Surprise billing reform serves patients and physicians alike

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As physicians, we will always put the needs of our patients above all else. The same is true about our AMA, which remains committed to improving access to quality, affordable health coverage for everyone, and to protecting patients from the financial impact of unanticipated medical bills.

Our AMA played a key role in shaping the federal response addressing surprise billing that was included in the omnibus legislative package passed in December. That measure, which funds federal government operations throughout fiscal 2021, includes a modified version of last fall’s “No Surprises Act.”

Our AMA opposed the earlier proposal because it placed physician practices at a distinct disadvantage while favoring commercial health plan providers. The timing could not have been worse, given the results of an AMA survey conducted last summer that revealed the financial stress inflicted on physician practices as patients delayed or canceled visits because of the pandemic. On average, physicians saw revenue drop by 32% after February 2020; about one in five physicians saw revenue plunge by 50% or more.

The revised plan better reflects the principles that have guided our AMA’s response to unanticipated medical bills since the issue was first addressed: that patients should only be responsible for cost-sharing amounts that would be their responsibility if care had been provided in-network. This directly addresses the situation under which surprise billing most frequently occurs—when patients reasonably believe their care is covered by their health insurer, but find it denied because their insurer lacks an adequate network of contracted physicians.

I am proud of how our AMA has led on this issue. We worked with our Federation partners to ensure the final version of surprise billing reform provides robust protection to our patients, while simultaneously serving to preserve the financial viability of all forms and types of physician practices—especially the small, independent practices that would have been ill-equipped to respond under earlier proposals.

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The results have been gratifying. Our close involvement in surprise billing throughout the term of the 116th Congress has yielded a package of reforms that will benefit all concerned parties. Of note, these measures now require an upfront initial payment (or notice of denial) from health plans to physicians, and provide a 30-day open negotiation period if the physician is not satisfied with the payment from the plan.

In addition, our involvement in surprise billing reform has generated a robust independent dispute resolution (IDR) process in the legislation that establishes an arbitration procedure that allows independent review of provider-plan disputes. A similar process was introduced in 2019, but was derailed a few days before it was to be included in the omnibus spending bill. This monumental bill requires IDR in the event the parties cannot reach agreement.

Highlights of the IDR process include:

- Pursuing IDR four days after the 30-day open negotiation period.
- Barring the consideration of public program rates such as Medicare, Medicaid or Tricare during the IDR process.
- Clarifying that all batched claims remain eligible for IDR after the 90-day “cooling off period” has ended.
- Eliminating burdensome and unworkable timely-billing provisions.

In addition, the revised legislation addresses the intersection between state laws and self-insured plans by ensuring a consistent approach to both, while also extending relief to states that have not provided consumer protections against surprise bills.

I should note that enacting the No Surprises Act into law does not close the book on this issue. The rulemaking process that now ensues will focus on the precise manner in which the new law is implemented, such as how payments due to non-participating providers should be calculated. Our AMA will maintain the diligence we have demonstrated to date throughout this next phase.

Finally, it’s important to note that the No Surprises Act does not preempt comprehensive state laws dealing with surprise billing. Although we may see state-level controversies surface less often in 2021 and beyond, some state legislatures can be expected to supplement the federal statute with laws pertaining to state-regulated plans. Our AMA will continue to work with state medical societies and others to support organized medicine at every turn.