

Congress of the United States
Washington, DC 20515

May 22, 2019

The Honorable Alex Azar
Secretary
U.S. Department of Health and Human
Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

The Honorable R. Alexander Acosta
Secretary
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Joe Grogan
Assistant to the President
Director of the Domestic Policy Council
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Secretary Azar, Secretary Acosta, and Mr. Grogan:

As members of the House GOP Doctors Caucus, we commend the Administration's acknowledgment of surprise medical billing as a significant problem facing American patients, and for actively seeking solutions to this critical issue. We could not agree more with President Trump when he said, "No American mom or dad should lay awake at night worrying about the hidden fees or shocking unexpected medical bills to come."

We agree that patients should not be forced to shoulder unanticipated out-of-network costs, particularly when the patient did not choose the provider or had reasonably assumed the provider was in-network.

We further offer our strong support to adherence of the "Prudent Layperson Standard," wherein health insurance companies are required to cover emergency care visits based on the patient's *symptoms*, as opposed to a final diagnosis. For example, if a patient experiencing severe chest pain visits an emergency room, that patient should not be left with a shocking and unexpected medical bill simply because the ultimate source of their symptoms was indigestion, and not a heart attack. Lay patients, acting with prudence, should not be so drastically penalized for not knowing the cause of their symptoms.

As the Administration works with Congress to craft solutions to the out-of-network problem, we respectfully urge consideration of successful state-level models. For example, New York enacted legislation in 2014 that struck an effective balance of both protecting patients from surprise medical bills, while still preserving the ability of hospital emergency departments to

maintain adequate on-call specialty physician care.¹ Under this law, which also incorporates an independent dispute resolution (IDR) process wherein the provider and insurer participate in arbitration, patients are no longer required to pay out-of-network provider charges for surprise out-of-network services that are higher than the patient's standard in-network copayment, deductible, or coinsurance rate. Since enactment, New York successfully reduced the rate of out-of-network patient billing for emergency department services from 20.1% in 2013 to 6.4% in 2015, a near 70 percent reduction.² This New York law has since been repeatedly hailed as an exemplar for the rest of the country among the healthcare community.

Likewise, Maryland's law, enacted in 2010, deals with the out-of-network issue successfully by establishing a floor for out-of-network payments, while also holding patients harmless.³ These payments are based on the greater of 140% of in-network payments, or an historic amount indexed by the Medicare Economic Index. In just a few short years after enactment, out-of-network billing was halved. This use of a payment floor above the median in-network payment encourages good faith attempts to negotiate network contracts between providers and insurers, and has been shown to greatly decrease out-of-network expenditures.

We strongly urge arbitration to be considered in any federal proposal addressing surprise medical bills, and we respectfully ask the Administration to reconsider its comments that arbitration would be a disruptive and unnecessary distraction. To the contrary, arbitration based on a third-party charge-based system, like that in New York, provides an effective, balanced solution, while steadfastly adhering to free-market principles.

As our founding fathers intended when creating our federalist system, states should serve as "laboratories of democracy." New York State and Maryland have succeeded in generating innovative and successful approaches to addressing an issue of significant concern to our American families and patients. We encourage the Administration and Congress to consider their success and work to ensure similar standards are included in any final federal solution.

We do not believe that hospital bundled billing or "network matching" proposals offer practical, proven solutions.

Further, we hope you consider providers' unique mandate under the Emergency Medical Treatment and Labor Act (EMTALA), which requires any patient seeking emergency medical care to be provided care regardless of ability to pay. Creating a dual mandate in which providers are required to provide care, but also accept a payment floor, should they not agree to an insurance company's proposed terms, puts physicians in a position where patients' access to care could be put in jeopardy in certain instances.

¹ Corlette, Sabrina and Hoppe, Olivia. (May 2019). *New York's 2014 Law to Protect Consumers from Surprise Out-of-Network Bills Mostly Working as Intended: Results of a Case Study*. Georgetown University Health Policy Institute, Center on Health Insurance Reforms, and Robert Wood Johnson Foundation, <https://georgetown.app.box.com/s/6onkj1jaiy3f1618iy7j0gpzdoew2zu9>.

² Cooper, Z.; Morton, F. S.; and Shekita, N. (2017). *Surprise! Out-of-Network Billing for Emergency Care in the United States*. National Bureau of Economic Research, <https://www.nber.org/papers/w23623.pdf>.

³ Social & Scientific Systems, Inc. (2015). *Impact of the Assignment of Benefits Legislation*. Maryland Health Care Commission, http://mhcc.maryland.gov/mhcc/pages/plr/plr/documents/LGSPT_AOB_rpt_20150115.pdf.

Once again, we want to express our sincere appreciation for the Administration's push to address the issue of surprise medical bills. We agree with President Trump's May 9, 2019 remarks that the Administration's principles are simple, straightforward solutions that would provide great relief to our American families and patients. The laws set forth by New York and Maryland also provide a simple, straightforward solution – while simultaneously protecting individual patients and families from unexpected medical costs, addressing the root causes of surprise medical bills, lowering overall healthcare costs, and remaining committed to an open, free-market system. We look forward to working with the Administration to craft a similar, nationwide solution.

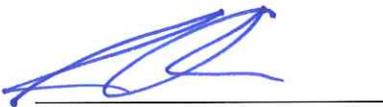
Sincerely,



Andy Harris, M.D.
Member of Congress



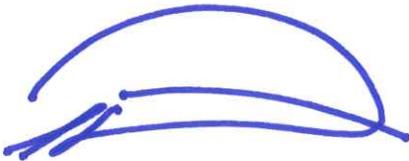
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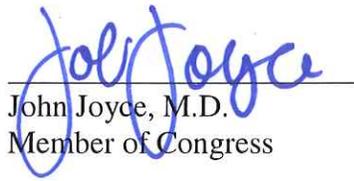
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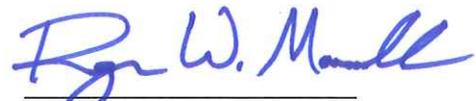


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