December 17, 2020

Hon. Mitch McConnell
Majority Leader
U.S. Senate
Washington, D.C. 20510

Hon. Charles Schumer
Minority Leader
U.S. Senate
Washington, D.C. 20510

Hon. Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, D.C. 20515

Hon. Kevin McCarthy
Minority Leader
U.S. House of Representatives
Washington, D.C. 20515

Re: Modifications to – H.R. 3630 - No Surprises Act

The American College of Allergy, Asthma and Immunology (ACAAI) and the ACAAI Advocacy Council, representing more than 6,000 practicing allergists, immunologists and health care professionals, appreciates the inclusion of many improvements to the No Surprises Act. However, ACAAI does not support the bill in its current form and we believe significant modifications are needed.

ACAAI supports the bill's patient protection provisions, which are consistent with previous legislative proposals on this issue.

We echo the concerns expressed by the American Medical Association and other professional societies for healthcare providers. More specifically, we disagree with the bill's provisions regarding the reimbursement rate for unexpected out-of-network (OON) "surprise" medical billing scenarios, as well as other provisions that apply more broadly across the healthcare system.

In general, the legislation fails to adequately address many of the reasons why these out-of-network scenarios occur. Overly narrow health insurance networks are one of the most egregious reasons why providers may be out-of-network. Health plans either do not accept new providers into their small networks or they offer unreasonable terms for network participation which discourage providers from participating. Patients can also experience an unexpected out-of-network bill if their health plan maintains an inaccurate directory of in-network providers or if health plans deny coverage for a service.

While the bill primarily applies to scenarios that occur in the hospital setting, there are scenarios where the bill would apply the patient protections to the physician office setting. Sec. 116 describes how patients are protected from OON bills they receive due to inaccurate health plan provider directories. We are glad the bill would require health plans to maintain accurate provider directories.

However, the bill does not specify that health plans must also cover the out-of-network service and forces a health plan's cost-sharing requirements on a non-contracted practice. Congress must hold plans more accountable for inaccurate directories.

85 West Algonquin Road, Suite 550, Arlington Heights, IL 60005
Phone: (847) 427-1200 | Fax: (847) 427-9656
www.acaai.org

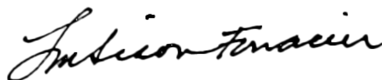
We also take issue with elements of the process for resolving OON reimbursement disputes through an independent dispute resolution (IDR) process. Though limited to hospital settings in this bill, we could easily see future legislation expand this concept throughout the entire healthcare system. For this reason, we proactively oppose an IDR process that requires the arbiter to consider government rates for services that would otherwise be reimbursed by health plans. Government payer rates are often far below commercial rates. The IDR process is intended to identify a fair reimbursement rate. It would be incredibly unfair for an arbiter to consider a below-market government payer rate for a service that is being reimbursed by a commercial health plan.

Additionally, the bill includes barriers to the IDR process in the form of a 90-day cooling-off period and a two-day limit to request IDR after the negotiation window concludes. We urge Congress to eliminate the cooling-off period and to extend the time providers have to request IDR from two days to five days.

Finally, the No Surprises Act goes beyond protecting patients from “surprise” medical bills by including a provision to submit timely bills to patients. Sec. 117 states that patients will not have to pay a bill if they receive it 90-days after the date of visit. It also specifies that providers have 30 days to submit claims to health plans, which have 30-days to return an adjudicated claim to the provider, who then has 30 days to send a final bill to the patient. This timeline does not reflect the industry norm for commercial health plans and is far more aggressive than Medicare which allows providers up to one-year to submit claims. Sec. 117 must be changed to give providers additional time to submit claims to health plans.

Thank you for your consideration of our recommendations. Please do not hesitate to contact Bill Finerfrock (bf@capitolassociates.com) or Matt Reiter (reiterm@capitolassociates.com) if you have questions or need additional information.

Sincerely,



Luz S. Fonacier, MD, FACAAI
President
American College of Allergy, Asthma and Immunology

James M. Tracy, DO, FACAAI
Chair
ACAAI Advocacy Council