

**BOARD OF GOVERNORS**

**PRESIDENT**

Robert C. DeLuca, DO, FACOFP *dist.*  
Eastland, TX

**PRESIDENT-ELECT**

Nicole H. Bixler, DO, MBA, FACOFP  
Spring Hill, FL

**VICE PRESIDENT**

David J. Park, DO, FACOFP  
Ivins, UT

**SECRETARY/TREASURER**

Bruce R. Williams, DO, FACOFP  
Blue Springs, MO

**IMMEDIATE PAST PRESIDENT**

Duane G. Koehler, DO, FACOFP *dist.*  
Miami, OK

**PAST PRESIDENT**

Rodney M. Wiseman, DO, FACOFP *dist.*  
Pearland, TX

**GOVERNORS**

Greg D. Cohen, DO, FACOFP *dist.*  
Chariton, IA

David A. Connett, DO, FACOFP *dist.*  
Anaheim Hills, CA

Gautam J. Desai, DO, FACOFP  
Kansas City, MO

Brian A. Kessler, DO, FACOFP  
Harrogate, TN

Saroj Misra, DO, FACOFP  
Warren, MI

Ronna D. New, DO, FACOFP  
Abingdon, VA

**RESIDENT GOVERNOR**

Ryan M. Smith, DO  
Warren, MI

**STUDENT GOVERNOR**

Athena Chatzigiannidis, OMS III  
Jenks, OK

**SPEAKER, CONGRESS OF DELEGATES**

Elizabeth A. Palmarozzi, DO, FACOFP  
Auburn, AL

**EXECUTIVE DIRECTOR**

Bob Moore, MA, CAE  
Arlington Heights, IL

May 24, 2019

**VIA ELECTRONIC SUBMISSION**

The Honorable Frank Pallone  
Chairman  
House Committee on Energy & Commerce

The Honorable Greg Walden  
Ranking Member  
House Committee on Energy & Commerce

Dear Chairman Pallone and Ranking Member Walden:

On behalf of the American College of Osteopathic Family Physicians (ACOFP), we appreciate the opportunity to respond to the Energy & Commerce Committee's Discussion Draft of legislation entitled, the *No Surprises Act*.

ACOFP is the professional organization representing more than 20,000 practicing osteopathic family physicians, residents, and students throughout the United States who are deeply committed to advancing our nation's health care system by improving health care delivery and outcomes and ensuring that patients receive high-quality care.

Osteopathic family physicians' practice in variety of settings, including in solo, small, group, rural, Native American Indian healthcare, and alternative payment models. We support efforts to protect patients from unnecessary costs; however we are concerned that some of the proposals in this legislation go too far and would place significant burdens on physicians that would lead to poorer quality outcomes and urge the Committee to consider how this legislation will impact solo, small, and rural practices.

Our full comments are detailed on the following pages. Thank you for the opportunity to share these with you. Should you need any additional information or if you have any questions, please feel free to contact ACOFP at [advocacy@acofp.org](mailto:advocacy@acofp.org) or (847) 952-5100.

Sincerely,



Robert C. DeLuca, DO, FACOFP *dist.*  
ACOFP President

Overall, the American College of Osteopathic Family Physicians (ACOFP) supports efforts to ensure patients obtain needed, medically appropriate care in a timely fashion. We also understand the critical importance of ensuring patients are not adversely impacted by “surprise” billing, which can create unanticipated financial burdens for patients. However, we are concerned with several elements of the No Surprises Act Discussion Draft, as released by the Energy & Commerce Committee (Committee).

Specifically, we are concerned with the undue burden this legislation will place on practices and physicians to determine whether a patient is in-network prior to seeing or treating a patient. For small or solo practices, determining network status of patients would be a significant burden on limited, already overwhelmed administrative staff. Physicians contract with insurers, and it should be the responsibility of insurers to ensure patients understand their plan and corresponding limitations. While many of our members assist patients with insurance coverage issues, these activities are time consuming and cannot be reimbursed. This is not how physicians or staff should be spending the limited time they have to provide care to patients.

We also have significant concerns with the written notice requirement. Scheduling prospective patients is typically done over the phone. Requiring written notice “on the date on which the [patient] makes an appointment,” will cause significant strain not only on the intake staff, but also on a prospective patient. Practices make efforts to verify insurance, but this occurs at the time of the visit, not during scheduling. This problem is especially acute in rural areas where patients may have to travel significant distances for an appointment, let alone to schedule an appointment at which the patient could receive, sign, and date a written notice. In addition, many rural areas do not have reliable internet connection for electronic delivery of a written notice. Even if electronic delivery is a viable option, not all Medicare beneficiaries are technically savvy to electronically receive, print, sign, scan, and electronically return a copy of the written notice, as would be required under this Discussion Draft.

ACOFP also is concerned with potential penalties on specialists who are needed to perform medically necessary services. Often, family physicians must coordinate with a limited number of specialists in a geographic region who may or may not be in-network. While this is not specifically addressed in the legislation, we urge the Committee to consider this scenario and ensure that access to specialists is not limited, or that physicians who have no choice but to refer to out-of-network specialists, are not penalized for doing so. In such situations, patients cannot “reasonably choose” the specialist because there is no guarantee that the specialist is in-network.

In the hospital setting, physicians typically are restricted to utilizing physicians on staff, without regard for a patient’s insurance plan and network. In addition, if a patient’s physician is not the individual who can provide the needed service, a hospital’s protocol is to typically use the “on-call” group, which may or may not be in network. Each of these issues are out of the hands of the individual physicians, and the Discussion Draft would unfairly punish providers for furnishing care due to an insurer’s decision to limit a patient’s network.

We are especially concerned that the Discussion Draft does not address the primary problem – the balance between physicians, especially those in solo, small, or rural practices, and insurers skews far too heavily in favor of insurers. Physicians are forced to accept lower payment from insurers or are excluded from networks because insurers seek to limit their network. In rural areas where there are fewer patients and limited insurance options, a practice excluded from the network and unable to obtain payment to cover costs, is essentially a death knell for these community-based physicians. This would result in less surprise billing because there would be fewer practices available to provide care.

There must be greater balance in navigating and finding solutions that do not limit access to care in the most underserved areas. Specifically, any responsibility to assess a patient’s insurance coverage should fall with the insurer in the form of simple, clear, easily accessible, and up-to-date information on network providers and services covered. We strongly urge the Committee to consider exceptions for physicians in

situations when there is no in-network choice for patients (i.e., the patient has no options other than an out-of-network physician).

ACOFPP also urges the Committee to take a measured response to this problem and ensure sufficient stakeholder feedback is incorporated into surprise billing efforts. For example, the Discussion Draft does not address: (1) whether federal law would preempt existing state laws; (2) how these proposed requirements may impact professional liability; (3) how this proposed framework would impact physicians treating patients from multiple states; and (4) the significant burden this would place on solo, small, and rural practices.

Finally, while we appreciate the effort and funding to establish or support a state all-payer claims database, we remind the Committee that many physicians continue to face infrastructure challenges, which limit the utility of an electronic database.

Thank you again for the opportunity to provide these comments. Please do not hesitate to contact us should you have any questions or if you would like to discuss this issue further.