



February 11, 2020

**Via Email:**

The Honorable Richard Neal  
Chairman  
Ways and Means Committee  
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Washington, DC 20515  
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The Honorable Kevin Brady  
Ranking Member  
Ways and Means Committee  
1102 Longworth House Office Building  
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Re: HR 5826: Consumer Protections Against Surprise Medical Bills Act

Dear Chair Neal and Ranking Member Brady:

**The Emergency Department Practice Management Association applauds the framework in HR 5826, including its robust patient protections, but opposes the requirements that function as a benchmarking standard because they threaten the patients' access to timely emergency care.**

The Emergency Department Practice Management Association (EDPMA) is one of the nation's largest professional physician trade associations focused on the delivery of high-quality, cost-effective care in the emergency department. EDPMA's membership includes emergency medicine physician groups, as well as billing, coding, and other professional support organizations that assist healthcare providers in our nation's emergency departments. **Together, EDPMA's members deliver (or directly support) health care for about half of the 146 million patients that visit U.S. emergency departments each year.**

Thank you for proposing the Consumer Protections Against Surprise Medical Bills Act (HR 5826) which protects patients from surprise bills and ensures that providers have access to dispute resolution when insurers reimburse at unsustainable rates. We strongly agree that the focus of the bill should be on protecting patients – including protecting their access to timely emergency care -- and that there should be no monetary threshold to access dispute resolution. **HR 5826 is a significant improvement upon proposals that have been considered by other Congressional committees and we would support passage of it with one important change.**

**We urge you to remove the requirement that the mediator must consider the plan's median contracted rate. If this one factor is elevated to the level of the one "required" factor, we are concerned that, in practice, it will become the only factor that has a major impact on the mediator's decision. It would be tantamount to a payment standard. Setting reimbursement at the plan's median contracted rate threatens to lead to unsustainable**

**reimbursement, limit access to timely emergency care and cause some emergency departments to close down. Emergency department closures are most likely in rural and vulnerable neighborhoods where we are already experiencing a record number of hospital closures. Over 110 rural hospitals have closed since 2010.**

Insurance plans can easily manipulate contracted rates for emergency care. This is because federal law -- the Emergency Medical Treatment and Labor Act (EMTALA) -- requires that hospitals evaluate and stabilize all patients who visit the emergency department no matter how little the insurance company reimburses the provider. Because patients cannot be turned away, insurance plans can offer “take it or leave it” in-network rates for emergency care. If out-of-network reimbursement is also set at the plan’s median contracted rate, emergency physicians will be paid at that “take it or leave it” rate whether or not the provider chooses to contract with the plan and whether or not that rate is sustainable.

Further, requiring the mediator to consider the plan’s median contracted rate would encourage insurance plans to cancel the 50% of contracts that are above the median contracted rate. This would drive down the median the following year and quickly result in a spiral downward to unsustainably low reimbursement. Due to EMTALA (which creates a unique relationship between insurers and emergency providers), there are no market forces that would force in-network rates back toward market rates. So, the proposal threatens to lead to reduced access to emergency care and possible closure of some emergency departments. Although the bill protects against this happening in the first few years, the bill would allow a new potentially manipulated median to take effect in either 2023 or 2027 (it is unclear whether the 2019 median is the benchmark between 2023 and 2027).

Moreover, a payment standard set at the individual plan’s reimbursement rate would reward “bad actors”, rather than encourage a sustainable health care environment. Insurance plans that are currently reimbursing at unsustainably low rates would be able to continue to do so in the future with impunity. They would be assured a competitive advantage over insurers who are currently reimbursing at sustainable rates.

We encourage you, instead, to use the independent dispute resolution (IDR) factors included in Senator Cassidy’s surprise billing proposal, which have gained considerable support since they were proposed. No one factor should be given more weight than the others. The mediator should determine which factors are the most relevant in each case.

Additionally, the definition of the median in-network rate should be improved. The plan should not be able to unilaterally determine or manipulate the standard. The standard should be based on payments from all plans in the relevant geographic area. The standard should reference an independent unbiased claims database, such as FairHealth. Furthermore, to prevent manipulation, the standard should be anchored to a reasonable date in the past and adjusted going forward for inflation. The current proposal does tie it to the past for a few years (it is unclear whether the 2019 median is used through 2023 or 2027), but it then allows for a new median (which may have been manipulated) to be used in a future years. We are concerned that

insurance companies could use this as an opportunity to unilaterally manipulate payment rates, rather than respond in a manner that sustains patient's access to high quality care.

Again, thank you for drafting a bill that is focused on protecting patients. We look forward to working with you to make key and necessary improvements to this proposal as it moves through the legislative process. If you have any questions, please do not hesitate to contact Elizabeth Munding, Executive Director of EDPMA, at [emunding@edpma.org](mailto:emunding@edpma.org).

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 and title.

Bing Pao, MD, FACEP  
Chair of the Board, EDPMA

cc Ways and Means Committee Members