AMERICAN ASSOCIATION OF ORTHOPAEDIC SURGEONS

December 17, 2020

The Honorable Mitch McConnell
Majority Leader
United States Senate
Washington, DC 20515

The Honorable Nancy Pelosi
Speaker
United States House of Representatives
Washington, DC 20515

The Honorable Charles Schumer
Minority Leader
United States Senate
Washington, DC 20515

The Honorable Kevin McCarthy
Minority Leader
United States House of Representatives
Washington, DC 20515

Dear Leader McConnell, Speaker Pelosi, Leader Schumer and Leader McCarthy,

On behalf of the American Association of Orthopaedic Surgeons, I'm writing to provide comments and suggestions for improvements to the "No Surprises Act", legislation to end surprise medical bills for patients. Since the beginning of this process, AAOS has been consistently engaged with Congress to share our principles and find a solution that protects patients while instituting a fair independent dispute resolution (IDR) process for negotiation of disputed bills between physicians and insurers.

Orthopaedic surgeons believe that any successful solution to surprise medical billing must meet the following requirements:

- Hold patients harmless: A patient receiving emergency services from an out-network provider should be liable only for the amount they would have been charged in-network.
- Use of the median in-network rate is problematic: In order for an IDR process to be fair, it must rely on multiple factors weighted evenly and not just the median in-network rate of a single narrow network insurer. Physicians must be able to submit prior-contracting history and any other data they deem relevant for consideration by fair arbiters.
- Create an accessible, effective IDR process: Barriers like monetary thresholds and "cooling-off" periods only reduce access to IDR and encourage insurers to keep physicians out-of-network.
- Require transparency from insurers: Insurance companies should be responsible for keeping accurate records of physician's network status and be held liable if a patient was informed incorrectly that a provider was in-network.

AAOS recognizes and thanks Congressional negotiators for the significant progress made in the "No Surprises Act" to move the legislation closer to the above principles. These changes include the use of an IDR process instead of a government benchmark, the removal of the median-in-network rate as a mandatory interim payment, the removal of a dollar amount threshold for access to IDR, the inclusion of important IDR factors like prior contracting history at an equal weight to the median in-network rate, and key transparency provisions for insurers including for keeping accurate database records.

The resulting legislation is not perfect but significantly improved from earlier versions. However, AAOS would like to suggest several improvements to help avoid unintended negative impacts of the legislation to patients and physicians, especially as the nation continues to face the COVID-19 pandemic. These include:

- Reducing the burden to physicians by eliminating or lessening the impact of the 90-day waiting period following IDR. While AAOS appreciates that physicians have the ability to batch claims occurring during the waiting period and take them to IDR following the 90 days, we are concerned that smaller rural practices may have difficulty not receiving payment for that period. It is critical that the IDR process be accessible by all in order to ensure that it properly incentivizes parties to come together and build robust networks.
- Including an interim Government Accountability Office (GAO) study to better assess the impact of any wait period on the ability of smaller practices to access the IDR process. The current study, while helpful, will take place in 4 years, which may not be soon enough to provide information to fix any deficiencies before serious damage is done.
- Allow physicians more time to file for IDR. The current legislation only contains 2 calendar days for the filing process, which may fall over a weekend. In order to ensure access and avoid undue administrative burden this period should be extended to 5 business days.
- Exclude public rates like that for Medicare, Medicaid, and Worker's Compensation plans from consideration by the IDR entity. These rates have no connection to local market rates or physician costs, and therefore do not assist the IDR entity in understanding the value of a fair payment rate.
- Consider ensuring that the median in-network rate considered by the IDR entity is based on the rate for all local health plans, and not just the products of the insurer in question. This will help the IDR entity understand whether the health plan is an outlier in all their products.

Acknowledging again the important progress that has been made, AAOS asks that Congress continue to work to improve this impactful legislation. Especially during the COVID-19 pandemic, it is vital that Congress not disadvantage physicians in practices around the country delivering needed care to patients.

Sincerely,

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