Identical Letter also sent to House Energy & Commerce and Education & Labor Committees, and Senate Finance and HELP Committees

February 7, 2019

The Honorable Richard E. Neal
Chairman
Committee on Ways and Means
1102 Longworth House Office Building
Washington, DC 20515

The Honorable Kevin P. Brady
Ranking Member
Committee on Ways and Means
1139E Longworth House Office Building
Washington, DC 20515

Dear Chairman Neal and Ranking Member Brady:

Patients, physicians, and policymakers are deeply concerned about the impact that unanticipated medical bills are having on patient out-of-pocket costs and the patient-physician relationship. Health insurance plans are increasingly relying on narrow and often inadequate networks of contracted physicians, hospitals, pharmacies, and other providers as one mechanism for controlling costs. As a result, even those patients who are diligent about seeking care from in-network physicians and hospitals may find themselves with unanticipated out-of-network bills from providers who are not in their insurance plan's network, simply because they had no way of knowing and researching in advance all the individuals who are ultimately involved in their care. Physicians and other providers are limited in their ability to help patients avoid these unanticipated costs because they, too, may not know in advance who will be involved in an episode of care, let alone other providers' contract status with all the insurance plans in their communities.

As Congress develops potential legislation to provide relief to patients from health care costs that their insurance will not cover, we urge your consideration of the following policies.

- **Insurer accountability.** Since overly narrow provider networks contribute significantly to this problem, strong oversight and enforcement of network adequacy is needed from both federal and state governments. Robust network adequacy standards include, but are not limited to, an adequate ratio of emergency physicians, hospital-based physicians, and on-call specialists and subspecialists to patients, as well as geographic and driving distance standards and maximum wait times. Provider directories must be accurate and updated regularly to be useful to patients seeking care from in-network providers. In addition, 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.

- **Limits on patient responsibility.** Patients should only be responsible for in-network cost-sharing rates when experiencing unanticipated medical bills.

- **Transparency.** All patients who choose in advance to obtain scheduled care from out-of-network physicians, hospitals or other providers should be informed prior to receiving

care about their anticipated out-of-pocket costs. When scheduling services for patients, providers should be transparent about their own anticipated charges, and insurers should be transparent about the amount of those charges they will cover.

- **Universality.** In general, any federal legislation to address unanticipated out-of-network bills should also apply to ERISA plans.

- **Setting benchmark payments.** In general, caps on payment for physicians treating out-of-network patients should be avoided. If pursued, guidelines or limits on what out-of-network providers are paid should reflect actual charge data for the same service in the same geographic area from a statistically significant and wholly independent database. They should not be based on a percentage of Medicare rates, which have become increasingly inadequate in covering overhead costs, nor should they be based on in-network rates, which would eliminate the need for insurers to negotiate contracts in good faith. Any prohibition, whether state or federal, on billing from out-of-network providers not chosen by the patient should be paired with a corresponding payment process that is keyed to the market value of physician services.

- **Alternative dispute resolution.** Legislation should also provide for a mediation or sequential alternative dispute resolution (ADR) process for those circumstances where the minimum payment standard is insufficient due to factors such as the complexity of the patient's medical condition, the special expertise required, comorbidities, and other extraordinary factors. ADR must apply to states and ERISA plans. Arbiters should not be required to consult in-network or Medicare rates when making final determinations regarding appropriate reimbursements.

- **Keep patients out of the middle.** So that patients are not burdened with payment rate negotiations between insurers and providers, physicians should be provided with direct payment/assignment of benefits from the insurer.

The problem of unanticipated out-of-network bills is complex, and requires a balanced approach to resolve. In addition to providing strong patient protections, we believe the principles set forth above would improve transparency, promote access to appropriate medical care, and avoid creating disincentives for insurers and health care providers to negotiate network participation contracts in good faith.

We appreciate your consideration of these policies and look forward to working with you on these matters.

American Medical Association
AMDA - The Society for Post-Acute and Long-Term Care Medicine
American Academy of Allergy, Asthma & Immunology
American Academy of Dermatology Association
American Academy of Facial Plastic and Reconstructive Surgery
American Academy of Family Physicians
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American Urological Association
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College of American Pathologists
Congress of Neurological Surgeons
International Society for the Advancement of Spine Surgery
Medical Group Management Association
National Association of Medical Examiners

National Association of Spine Specialists
North American Neuro-Ophthalmology Society
Obesity Medicine Association
Society for Cardiovascular Angiography and Interventions
Society for Vascular Surgery
Society of Cardiovascular Computed Tomography
Society of Critical Care Medicine
Society of Hospital Medicine
Society of Thoracic Surgeons
The Obesity Society

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