December 5, 2019

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

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

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

On behalf of the more than 82,000 members of the American College of Surgeons (ACS), I write to you as Congress considers proposals to address surprise medical billing. The ACS continues to support efforts to prevent patients from receiving surprise medical bills and believes patients should be kept out of the middle of disputes between insurers and physicians. However, Congress should not enact bad policy in order to pay for other health care programs. The ACS remains opposed to utilizing insurer-dictated federal payment rate setting as a go-around to addressing the root cause of surprise medical billing. The ACS believes that a comprehensive solution should avoid the long-term consequences of setting payment benchmarks, provide a fair and accessible independent dispute resolution process, increase the transparency of insurance plans, address network adequacy, and level the playing field between physicians and insurers.

Oppose Rate Setting

While it is important that Congress find a solution to protect patients from surprise medical bills, the ACS opposes any solution which uses a payment benchmark based on negotiated in-network rates (median or mean) or a percentage of Medicare to pay for out-of-network care. Setting the benchmark at the median or mean in-network payment rate will expand the disproportionate power that health plans have over physicians, leaving them with no incentive to negotiate an adequate in-network payment rate. Instead, the ACS supports a commercially reasonable interim payment with the ability to appeal an insufficient payment to an independent dispute resolution (IDR) entity.
Accessible Independent Dispute Resolution

A solution to the issue of surprise medical bills must strike a careful balance, allowing physicians and insurers to negotiate a final payment through a fair and accessible IDR process, independent of patient involvement. This process should be a “baseball style” approach and allow the arbiter to review a variety of factors when making their determination.

IDR eligibility should not be restricted to claims above a specific dollar amount or “threshold.” If a threshold must be used, it should be set at a level that is realistic in the context of the distribution and range of real-world claims and payments and allow for “batching” of claims that involve an identical plan or issuer and physicians for the same or similar procedures. The $1,250 threshold included in the Reauthorizing and Extending America’s Community Health (REACH) Act, H.R. 2328, is not realistic.

There seems to be consensus around certain criteria an IDR entity can consider. While current contracted rates are one factor, an IDR entity must also be able to take into account other economic data, such as previous contracting history.

The ACS has significant concerns with advancing a sweeping solution that will have unintended consequences on the health care system as a means to pay for other expiring health care programs. Accepting a federally mandated benchmarked rate or using rate setting to resolve the issue of surprise billing could have a striking effect on all physician payment. We encourage you to consider legislation that protects patients from surprise medical bills, promotes access to appropriate medical care, and encourages insurers to negotiate in good faith with physicians to establish adequate provider networks and fair remuneration.

Sincerely,

David B. Hoyt, MD, FACS
Executive Director