June 24, 2019

The Honorable Lamar Alexander
Chair
Health, Education Labor and
Pensions Committee
SD – 428
Washington, DC 20510

The Honorable Patty Murray
Ranking Member
Health, Education, Labor and
Pensions Committee
SD - 428
Washington, DC 20510

Dear Chairman Alexander and Ranking Member Murray:

The American College of Allergy, Asthma and Immunology (College) and its Advocacy Council, representing more than 6,000 practicing allergists, immunologists and health care professionals appreciates your consideration of our following comments.

On Wednesday, June 19th, you released a DRAFT bill entitled the "Lower Health Care Costs Act" to address the concerns surrounding patient financial exposure as a result of receiving care from Out-of-Network (OON) providers. The College and Advocacy Council have significant concerns about this legislation.

Like you, we have seen, heard or read about some of the very egregious examples of patients being exposed to unreasonably high out-of-network expenses through no fault of their own. These situations deserve to be addressed.

We agree that patients who are unable to obtain care from in-network providers should be protected from unreasonable out-of-pocket expenditures. However, protecting patients from such unreasonable expenses should not be used as a pre-text to protecting health plans from negotiating fairly with those providers who are either unwilling or unable to have the opportunity to be in-network providers for a health plan.

We believe that your legislation, if adopted as proposed, will disrupt and distort the well-established negotiating process that has existed for many years between physicians and health plans. Your legislation will, we believe, incentivize health plans to demand below market payment rates as part of the physician contracting process. More importantly, such intervention by the federal government, is unnecessary to achieve the goal of protecting patients from unreasonable out-of-pocket expenditures.

Your bill would mandate that out-of-network physicians be paid at the health plan's median in-network rates. Furthermore, physicians would be prohibited from balance billing the patient in situations where the patient did not have the opportunity to choose an in-network physician. This is an example of unwarranted and heavy-handed government interference into negotiations that should occur between physicians and health plans.

Patients often find themselves being forced to obtain care from out-of-network physicians because health plans fail to contract with an adequate number of physicians. Your bill does nothing to ensure that health plans have an adequate number of physicians and hospitals in their networks.

We know that after price, the single most significant factor for patients - when choosing a health plan - is whether their physician and their hospital is in the network of the plan. Many parents with children suffering from severe allergies or asthma will specifically select a plan because their allergist is in the plan network.

All-too-often we find that health plans will offer a contract to an allergist or allergy group, get patients to select that plan and then, once the patient is locked in to that plan, drop the allergist or allergy group from the plan for no reason. This very real situation forces the family to choose to either continue seeing their allergist as an out-of-network provider (exposing them to higher costs) or switch to a new allergist who does not know the family or patient - simply to protect themselves from high out-of-network costs.

It is apparent to many in the physician community that the health plans are creating the very out-of-network problem they are now asking you to solve through legislation. Sadly, nothing in your bill would prevent or even discourage plans from continuing this "bait and switch" approach to network development. Indeed, it will only encourage them to continue to engage in this type of unscrupulous behavior.

Congress should not reward the people who created this problem in the first place.

It must be noted that the dramatic and highly inflammatory examples that have been driving this debate are the exception, not the rule. While the out-of-network/balance billing situations reported by the media are real, they are also rare. It has been our experience in the allergy/immunology specialty that physicians are willing to work with their patients – and their health plans – to ensure patients can continue to access their out-of-network physicians without being exposed to extremely high costs.

The Advocacy Council, along with many other physician organizations, believes that patients who do not have an opportunity to select an in-network provider should be protected from their plan's failure to contract with an adequate number of physicians and only be liable for what they would have paid in-network.

We also believe, however, health plans should bear some consequence for creating this situation in the first place.

As noted above, health plans will use their provider network as part of their consumer-directed marketing during open enrollment. They will often highlight the physicians and hospitals in-network to assure patients that they can continue to have access to certain providers and hospitals. Then, once the patient is locked into the plan, change the network.

Patients should not be forced to remain in a health plan if the physician or hospital they use has been removed – unless the removal is for cause.

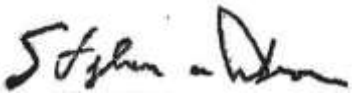
We strongly recommend you include a patient protection provision in the Lower Health Care Costs Act that would classify a change in the health plans network as a "life event" for purposes of the ACA enrollment process.

Such a designation would allow patients affected by the post lock-in change to go back into the marketplace – if they wish – and change to a health plan that does include the patient's physician and/or hospital. Allow patients to vote with their feet and move to a plan that better meets their needs.

We believe that by allowing patients to "vote with their feet" you will cause health plans to stop making these cynical mid-year changes and truly protect patients from unreasonable out-of-network charges.

We urge you to work with the provider community to amend your legislation to come up with better solutions to a very vexing problem.

Sincerely,



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