How to fix surprise billing without impeding access to care

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The AMA and other physician organizations representing hundreds of thousands of U.S. doctors are outlining for policymakers how to keep patients out of the middle of any billing disputes that arise between physicians and health insurance companies.

“As your committees develop a legislative solution to protect patients from surprise medical bills, we urge you to keep in mind the potential for unintended consequences of congressional action to impact patient access to care, particularly in rural and underserved communities,” says a letter sent to the chairmen and ranking members of the House Ways and Means Committee and the House Education and Labor Committee.

Key policy considerations are detailed in the letter, which is signed by the AMA, American Association of Neurological Surgeons, American Association of Orthopaedic Surgeons, American College of Emergency Physicians, American College of Radiology, American College of Surgeons, American Society of Anesthesiologists, American Society of Plastic Surgeons, College of American Pathologists, and the Congress of Neurological Surgeons.

Here are the six policy ideas that Congress should heed as lawmakers move to address surprise medical bills.

Limit patient responsibility. When patients unknowingly get out-of-network services at in-network facilities, they should be protected from surprise medical bills. In these situations, balance billing should be barred and patients should only be responsible for copays, coinsurance or deductibles that would happen with an in-network provider.

Avoid rate setting. The payment process for out-of-network care should be “keyed to the market value of physician services and that maintains a level playing field for future in-network contract negotiations.” Setting a benchmark rate would let insurers off the hook for forming narrow provider networks that shift costs to patients through cost-sharing mechanisms such as higher deductibles.

Ensure upfront payment. The pay process for out-of-network care should ensure that commercially reasonable payments are made upfront, within 30 days of claim submission.

Avoid payment disputes from the start with robust, independent dispute resolution (IDR). Such a mechanism encourages "all parties to act fairly and reasonably from the start in setting charges and payment amounts, without ever needing to be invoked." Then, in cases when the upfront payment is insufficient the IDR process enables an efficient solution that doesn't require lawyers or taxpayer dollars.

The IDR process should:

- Be accessible for all physicians who provide out-of-network care.
- Use a baseball-style approach.
- Allow for batching of claims.
- Require criteria to be considered, such as the physician or other provider's training, experience and specialization, case complexity, and commercially reasonable amounts for comparable services.

Allow patients to choose elective out-of-network care. "Patients should have the opportunity to knowingly receive care from the out-of-network provider of their choice for elective services," the letter says. Physicians, other providers and insurers all have a responsibility to properly inform patients about which doctors are within the network.

Strengthen network adequacy. Insurer-designed, overly narrow networks helped create the surprise medical billing problem. Strong state and federal oversight and enforcement of network adequacy is a must, and should focus on standards such as an adequate ratio of patients to emergency physicians, hospital-based doctors and on-call specialists. (Read more: "6 ways insurers drive the surprise-billing phenomenon.")

Ensure insurer transparency. Insurers must maintain accurate and regularly updated in-network provider directories. Also, the letter says, "insurers should be held to complying with the prudent layperson standard in existing law for determining coverage for emergency care, so that insured patients are not liable for unexpected costs simply because they were unable to accurately self-diagnose ahead of time whether their symptoms were, in fact, due to an emergency medical condition."

To learn more, read the AMA Physician Grassroots Network's surprise billing action kit, and take a moment to write your members of Congress about this important issue.