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June 25, 2019

The Honorable Elizabeth Warren
317 Hart Senate Office Building
Washington, DC 20510

Dear Senator Warren:

I am writing on behalf of the 25, 000 physicians, residents and medical students of the Massachusetts Medical Society to share our recommendations and concerns regarding, S. 1895, The Lower Health Care Costs Act of 2019. There are several provisions in this bill which we find laudable. These include extending prudent lay person protections to all patients including those in ERISA plans; authorizations for community health centers; the CREATES Act, which would stop anticompetitive behaviors by pharmaceutical companies towards generic manufacturers and provisions to strengthen mental health parity laws. The MMS has long advocated for each of these programs and reforms and strongly supports these provisions. Community health centers are a fundamental pillar of our health care system and one our most significant partners in patient care; we have advocated repeatedly for legislation to strengthen the implementation of mental health parity laws and applaud your efforts to make prescription drugs more affordable and available to our patients.

We have serious concerns about several provisions in the bill designed to address surprise billing as well as other provisions which would significantly empower insurers when negotiating with physicians. Our concerns are well founded. Data from the states proves that misguided surprise billing legislation exacerbates this problem and harms patients access to care by decreasing the number of in-network physicians to care for them. We strongly urge you to oppose the surprise billing model currently in S. 1895 and to consider other state models which are successfully protecting patients, reducing costs and increasing the number of in network physicians available to care for patients.

The MMS is extremely concerned about the impact of surprise bills on our patients. To be clear it is our patients who are harmed by these surprise bills - not the physician, nor the insurer. While the cause of surprise bills rests with the dysfunction in how we finance and negotiate health care and insurance, it is our patients who are the most directly impacted. We believe strongly that patients should never receive a surprise bill and should be protected from any negotiations or additional payments in these circumstances. All patient protections, including prudent layperson definitions, should apply to all insureds, including those who are enrolled in ERISA plans. We support the provisions in the bill which hold patients harmless, ban balance billing and extend prudent layperson definitions to ERISA plans. These protections are long over overdue.

We also strongly believe the fundamental solution to ending surprise bills is to create systemic changes which restore balance to contract negotiations between physicians and insurers thus giving patients timely access to fully staffed physician networks. Too much of

the debate on the surprise billing issue has focused simply on how to determine the amount of money that will be paid either to the physician or the payor. This approach fails to address the underlying issue which led to surprise billing and has fostered policy recommendations which are proven harmful to patient access to health care.

The surprise billing framework in S. 1895 is very similar to the California state law which has been a failure both in reducing surprise billing and in encouraging more physicians to contract in network. Both rely on an in-network benchmark which has empowered insurance companies and removed any real incentive to negotiate with physicians.

There is much confusion about why the in-network rates are troubling to the physician community. It is important to understand that there is a significant imbalance that currently exists in negotiations between physicians and insurers. In many cases, the approach from the insurers is to take it or leave it as they have market dominance. In other cases, physicians will accept lower rates than costs because they will make up the difference in volume**.** *The single most important reason why we oppose using the in-network rate as the benchmark is because it fails to increase "in network" care by giving insurers significantly more power in contract negotiations with physicians.*

This is not speculation on our part. California has proven this point.

The California law mirrors the surprise billing provisions before the committee. The results of the law are compelling. Since its passage insurers are terminating long standing contracts with physicians, demanding significant cuts in reimbursement or closing their networks to new physicians. The result is more limited networks, increases in deductibles and decreased access to care.

