

June 4, 2019

On behalf of the Texas Hospital Association's more than 450 member hospitals and health systems, THA is pleased to submit comments on the United States Senate Health, Education, Labor and Pensions Committee Chairman Lamar Alexander and Ranking Member Patty Murray's discussion draft legislation -- Lower Health Care Costs Act of 2019. THA's comments focus on Title I of the bill to eliminate surprise medical billing of patients.

THA applauds Chairman Alexander, Ranking Member Murray and the HELP committee for their leadership on this issue. THA long has supported work at the state level to ensure that patients are protected from unexpected medical expenses and believes that eliminating patients' financial responsibility beyond known, required cost-sharing amounts for out-of-network emergency or unplanned health care services is fair and reasonable. We continue that support at the federal level as only approximately 17 percent of privately insured Texans have coverage from a plan under the regulation of the state Department of Insurance. Most are in self-funded ERISA plans, regulated by the federal government.

As most Texas hospitals do not directly employ physicians, physicians maintain independent contract and negotiating power with health plans. But, Texas hospitals consistently encourage hospital-based physicians to negotiate in good faith with the same plans that contract with the hospital. For years, THA has worked alongside policymakers to address this issue and supported legislation to expand the scope of balance bills that can be mediated through the Texas Department of Insurance.

This legislative session, which just concluded on May 27, Texas hospitals were early and consistent supporters of bipartisan legislation to strengthen protections against surprise billing of patients. We believe that this legislation, Senate Bill 1264, can serve as a model for national legislation because it:

- Implements strong consumer protections by eliminating surprise billing of patients for emergency or unplanned out-of-network health care.
- and
- Ensures hospitals and health plans can continue to negotiate a fair, appropriate and market-responsive reimbursement amount unhampered by artificial, government-set rate parameters.

As the committee continues this important work, we ask that members be:

- Mindful of the nuances and complexities involved in health plan contracting and payment.
- Cautious of not advantaging health plans to the disadvantage of hospitals and, ultimately, patients.

- Aware that a one-size-fits-all approach and methodology will not work for hospitals and could impede patients' access to care when they need it.

The Lower Health Care Costs Act of 2019 discussion draft presents three options for resolving surprise medical bills. Texas hospitals favor Option 2. We understand this option would require health plans to pay the median contract rate for the area for bills of \$750 or less. For bills greater than \$750, baseball style arbitration would be required, but the arbiter maintains flexibility to negotiate an acceptable, fair payment.

Texas hospitals support a fair and balanced negotiation between health plans and hospitals for both network inclusion and for out-of-network payment. **Whether the process for determining out-of-network payment is arbitration or mediation, it is essential that a legislative solution not disrupt market-based negotiations or unfairly advantage health plans. Inserting government-set rate parameters into a private negotiation could disincentivize health plans from including hospitals as in-network providers and paying them fairly, ultimately limiting patients' access to care.** If plans would rather pay hospitals for an out-of-network claim because the government has set that payment amount lower than what would be paid for an in-network claim, they have little incentive to negotiate with hospitals to be in-network providers.

Texas' approach to solving the surprise billing problem strikes the best balance of protecting patients from financial challenge, allowing private negotiations to continue unimpeded, and ensuring access to care.

Texas hospitals thank the committee for its commitment to protecting patients and its serious work to improve access to care for all Americans.