



June 10, 2019

The Honorable Lamar Alexander
Chairman, Committee on
Health, Education, Labor & Pensions
United States Senate
Washington, D.C. 20510

The Honorable Patty Murray
Ranking Member, Committee on
Health, Education, Labor & Pensions
United States Senate
Washington, D.C. 20510

Re: Draft Legislation on "Lower Health Care Costs of 2019"

Dear Chairman Alexander and Ranking Member Murray:

America's Physician Groups (APG) appreciates the opportunity to provide feedback on the Lower Health Care Costs Act of 2019, the Committee's bipartisan discussion draft legislation. We applaud the Committee's efforts in addressing this important issue.

APG is a professional association representing over 300 physician groups nation-wide. Our tagline, "Taking Responsibility for America's Health," truly represents our members' vision and efforts to improve the health of the patients and communities they serve by practicing accountable, coordinated care through value-based alternative payment models. Our members have decades of experience in value arrangements in MA, including capitation, and are pleased to serve as a resource to you and your staff as you work to strengthen and improve the program now and in the future.

APG understands the importance of and supports increasing access to healthcare by lowering costs. We would like to respectfully offer our thoughts on the "Lower Health Care Costs Act of 2019" in hopes of assisting in the betterment of our healthcare system.

Summary of APG's Comments:

Title I- Ending Surprise Medical Bills: We support ending surprise billing by prohibiting balance billing and capping the charges for all types of services in an emergency or an out-of-network ancillary care (laboratory or diagnostic) setting at an in-network facility to the in-network cost sharing amount and to median contracted charges. We also agree that hospitals must be required to provide patients with written or electronic notice when an out-of-network service or provider is to enable the patient to request an in-network option.

Title III-Improving Transparency in Health Care: We support publishing quality and claims data in fee for services models in order to better engage patients and facilitate the identification of best practices. The publication of capitation rates will not be meaningful or helpful to individual patients because those payments are population based and vary significantly based on differing benefit and coverage designs.

We do not support removing gag clauses on negotiated price information relating to capitated rates nor prohibiting an agreement between plans and providers from steering or offering incentives to encourage enrollees to stay within network providers. Using decision support to help steer patients to select the best in network physician for them is an important element of coordinated care and the performance of the alternative payment models arising across the country under MACRA. We do support the development of a national All-payer claims database that would include self-insured plans in order for providers to benchmark themselves and identify best practices.

TITLE I-ENDING SURPRISE MEDICAL BILLS:

We support the Committee's commitment to develop solutions to hold patients harmless from unexpected surprise and balance billing. APG supports the capping a patient's out of pocket obligation to in-network amounts for any out-of-network ancillary, diagnostic, and emergency services at an in-network facility. This will dramatically relieve patients' unexpected panic when receiving these types of surprise bills after emergency services. Additionally, having the cost sharing amounts count toward the plan's deductible and maximum out-of-pocket limits are positive additions to the proposed legislation.

APG urges that after stabilization for emergency services, hospitals would be responsible to provide the patient with paper or electronic notification that the facility or provider is out-of-network, the out-of-network rate, and alternative options of in-network providers that the patient can utilize. Before billing the patient, the patient must acknowledge that they understand that the out-of-network services has a different cost-sharing obligation. We agree that the notice must be in easy to read and understand format with no more than one page in length. After the patient is stabilized the out of network hospital must notify the plan and delegated group of the ER admission and make efforts to repatriate the patients back to an in network facility.

APG urges that in the instance in which an out-of-network provider or facility does not reach agreement on the appropriate charge with the plan or delegated group within 30 days, the default rate will be the "median contracted rate" of the payer as opposed to "average contracted rate" found in previous proposals. The median contracted rate in conjunction with a dispute resolution process will allow providers that believe that median is not sufficient to provide appropriate justification. We support that the methodology in determining the median contracted rate will be published through rulemaking by the Secretary within 1 year.

Under the Independent Dispute Resolution (IDR) section, the Committee has recommended that the Secretary shall establish an independent dispute resolution process between providers and plans which we support the concept. However, we do not support mandatory arbitration similar to "Baseball Style" as a method of dispute resolution. Mandatory arbitration is typically a very slow, costly, and inefficient method to resolve conflicts between plans and providers. Very few states that have passed surprise billing legislation have included it as an option. Providers should have the option to enter into the court

system if needed. We believe that the states should have the authority in designating the IDR entities and that processes should follow National Arbitration standards with fixed resolution timelines.

TITLE III-IMPROVING TRANSPARENCY IN HEALTH CARE:

We support the goal of quality and cost transparency to patients in fee for service models in order to achieve better healthcare outcomes for all Americans. Tools that allow consumers more information surrounding quality and price will better engage the patients in their care. However, many of the proposals included in this draft legislation have the potential of driving up costs and reducing quality.

Removing gag clauses on negotiated risk based or capitated price information will not further the Value based movement. In both fee for service and risk based models, the publication of proprietary rates will most likely drive up costs as providers insist on receiving higher rates received by their competitors.

Creating a Federal all-payer claims database (APCD), excluding capitated and risk based arrangements, for self-funded plans is supported by APG in order for benchmarks and ultimately best practices to be identified. The recent addition of Medicare Advantage claims data to the Medicare database has assisted our members in identifying benchmarks and best practices.

Section 302, which prohibits an agreement between plans and providers from steering or offering incentives to encourage enrollees to stay within network, is counterproductive to risk based contracts and decision support that forms the foundation of the value-based movement. As providers assume more financial risk in both public and private payer valued based contracts, it is essential that they are able to develop networks that are comprised of high-quality providers. APG does not support this section in its current language.

Conclusion:

Thank you in advance for your consideration of our comments. We look forward to a final Bill that we are sure will create a stronger healthcare system for the future, and we offer ourselves and our members as a resource to you as you continue to work to strengthen and improve healthcare for Americans. Please do not hesitate to contact me or Valinda Rutledge, SVP of Federal Affairs (vrutledge@apg.org) with any questions you may have.

Sincerely,



Donald H. Crane
President & CEO
America's Physician Groups