This June one of California's largest insurers sent its new fee schedule to at least half of its physician organizations outlining dramatic cuts in payment for hospitals-based physicians. Some examples of the new payment rates

- OB-GYN obstetric care: -20%;
- Anesthesiologists: -45% for women's labor and delivery epidurals and monitoring lines for life-saving heart surgeries, among other procedures;
- Radiologists: -19%;
- Pathologists by -20-50%;

Nor is this an isolated example. These numbers are excerpted from the California Medical Association letter which was shared with the HELP Committee (attached). They state: "*These are take-it-or-leave-it contracts. If these hospital-based physicians cannot afford to absorb these substantial payment cuts from their largest payer, they will be forced out of the insurance company's network. They will also be forced to accept the very low out-of-network payment rates established by California's surprise billing law. The actions of this insurer are the direct result of California's inadequate surprise billing laws that do not incentivize insurers to contract with physicians. Most of these physicians will no longer be*

able to contract under these unfair terms. This insurer has clearly decided it doesn't need to contract with physicians because it can just pay the low rates in California law. Access to "in-network" care is in jeopardy. Patients in California will be forced to wait even longer to see primary care and specialty physicians. As patients wait to see their physicians, they may be forced to seek care in emergency departments when their conditions have worsened and become more expensive."

The result is narrower networks, increased out of pocket costs and decreased access to care. Access to emergency on call physicians, including surgeons and anesthesiologists, is also in jeopardy.

While some might think cutting physicians reimbursement is a good way to save money and to reduce the cost of care, in reality these measures will increase health care spending. These payments will lead to a collapsing of smaller physicians' practices and ultimately an increase in health care costs as more patients seek care through emergency rooms and out of network care.

The MMS, the national and state physician organizations support the New York State model to address surprise billing. As the following details, the law has significantly reduced surprise billing, incentivized negotiations between physicians and insurers and reduced health care spending as defined through decreased payments to physicians and lowest premium increases in the nation.

The recent study from the Georgetown University Health Policy Institute and the Robert Wood John Foundation reports that there has a "dramatic decline" in the number of surprise bills since the enactment of the law. "Virtually all stakeholders we interviewed reported that New York's law has successfully helped protect consumers from a major source of surprise balance bills. An analysis of calls to the Community Service Society's consumer help line related to surprise balance billing found that 57 percent were resolved thanks to the law's protections." The report also concluded that the law has incentivized physicians and insurance companies to negotiate before filing for an independent dispute resolution. As the authors state, this is consistent with a recent analysis of claims data, which found a 34 percent drop in out-of-network billing in New York since the law was in effect.

When cases do go forward, the numbers are nearly evenly split between what the insurer offered, and the physician requested. Of equal import, the report notes that the law is having a positive impact of the health care spending in New York where the rate of growth of health premiums is significantly less than the national average. According to the Kaiser Family Foundation, the national average in 2019 was 70% compared to New York at 50%. In addition, the New York Health Foundation found that payments to physicians were down on average 13% since the law was enacted. Anthem, Aetna and United New York also just won a multiple year battle to require that out of network hospitals in New York be subject to the same arbitration process as out of network physicians. Clearly these insurers support this model.

We also understand the importance of the CBO score to this discussion. From our perspective, the CBO score is shortsighted and fails to take into the account the impact of a flawed law on access to care. If Congress passes legislation which ultimately results in less access to care, the impact on our patients and costs to the health care system will be far greater than the current score. California is already proving this point. We know that legislation based on the New York model decreases costs, decreases surprise bills and continues patient access to care.

We strongly urge you to vote against the surprise billing model in S 1895 and to consider legislation based on the New York model which is proven to protect patients access to care and decrease health care spending. Legislation is being introduced in the US House by Representatives Ruiz, Roe and Morelli which mirrors the New York model and which we support. Our goal is to ensure that patients are protected from these charges and that negotiations that occur between insurers and physicians are done on a level playing field without any interruption to patient care. We support other provisions in S 1895 which we believe are important to improving our patients' health and welfare.

We look forward to continuing our work with you to improve access to quality health care for all.

Sincerely,

Maryanne C. Bombaugh MD MSc MBA

Maryanne C. Bombaugh, MD, MSc, MBA, FACOG

cc: Susannah Savage
Alex Davidson
Beth Pearson