October 16, 2019

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
H-222 U.S. Capitol
Washington, DC 20515

The Honorable Kevin McCarthy
Republican Leader
U.S. House of Representatives
H-204 U.S. Capitol
Washington, DC 20515

Dear Speaker Pelosi and Republican Leader McCarthy:

The undersigned medical organizations remain committed to working with Congress to seek a balanced legislative solution to protect patients from unanticipated ("surprise") medical bills that can occur when gaps in health insurance coverage lead them to receive care from out-of-network physicians or other providers. We represent hundreds of thousands of practicing physicians who provide care to millions of Americans every day in a variety of practice settings. We strongly believe that, in situations where a coverage gap occurs and patients unknowingly or without a choice receive care from an out-of-network physician or other provider, patients should be held harmless for any costs above their in-network cost-sharing, and their cost-sharing should count toward deductibles and out-of-pocket maximums. Patients

heavily consolidated, which can result in artificially low payment rates and anticompetitive harms to both consumers and providers of care. We are highly concerned that the rate-setting provisions in current bills further shift marketplace leverage to health insurers at the expense of providers. As a consequence, this imbalance will likely lead to access problems for patients seeking hospital-based care from on-call specialists, as well as precipitate staffing shortages in rural areas and other underserved communities. Furthermore, according to the Congressional Budget Office, "The vast majority of health care is delivered inside patients' networks, and more than 80 percent of the estimated budgetary effects of title I [of the "Lower Health Care Costs Act" (S. 1895)] would arise from changes to in-network payment rates." In other words, in-network providers who have not contributed to the problem will bear the impact of the raa timely upfront, commercially reasonable payment for out-of-network services, and an efficient independent dispute resolution (IDR) process designed to incentivize health insurers to make a fair initial offer of payment for out-of-network care provided to their customers while 8-35 govi-i

adverse market distortions or patient access proble

The IDR process should be structured so that a ran
fair payment—such as the complexity of the servic
the service, the rate that physicians or other provid

commercial insurance data from an independent and transparent source. There is strong, compelling evidence that this approach is successfully resolving out-of-network payment disputes between health insurance companies and out-of-network providers without negatively impacting patient access to hospital-based services or increasing insurance premiums.

In an October 1, 2019 Op-Ed in the *New York Daily News*, Linda Lacewell, the Superintendent of the New York State Department of Financial Services, said that from March 15, 2015 through the end of 2018, the New York out-of-network law has saved patients more than $400 million in emergency services alone, reduced out-of-network billing in New York by 34 percent, and lowered in-nets6.4 13.2 2.7(w)-6.TJ 0 -1.1hTw (b)T

- Median in-network rates established by individual insurers are problematic because they do not rely on a known independent, transparent, and verifiable database. Insurer datasets cannot be relied on for these rates, as proven by the 2009 class action settlement against United Health Care for $300 million in which the usual, customary, and reasonable database for determining out-of-network payments operated by its subsidiary, Ingenix, was found to be inaccurate and unreliable. More recent efforts by the Georgia Department of Insurance to collect plan-reported data on mean and median contracted payment rates yielded similar inconsistencies and was abandoned.

Finally, a balanced solution requires that insurers be held accountable for addressing their own contributions to the problem. Any legislation addressing surprise billing should also establish strong, measurable, and enforceable network adequacy requirements, as well as require stronger enforcement of federal mental health and substance use disorder parity and prudent layperson laws. This is essential to ensure that insurers maintain adequate provider networks and do not force patients to go out-of-network to access care that they need.

We look forward to working with the Congress to make these refinements as the process moves forward and ensure that any final bill represents a fair, market-based approach that treats all stakeholders equally while protecting patient access to care.

Sincerely,

American Medical Association
American Academy of Allergy, Asthma & Immunology
American Academy of Dermatology Association
American Academy of Emergency Medicine
American Academy of Facial Plastic and Reconstructive Surgery
American Academy of Neurology
American Academy of Ophthalmology

The Honorable Frank Pallone, Jr., Chairman
House Committee on Energy & Commerce

The Honorable Greg Walden, Ranking Member
House Committee on Energy & Commerce

The Honorable Richard Neal, Chairman
House Committee on Ways and Means

The Honorable Kevin Brady, Ranking Member
House Committee on Ways and Means

The Honorable Bobby Scott, Chairman
Committee on Education & Labor

The Honorable Virginia Fox, Republican Leader
Committee on Education & Labor