February 12, 2020

The Honorable Richard Neal, Chair
Committee on Ways and Means
U.S. House of Representatives
1120 Longworth House Office Building
Washington, DC 20515

The Honorable Kevin Brady,
Ranking Member
Committee on Ways and Means
U.S. House of Representatives
1139 Longworth House Office Building
Washington, DC 20515

Dear Chairman Neal and Ranking Member Brady:

On behalf of the 82,000 members of the American College of Surgeons (ACS), I write to you regarding the bipartisan Consumer Protections Against Surprise Medical Bills Act of 2020. The ACS continues to support efforts to prevent patients from receiving surprise medical bills. In reviewing the legislation, it is clear the Committee considered feedback from all stakeholders, and we thank the Committee for its even-handed approach. While some areas still need to be addressed, the ACS is appreciative of how the Committee approached the following topics:

**No Federal Rate Setting in the Initial Payment**

Unlike the other surprise billing legislation, the Committee’s legislation does not rely on a federally set benchmark payment rate as the initial payment. As we have stated previously, setting an initial payment benchmark at the median in-network rate will expand the disproportionate power that health plans have over physicians and will likely result in major negative consequences. We thank the Committee for not including such a payment at the initial stage.

**Accessible Dispute Resolution Process**

The ACS appreciates that the legislation creates a mediation process that is attainable for a physician when the insurer’s payment is not reasonable. Other proposals have set thresholds at an excessive amount, rendering the process out of reach for most physicians.
Burden Reduction through Bundling of Claims

We thank the Committee for allowing physicians to bundle claims for the same or similar service under the same insurance provider, which helps to maximize administrative efficiency and reduces burden on all parties involved in the mediation process.

Ensuring Health Plan Transparency

The ACS has long advocated that proposed solutions must include increased transparency for insurers, requiring them to accurately update their provider directories on a regular basis and make them readily available. In addition, insurers must provide greater transparency with regards to deductibles and required cost-sharing amounts for both in-network and out-of-network care so that patients can make informed decisions when they are able to choose who will provide their care. This legislation makes important strides in reaching the goal of more transparent health plan information.

Areas of Concern

While the legislation is a good step forward, we look forward to working with the Committee to address some provisions of concern:

Strengthening the Fairness of the Mediation

Within the mediation process, since the median in-network rate is the only consideration listed, the ACS is concerned that it will become the de facto payment rate. We encourage the Committee to list for consideration all in-network rates for a specific item or service as well as previous contract history, complexity of care, level of training, education, experience, outcomes and quality metrics of the physician providing the service, as well as individual patient characteristics. We believe this can be accomplished without the mediation entity being limited to those considerations.
Over-disclosure of Physician Reimbursement Rates

The ACS has concerns with physicians being required to disclose their median of the total amount of reimbursement in the open negotiation process. This will be excessively burdensome on physicians, particularly those in small practices. Further, allowing insurers access to that data will give them more leverage in future contract negotiations, potentially driving down physician payment for both in and out-of-network care.

Ensuring Payment in a Timely Manner

We believe the legislation needs further clarity on the timing of the insurer’s initial payment. The ACS suggests changing the insurer’s “response” to “payment” so that providers are not left without a timely payment for services rendered. Many practices do not have the financial stability to wait for the mediation process to complete before receiving payment.

We appreciate the Committee’s efforts to create a more equitable process and look forward to our continued work together to ensure this issue is addressed. Thank you for your leadership on this issue.

Sincerely,

David B. Hoyt, MD, FACS
Executive Director