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October 10, 2018

The Honorable Bill Cassidy, MD  
United States Senate  
520 Hart Senate Office Building  
Washington, D.C. 20510

Dear Senator Cassidy:

On behalf of the more than 80,000 members of the American College of Surgeons (ACS), I would like to thank you for the opportunity to provide feedback on the *Protecting Patients from Surprise Medical Bills Act* draft legislation. As you may know, the ACS was founded in 1913 to improve the quality of care for surgical patients by setting high standards for surgical education and practice, and we look forward to working with the Bipartisan Price Transparency Initiative Work Group to achieve appropriate transparency regarding medical billing practices.

In reviewing any legislation related to this important topic, the ACS refers to our key principles related to billing by out-of-network providers. We have made reference to these principles below.

### ACS Principles Related to Billing By Out of Network Providers

*Looking out for patient care is our highest priority*

#### Network Adequacy and Narrow Networks

Surgeons are being excluded from health insurance networks for a variety of reasons, including poor contract offerings that are not negotiable and cuts to reimbursement, all while practice costs are increasing. Any legislation related to billing by out-of-network physicians must place requirements on insurers to provide an adequate provider network and also provide patients with an up-to-date list of in-network providers.

While we recognize the need to protect patients and their families from unexpected medical bills, the ACS believes that this should be achieved through comprehensive legislation addressing the underlying issue of network adequacy. Many patients struggle to understand the complexities of modern insurance products. As such, the shock a patient experiences is often due less to the bill they receive than to their learning of gaps in their insurance coverage. This is not surprising, given that efforts to reduce growth in health spending have resulted in increasingly restrictive rules over

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time, and have left patients on the hook for greater portions of their health care costs. Consolidation and tough negotiating tactics between insurers and providers have also resulted in narrower networks with less flexibility and choice for patients in many areas of the country.

Given these factors, ACS proposes that legislation addressing out-of-network medical bills must also focus on root causes, including network adequacy. Many areas in the United States now have narrow, inadequate networks—deficient in specialists and other key health care providers. Thus, many patients unknowingly receive out-of-network care, and subsequent charges, after receiving treatment at an in-network facility which is overseen by in-network providers. We believe that addressing unexpected medical bills, without considering the underlying problem of network adequacy, will likely fail to protect patients from surprise medical bills.

#### **Billing for Emergency Care by an Out-of-Network Provider**

In an emergency situation, in which a patient receives care from an out-of-network physician or at an out-of-network facility, the patient should never be responsible for more than the amount that he or she would have paid to an in-network physician or in-network facility. Also, the burden should not be on the patient or their family to determine whether a provider is in-network or out-of-network. Additionally, in a trauma situation, there may not be options for in-network providers, depending on the patient's level of traumatic injury and where the incident occurred.

#### **Treatment for a Patient Following Stabilization**

Once a patient is stable, he or she should be provided with full, written disclosure explaining that future treatment offered by an out-of-network physician may result in higher costs. In addition, the ACS believes that a specific, good faith cost-estimate should be provided to the patient prior to receiving out-of-network treatment, as well as additional information about the option of being referred to an in-network facility or physician. Finally, a physician should be consulted as to whether a patient is capable of making an informed decision regarding his or her future care, and criteria for safe transfer should be made by professional organizations like the American College of Surgeons. This is critical given that the decision to transfer facilitates may significantly impact cost, availability of treatment options, quality of care available, as well as the overall outcome of care.

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### **Planned Treatment by an Out-of-Network Physician**

If a patient knowingly seeks care from an out-of-network physician, the ACS believes that the government should not mandate what the physician may charge and no limits should be put in place regarding balance billing.

### **Comments on the Draft Legislation**

#### **Payment Rates**

The proposed bill references using a payment rate of “the greater of the median in-network rate negotiated by health plans and participating providers, or 125 percent of the “average allowed amount” for all private health plans for the services provided by a provider in the same or similar specialty and provided in the same geographical area. We believe that these options are too limiting and will have a negative effect on the larger health care system, and we would like to work with you to determine a fair and acceptable level.

#### **Disclosures**

The bill requires that once an emergency patient is stabilized, he or she must be provided with information about the potential for higher cost-sharing if services are performed by an out-of-network provider or facility. In addition, the bill mandates that the patient must sign a written acknowledgement regarding the possibility of increased costs in advance of receiving any further services. The ACS supports the disclosure requirements but believes that the disclosure notice should include a good faith cost estimate for the patient if they chose to receive care by out-of-network provider.

Using stabilization of a patient as the standard for when protections cease to apply may not be ideal. Even though a patient may be medically “stable” an individual (or their representative) emerging from a traumatic event may still not be in a position to make rational decisions about their care. We must ensure that patients who, due to situations beyond their control, cannot be deemed competent or capable of making important decisions related to their physical and financial health and wellbeing are protected. Similarly, decisions on appropriate safety of transfer should be made by professional organizations, and not by payors.

#### **Study on Effects of the Legislation**

Finally, ACS appreciates the portion of the bill instructing the Secretary of Health and Human Services to conduct a comprehensive study of the legislation and issue a public report that includes recommendations to Congress regarding the impact it would have on cost-sharing, patient access to quality health care, the price of

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insurance premiums, changes in overall health care costs, the use of emergency rooms, access to new and improved drugs and technology, and the adequacy of insurance networks. This type of report is critical to ensuring that quality of care is not adversely affected.

In conclusion, the ACS appreciates the opportunity to provide comments on this draft legislation, and remains committed to working with your office, the Bipartisan Price Transparency Initiative Work Group, and Congress to address the problem of network adequacy with the overall goal of empowering patients, improving the quality of health care, and lowering health care costs. The ACS encourages Congress to hold hearings on this important and complicated topic before moving forward with any legislation. If you would like to further discuss any of the concepts included in this letter, please contact Mark Lukaszewski, at [mlukaszewski@facs.org](mailto:mlukaszewski@facs.org) or at (202) 672-1509.

Sincerely,

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cc: Hon. Michael Bennet, United States Senator  
Hon. Charles Grassley, United States Senator  
Hon. Tom Carper, United States Senator  
Hon. Todd Young, United States Senator  
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