



December 11, 2019

Via Email

The Honorable Lamar Alexander
Chairman, HELP Committee
United States Senate
Washington, DC 20510
adam_buckalew@help.senate.gov

The Honorable Frank Pallone, Jr.
Chairman, Energy & Commerce Committee
United States House of Representatives
Washington, DC 20515
Tiffany.Guarascio@mail.house.gov

The Honorable Greg Walden
Ranking Member, Energy & Commerce Committee
United States House of Representatives
Washington, DC 20515
James.Paluskiwicz@mail.house.gov

Dear Chairman Alexander, Chairman Pallone, and Ranking Member Walden:

The Emergency Department Practice Management Association (EDPMA) is a trade association representing emergency physician groups and their practice partners. **Our members handle about half of the 141 million emergency department visits in the nation each year. We are writing to explain why we oppose the parameters of your recent surprise billing agreement.**

We strongly support the ban on balance billing with appropriate replacement legislation and agree that patients should be taken out of the middle of payment disputes between insurance plans and physicians. However, the bill poses a significant threat to the patients' access to emergency care. If emergency physicians and on-call physicians are not paid at a sustainable rate, emergency departments will be staffed with fewer physicians, lines waiting for emergency care will grow, and, in some rural and vulnerable neighborhoods, emergency departments may close down. We urge you to correct some of the proposed policies that discourage sustainable reimbursement for emergency care before legislative language is released.

Independent dispute resolution (IDR) is an integral and necessary piece of any proposal to address surprise insurance gaps because it ensures that physicians can access an independent decision maker when they are paid at an unsustainable rate. **Yet, the proposal's monetary threshold – requiring that the plan's median in-network rate for the claim exceed \$750 – would ensure that almost all emergency claims are ineligible for independent dispute resolution.** Although the threshold was lowered from \$1250 to \$750, this change did not significantly impact the number of emergency claims eligible for IDR. Almost all emergency claims are reimbursed below \$750. There is no need to have any monetary threshold at all. The

cost of arbitration already acts as disincentive to using IDR unless the amount in dispute is substantial and the likelihood of winning in arbitration is high. Further, our understanding is that the Congressional Budget Office (CBO) score should not change substantially if the threshold were removed. Moreover, if there were no threshold, plans would be discouraged from underpaying the large number of low-cost visits in the emergency department and threatening access to care. If the intention is to curb abuse, the threshold must be removed.

Further, according to your staff, the new provision that prevents physicians from utilizing arbitration for similar claims for 90 days also encourages abuse by insurance companies. Once a physician proves that a plan underpays for a certain type of claim, the IDR rate should apply. Yet, the proposal apparently does exactly the opposite. It ensures that the plan can continue to pay at the unfairly low rate for the following 90 days without fear of IDR.

Moreover, the underlying payment rate of the plan's in-network rate is not a market-based measure in emergency medicine. Because federal law – the Emergency Medical Treatment and Labor Act or “EMTALA” - requires emergency physicians and on-call physicians to provide care no matter how low the plan's reimbursement rate is, emergency and on-call physicians do not have any negotiating power when in-network rates are determined. So, in-network rates for emergency care are not a reflection of market rates.

Emergency physicians provide over two-thirds of all uninsured care in the nation and over half of the care covered by Medicaid, which reimburses far below cost. It is imperative that commercial insurers reimburse emergency claims at a sustainable rate or patients will pay the price with less access to emergency care. We hope these important issues are addressed before the legislative language is finalized.

Sincerely,

A handwritten signature in cursive script that reads "Bing Pao". The signature is written in black ink and is positioned above the typed name.

Bing Pao, MD, FACEP

Chair of the Board, EDPMA