



AMERICAN ACADEMY OF
ORTHOPAEDIC SURGEONS

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July 11, 2019

Chairwoman Anna Eshoo
Energy and Commerce Committee
Subcommittee on Health
202 Cannon House Office Building
Washington, DC 20515

Ranking Member Michael Burgess, MD
Energy and Commerce Committee
Subcommittee on Health
2161 Rayburn House Office Building
Washington, DC 20515

Chairwoman Eshoo and Ranking Member Burgess,

As the Energy and Commerce Subcommittee on Health continues to examine the issue of unexpected out-of-network medical bills, the American Association of Orthopaedic Surgeons (AAOS) would like to offer a statement regarding this important issue. On behalf of the 34,000 orthopaedic surgeons and residents represented by the AAOS, we thank the Subcommittee for its continued interest and commitment to finding a solution which avoids negative long-term consequences to patients, physicians, and the health care system as a whole.

Patient Protections

Our membership is dedicated to providing high-quality care to patients, whom the AAOS believes must be held harmless and removed from the middle of medical billing disputes. This must be an essential component of any solution addressing unexpected bills resulting from out-of-network emergency care. Insurance plans should reimburse providers directly and hold patients responsible only for the amount they would have paid in-network.

The AAOS believes that in nonemergent situations, balance billing should be permitted if the patient is adequately informed about the likelihood of out-of-network care. The patient should have every opportunity to seek care from their preferred provider to preserve choice and competition.

Consequences of Using Benchmarks

As multiple congressional committees and legislative proposals attempt to address unexpected out-of-network surprise medical bills, the AAOS has carefully examined the long-term implications of these proposed solutions. We would specifically like to call attention to proposals utilizing benchmarking to median in-network rates as a mechanism for resolving out-of-network payment disputes. This approach would result in an unprecedented transfer of market power to insurers by sanctioning government mandated price-setting.

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The AAOS cautions Congress against the economic viability of such an approach—even if rates are tied to the Consumer Price Index for All Urban Consumers (CPI-U) as suggested in the “No Surprises Act.” The CPI-U is calculated with a 3-year lag in considering new technology and therefore can’t keep up with dynamic medical costs or innovation. Consumer behavior, technology, and the health care market can change significantly in that time. Like any benchmark, it would threaten essential patient access during a time when choice and competition are increasingly limited.

Additionally, the AAOS has significant concern that federal benchmarks will result in the continued consolidation of the health care marketplace. Increased insurer leverage within the contract negotiation process has the potential to force providers to choose between accepting the median in-network rate or leaving the network entirely. The resulting narrow network gaps would only worsen access issues for patients, particularly for those in rural or underserved areas.

Arbitration is the best approach to solve these disputes in an independent, unbiased, and affordable manner. This model has been proven in the state of New York and has successfully reduced out-of-network bills, stabilized premiums, and protected patients.

Resolving Disputes Through Arbitration

The AAOS urges the Subcommittee to amend any legislative proposal attempting to address unexpected out-of-network medical bills to include an Independent Dispute Resolution (IDR) process, namely arbitration, as a part of its approach. Arbitration is the only model that has proven to effectively reduce the number of out-of-network bills while maintaining a fair playing field between physicians and insurers. It is also the only approach that fixes unexpected out-of-network medical bills without negatively impacting the economics of the health care market.

We have consistently pointed to New York State as an example of the success and viability of “baseball style” arbitration, which it has effectively employed since 2015. Under this model, patients are immediately taken out of the negotiation process and held harmless. The physician and insurer submit their best offers to an independent, third-party arbiter who then consults an independent database to determine the appropriate rate. The AAOS sees this approach as a positive alternative to federally benchmarking payment to median in-network rates.

The use of an independent database allows the arbiter to consider financial data, such as the usual and customary cost of services provided, and any “gross disparities” existing in the fee charged by the physician versus those similarly qualified in that region. More importantly, it provides arbiters additional context surrounding the individual medical case itself such as the experience of the physician, special expertise required to perform the case, patient comorbidities, and the circumstances and complexity of the case.

Almost immediately following passage of the New York law, there was a marked reduction in out-of-network billing in the state, premiums remained stable, and patient access was

maintained. Any legislation that attempts to address the issue of unexpected out-of-network medical billing without arbitration is missing a critical component and should be amended to include an IDR process before it continues towards congressional passage.

Conclusion

The AAOS thanks the subcommittee for its attention to this issue and urges you to consider solutions for unexpected out-of-network bills that focus on both protecting the patient and setting up a process for fair payment. This can only be done without benchmarking and with an IDR to ensure fair dispute resolution for patients, physicians and insurers.

Please contact Madeline Kroll in the AAOS Office of Government Relations at kroll@aaos.org or 202-548-4144 with any questions or if the AAOS can further serve as a resource to you.

Sincerely,

A handwritten signature in black ink, appearing to read "Wilford Gibson". The signature is written in a cursive, somewhat stylized font.

Wilford Gibson, MD
Chair, Council on Advocacy
American Association of Orthopaedic Surgeons