CALIFORNIA MEDICAL ASSOCIATION

SURPRISE MEDICAL BILLS
PHYSICIAN-ONLY BACKGROUND INFORMATION
Confidential – Do not share with your Members of Congress

The federal surprise medical billing legislation only applies to the self-funded employer ERISA plans that are regulated by the federal government. Medicare already bans balance billing. None of the bills would impact insurers and plans regulated at the state level. The federal bills also apply to physicians and hospitals.

U.S. Senate: The Senate HELP Committee recently passed legislation will full bipartisan support that includes a provision on surprise billing. It protects patients from surprise medical bills and pays out-of-network physicians at the median of in-network rates. It does not include network adequacy requirements, a transparent, independent database of rates, or a dispute resolution process. The AMA, all of the impacted national specialty societies and all of the state medical associations opposed the bill. Since its passage, 12 Senators have placed "Holds" on the legislation so that it cannot move to the Senate floor for a vote. There are on-going negotiations to improve the bill.

U.S. House of Representatives: There are three committees with jurisdiction over this issue in the House - Energy Commerce, Ways and Means, and Education and Labor. Physician Congressmen Raul Ruiz, MD (D-CA) and Phil Roe, MD (R-TN) have introduced legislation that is modeled after the proven successful New York law. All of organized medicine is supporting H.R. 3502, the Ruiz-Roe bill. However, the Energy Commerce Committee passed a bipartisan bill that protects patients but only pays out-of-network physicians the median of in-network rates. It was nearly identical to the Senate HELP Committee bill. All of organized medicine opposed the Energy Commerce bill and with our physician champions on the Committee (Raul Ruiz, MD (D-CA) and Larry Buschon, MD (R-IN)), we were able to win a unanimous amendment to include the New York baseball arbitration process. While we still opposed the underlying bill, the inclusion of arbitration is a huge step in the right direction and ensures the concept is on the table for future discussion. We thanked our Energy Commerce Committee members for supporting the compromise. The Ways and Means Committee and the Education and Labor Committees will develop their own surprise billing legislation in September. These committees have said they plan to be more deliberative in developing a solution that does not cause the unintended consequences we have experienced in California.

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CMA California Perspective: CMA has been working to warn Congress of the unintended consequences of California's surprise billing laws. Insurers across the state are cancelling long-standing contracts with physician groups (largely anesthesiologists) or imposing 25-45% payment cuts. The insurers have decided they don't need to contract with physicians because they can just pay the low (AB 72) rate that is in the law (the greater of 125% of Medicare or the average contracted rate). Because of the law, insurer networks are diminishing and access to care is in serious jeopardy for not only in-network care but for emergency physicians, and on-call surgeons, anesthesiologist, radiologists who care for patients in emergencies. If on-call physicians no longer have contracts and will only be paid the very low rate in the law, they can no longer afford to care for patients in the middle of the night. These federal bills will have a long-lasting and profound impact on access to care in California and across the nation. It is essential that you review the CMA letter to the Energy Commerce Committee attached. It provides specific California examples.

Proven New York Model/How it Works: Based on the difficult experience with California's law, all of organized medicine is supporting the proven New York Model. First, it protects patients from surprise bills. Next, it requires that insurers pay out-of-network physicians a "commercially reasonable rate." If the physician objects or the insurer objects, they can take the case to arbitration. In baseball arbitration, the arbiter can only select the physician's proposed charge or the insurer's proposed payment and the loser pays. There is no negotiation. It is done on-line, within 30 days and only costs an average of $300. Because the arbiter can only pick one number or the other, it forces both sides to submit reasonable rates. But very few cases are going to arbitration. Of the 7.5 million emergency department claims, only 849 have even gone to arbitration. Both sides have been incentivized to work out their disputes. And final decisions have been split evenly between insurers and physicians. The arbiter can apply a long list of criteria in making a final decision, including the complexity of the case, a physician's experience, and a benchmark payment rate of the 80th percentile of physician billed charges. The arbiter can review a transparent, independent database (FAIR Health) to look at all of the charges. FAIR Health tosses out the outlier charges so the only charges left in the database are the "reasonable middle."

According to recent reports from Georgetown University and New York State, networks are stable, insurers and physicians are contracting and working out their differences. Arbitration is relatively inexpensive. Physician billed charges have come down by 13%. And the premiums in New York are going up half as fast as the national average. In fact, not one insurer listed the surprise billing law as a reason for proposed premium rate hikes. The main criticism of New York is the high benchmark payment rate of the 80th percentile of billed charges. While the 80th percentile in New York may be a little high, the average contracted rate in CA is too low and it is not working! CMA is exploring compromise benchmark rates.

