is sure to have. The legislation itself even acknowledges such impacts in calling for a study within four years to examine if this clause "delays payment determinations, [or] impacts early, alternative resolution of claims (such as through open negotiations)". Accordingly, should the 90-day cooling off period remain in the bill, we request that an interim study be added at one year post-implementation so that any negative impacts can be identified and addressed sooner rather than remaining unchecked for four years.

Within the Independent Dispute Resolution (IDR) process, we again would like to thank you for providing equal weight to all factors the parties present to the arbiter, including previously contracted rates and good-faith efforts by either party to enter into in-network agreements. We note that publicly funded plans such as Medicare, Medicaid, or workers compensation, are not specifically excluded from consideration by the arbiter (unlike the explicit exclusion of a physician's billed charges).

While we appreciate your efforts to obtain a timely disposition to the reimbursement of claims following the delivery of care to a patient, we would ask you to consider ensuring requirements for timely billing align more closely with actual business practices. Like you, we do not want to inconvenience the patient, but emergency medicine is not like your more typical office-based physician practice. Our members work 24 hours a day, seven days a week, and those shifts do not always coincide with the aspects of the practice where claims and billing are handled. Any consideration to providing additional flexibility for those two incongruous aspects of our practice would be greatly appreciated.

One item that we believe may already be accounted for in subsequent revisions of the legislative text is the amount of time that a physician would have to initiate IDR following the end of the 30-day open negotiation period. As originally written, the physician would only be allowed two (calendar) days to make this determination and initiate the process. This could of course make it extremely challenging, if not impossible, to initiate IDR were the 30-day expiration to occur over a weekend or holiday, for example. Again, if this has been resolved to a period of more than a few calendar days, we appreciate your willingness to accommodate our needs.

Finally, we would strongly urge you to use any of the savings derived from this legislation to directly help the physicians and other health care providers who have been on the front lines treating COVID-19 patients. As you know, in addition to the stress and danger they continue to face each day as this pandemic continues, beginning January 1, emergency physicians will undergo a six percent cut in Medicare reimbursement. This will only stress an already strained health care safety net, and will lead to long-term damage to patient access to emergency care, especially in rural and underserved communities.

Thank you again for your hard work on this critical issue, and we look forward to working with you as we continue to serve our patients and their best interests. While there are refinements we'd like to see, we believe the "No Surprises Act" represents a significant step toward developing a meaningful, equitable solution to reimbursement disputes between emergency physicians and health insurers that will protect patients and keep them out of the middle.

Sincerely,

Mark Rosenberg, DO, MBA, FACEP
ACEP President