Washington State
Hospital Association

June 25, 2019

The Honorable Patty Murray
Ranking Member, Committee on Health, Education, Labor & Pensions
United States Senate
Washington, DC 20510

Sent via email

Dear Senator Murray,

We are writing to comment on the version of the Lower Health Care Costs Act of 2019 (S. 1895) that was released on June 19.

We appreciate your leadership on this important issue and applaud your efforts to find a solution to surprise medical billing that protects patients from surprise bills for emergency services or for services provided in any in-network facility when the patient could reasonably have assumed that the providers caring for them were in-network with their health plan. The Lower Health Care Costs Act of 2019 could achieve this goal. However, WSHA has concerns about the current proposal.

A fundamental component of this issue is how out-of-network providers are reimbursed for the services they provide to an insured patient. WSHA believes hospitals, providers and health plans should be allowed to negotiate fair reimbursement rates without laws dictating specific rates.

Support of an arbitration process to deal with disputes. We recognize that there still may be disputes between out-of-network providers and insurers. To resolve these, WSHA supports employing a dispute resolution process. Washington State's House Bill 1065, enacted during the 2019 legislative session, provides such a process and is an appropriate and workable model for federal legislation. WSHA supported this state legislation, which was developed by stakeholders and the state's Insurance Department and is similar to New York's "baseball-style" arbitration process. Legislation developed by the Senate Bipartisan Working Group (S. 1531) includes similar arbitration provisions.

WSHA has significant concerns about establishing a benchmark rate or methodology in statute for out-of-network payments, and we are disappointed that S. 1895 would establish a median in-network rate for out-of-network payments. We urge the committee to reconsider this provision and replace it with something like the Washington State statute.

Rate-setting was rejected by stakeholders in Washington State for several reasons. Most important was our belief that rate setting would give insurers few incentives to develop comprehensive and robust networks, especially in rural areas of our state. If negotiations between providers and insurers break down, insurers would pay a default rate of less than what they pay their in-network providers, creating an incentive for insurers to avoid paying fair reimbursement for medical services. The provision in S. 1895 that allows an insurer to pay its own median in-network rates favors insurers that lack robust provider networks due to inadequate payment

rates and would result in an increase in out-of-network services. This approach also could result in severe underpayments for services in geographically-diverse parts of our state, potentially reducing access to necessary services, especially in rural areas.

Notice to patients contained in the Manager's amendment doesn't reflect care delivery for urgent services. WSHA is concerned about the new requirements on hospitals contained in the Manager's amendment for two reasons: 1) ***For patients needing urgent services, but non-emergency services that are scheduled for less than 48 hours, the hospital would be unable to provide this notice and would be breaking the law***. For example, fixing broken bones are typically non-emergency services. 2) In-network hospitals do not have access to patient health plan information about out-of-network physician group(s). Providing notice to patients about the potential for a surprise bill will cause widespread confusion for patients and they will turn to the hospital for information. Since the non-contracted providers are by definition independent groups that the hospital does not contract for or bill for, the hospital would not have access to this information and may have no legal or reliable way to obtain it from the provider group. It also assumes the hospital could accurately predict all services of the outside group that will be needed as part of the patient's care.

Transparency and contracting provisions don't reflect reality and health insurer role. We also have concerns regarding some of the S. 1895's transparency and contracting provisions. The timeframes in S. 1895 would require facilities and providers to know and bill patient cost-sharing amounts before the allowed amounts and patient cost-sharing are determined by the insurer. This is not information hospitals have nor are they provided this by insurers for individual patients. The allowed amount and patient portion, particularly for hospital services, are usually determined by the insurer's grouper software at the time the claim is processed. Even in states with prompt pay laws, the claims adjudication process for many claims takes longer than the 45 days specified in S. 1895. An estimated cost-share would create confusion for patients as they would be given inaccurate information regarding their payment responsibility. We recommend the provision be changed to 45 days from the date the facility or provider receives payment from the insurer.

In addition, we are concerned about contracting provisions that require providers and facilities to provide confidential and proprietary financial and quality information to insurers. This could also threaten small facilities that may not be able to provide information in a format required by some insurers. We also are concerned the provisions that limit the ability of hospitals, systems, and provider groups to contract as a complete entity will result in fragmentation of patient care.

Again, we applaud your work on these critical issues and look forward to continuing to work with you as we seek to protect patients and make health care more affordable.

Sincerely,

Cassie Sauer

Cassie Sauer, President and Chief Executive Officer
Washington State Hospital Association
E: cassies@wsha.org
P: (206) 216-2538