



December 17, 2020

The Honorable Nancy Pelosi
Speaker
United States House of Representatives
Washington, D.C. 20515

The Honorable Mitch McConnell
Majority Leader
United States Senate
Washington, D.C. 20510

The Honorable Kevin McCarthy
Minority Leader
United States House of Representatives
Washington, D.C. 20515

The Honorable Charles Schumer
Minority Leader
United States Senate
Washington, D.C. 20510

Dear Speaker Pelosi and Leaders McConnell, McCarthy and Schumer:

On behalf of the American Association of Oral and Maxillofacial Surgeons (AAOMS), the professional organization that represents more than 9,000 oral and maxillofacial surgeons (OMSs) in the United States, I would like to thank you for your leadership in trying to prevent surprise billing instances.

OMSs – many of whom are part of small practices – are also an integral part of hospital systems, providing emergency department coverage, serving as essential members of trauma teams throughout the country and performing complex procedures at hospitals. AAOMS supports efforts to prevent patients from being unfairly surprised by an out-of-network bill, while ensuring that providers have the opportunity to be reimbursed at a fair and reasonable rate.

AAOMS supports many provisions in the No Surprises Act – as agreed to last week by leaders of the House Ways and Means Committee, House Energy and Commerce Committee, House Education and Labor Committee and Senate Health, Education, Labor and Pensions Committee. Specifically, it does not force out-of-network providers to accept the in-network rate but relies, instead, on negotiation as well as an independent dispute resolution (IDR) arbitration process to work out payment disagreements between providers and insurers. Furthermore, the agreement requires insurers to provide payment directly to the out-of-network provider. This provision is essential as our members frequently incur situations in which the patient never forwards the insurance payment to the surgeon, thereby resulting in significant loss of payment for providing emergent care, often under extenuating circumstances.

We would like to express a few remaining concerns with the bill.

First, we would like to ensure the definition of “health care facility” cannot be expanded by the Secretary to include office-based settings as language in the current version of the agreement may allow. We agree that the specific settings mentioned in the bill – such as hospitals, critical access

hospitals, ambulatory surgical centers – are appropriate to include in the definition. Patients in these settings are often unaware of which providers will be delivering care to them and whether such providers participate with their health plan. They also may not be in a position to request treatment by an alternative provider who participates in their plan’s network. This is not the case with care provided in an office-based setting where patients are able to determine in advance whether the provider is in their network, and patients can decide whether they want to incur any additional costs by seeking treatment from an out-of-network provider.

Second, we recommend an explicit exemption from the prohibition of balance billing for referrals for patients from the emergency department to providers for office-based treatment so as not to discourage providers from taking emergency call. While the definition of “emergency services” in the bill appears to exclude such situations, an explicit exemption would remove any possible ambiguity for patients, providers and insurers.

Third, we request additional safeguards for providers be included to prevent insurers from offering artificially low payments that would force smaller practices into an arbitration process more frequently than necessary. Specifically, we recommend language requiring the insurer’s initial payment be considered the insurer’s binding offer in an IDR process or that would allow the arbiter to disfavor the insurer’s offer if an unreasonably low initial payment is made. We also support the removal of Medicare, Medicaid and Worker’s Compensation rates from being considered by the arbiter as they are not a reflection of actual costs or market rates.

Fourth, we request the inclusion of language to ease the potential administrative burdens facing small practices that need to utilize the IDR process to obtain fair and appropriate payment from insurers. Specifically, we support the inclusion of language that would explicitly allow batching during the IDR process by one practice with multiple providers and eliminate the “cooling off period” to initiate an IDR process with the same insurer. Both of these provisions would assist small practices whose providers share ongoing problems with specific insurers.

Thank you for your consideration. Please contact Jeanne Tuerk, manager of the AAOMS Department of Governmental Affairs, at 800-822-6637 or jtuerk@aaoms.org for additional information.

Sincerely,



B.D. Tiner, DDS, MD, FACS
AAOMS President