Talking to Members of Congress: It is crucial that you begin your discussion by stating that CMA supports protecting patients from surprise medical bills. Patients should not be forced to endure the financial and emotional insecurity of a surprise bill. Moreover, patients should not be afraid to go to the doctor out of fear of a surprise bill. You should also say that you believe that the fundamental cause was the insurers narrowing their networks and refusing to contract with physicians. However, now there are a handful of physicians sending outrageous bills and abusing the system, and patients must be protected. We need to own some of the problem. It will help your conversation with your Representative.

Then you can say that there is widespread agreement that patients need to be protected. But there is disagreement over a framework to incent insurers and physicians to contract and resolve billing disputes. CMA believes that the solution should not threaten the viability of ALL physician practices or jeopardize patient access to in-network and emergency and on-call physicians treating patients in emergencies.

Meetings with Republican Members of Congress: It is important to emphasize that the Congressional HELP and Energy Commerce committee bills are government price-fixing. They set a government payment rate for private insurance. In what other industry has Congress done that? This approach is akin to Medicare For All. This legislation could drive many physicians to support Medicare For All. If Congress sets private rates at the median of in-network rates, many physicians would probably move to support a Medicare system that is less hassle than the private sector. Some Republican members have also criticized "arbitration" so we are calling it dispute resolution. They have been told by the insurers that arbitration costs $10,000 per case which is false. Talk through the New York dispute resolution process. It is certainly cheaper than handing over the system to litigation and the trial lawyers. And finally, most of California's Republican Members represent rural areas. The Energy Commerce bill would harm access to care in rural areas. No longer would rural physicians have private contracts that help cover the payer mix of Medi-Cal and Medicare. It would exacerbate physician shortages.

Meetings with Democratic Members of Congress: It is important to emphasize the long-term impact on patient access to care if the current legislation is enacted. You should discuss the fragile nature of the on-call panels in your area and what could happen to access to care if these bills pass. BUT do not get into a detailed discussion about rates, hospital politics, IPA politics, or delegated payers. It confuses the issue. Stick to the access to care arguments. Also emphasize the need for adequate networks. These bills hand over all control to the for-profit ERISA plans who have already been bad actors. Sell the success of the New York model, particularly on cost and access.

Cost Issues: Members of Congress need to understand that if the Senate or Energy Commerce Committee bills pass, many physicians will be driven to seek financial help to maintain their practice viability from hospitals or other investor owned medical groups. This continued consolidation of the market will increase health care costs.

Final thoughts: Congressional opinion is turning in Congress to favor physicians. That is because of the physician grassroots. The bad stories in the media have been difficult to overcome and this is a complicated issue. The insurance industry is well-funded and aggressive and are extremely critical of using the 80th percentile benchmark because it will increase costs. They are also opposed to any kind of arbitration or independent dispute resolution. Patients are concerned that the solution could increase health care costs so keep that in mind. Keep up the fight. We are starting to change opinions. **And keep your message SIMPLE!**

- Protect Patients from Surprise Medical Bills.
- Incent Insurers and Physicians to Contract and Resolve Disputes with a fair process to resolve disputes and an appropriate market-based payment benchmark (not in-network rates without the benefit of a contract).
- Access to care for patients must be preserved - both for in-network care and with emergency physicians and on-call physician specialists who care for patients in emergencies.
- **Cosponsor Ruiz-Roe H.R. 3502 "Protecting People from Surprise Medical Bills" based on the proven New York model.**

Important Representatives on the Committees of Jurisdiction:
Leadership: Speaker Pelosi (D-SF); Minority Leader Kevin McCarthy (R-Kern)
E&C Committee: Eshoo (D-Palo Alto), Matsui (D-Sacramento), McNerney (D-San Joaquin), Cardenas (D-LA), Ruiz (D-Riverside), Peters (D-San Diego), Barragan (D-LA).
W&M Committee: Thompson (D-Napa/Solano), Nunes (R-Tulare), Sanchez (D-LA), Chu (D-LA), Panetta (D-Monterey/Santa Cruz), Gomez (D-LA)
Ed Labor Committee: Davis (D-San Diego), Takano (D-Riverside), DeSaulnier (D-Contra Costa), Harder (D-Stanislaus).

H.R. 3502(Ruiz)California Cosponsors: Bera, Cardenas, Cisneros, Cox, DeSaulnier, Huffman, Peters, Rouda

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