Emergency Department EDPMA Practice Management Association

September 19, 2017

VIA EMAIL
William D. Melofchik, Esq.
Legislative Director
National Conference of Insurance Legislators
wmelofchik@ncoil.com

Re: NCOIL Draft Out-of-Network Balance Billing Transparency Model Act

Dear Mr. Melofchik:

The Emergency Department Practice Management Association (EDPMA) is one of the nation's largest professional physician trade associations focused on the delivery of high-quality, cost-effective care in the emergency department. EDPMA's membership includes emergency medicine physician groups, as well as billing, coding, and other professional support organizations that assist healthcare providers in our nation's emergency departments. **Together, EDPMA's members deliver (or directly support) health care for about half of the 141 million patients that visit U.S. emergency departments each year.** We work collectively and collaboratively to deliver essential healthcare services, often unmet elsewhere, to an underserved patient population who often has nowhere else to turn.

Emergency departments are the nation's health safety net. Federal law – through the Emergency Medical Treatment & Labor Act (EMTALA) - requires hospitals and physicians to evaluate and stabilize everyone visiting the emergency department, no matter the ability to pay. So, even though **emergency physicians are only 4% of physicians, they provide 50% of all care given to Medicaid and CHIP patients and 67% of all care to uninsured patients** Because emergency physicians provide significantly more than their fair share of uncompensated and undercompensated care, NCOIL's model legislation must include provisions that ensure private insurers are reimbursing appropriately for emergency care. Otherwise, emergency physicians may choose to practice in another state or leave the specialty altogether, putting the safety net in jeopardy.

We support provisions eliminating balance billing for emergency care if insurers are simultaneously required to reimburse at a fair rate. **We strongly support the amendments and comments submitted by the Coalition of Medical Specialties and Physicians for Fair Coverage that require insurers to reimburse out-of-network (OON) providers at the 80th percentile of charges based on a transparent and independent database.** We also support

report language passed by the US Congress in May, as part of the 2017 appropriations bill, which similarly directs CMS to clarify the minimum payment for OON emergency care and suggests benchmarking the payment standard to an independent and transparent database. And we agree with the National Opinion Research Council at the University of Chicago (NORC), who, in it's June 26, 2014, report to DHHS's Center for Consumer Information and Insurance Oversight (CCIIO) entitled "Data Sources for Establishing Payment Rates for Out-of-Network Emergency Room Visits," concluded that the FairHealth Database is the most appropriate database for benchmarking OON reimbursement. (This report was commissioned by CCIIO to address the concerns raised by the emergency medicine community over the lack of transparency in calculating the minimum OON payment required by federal law.) And we are happy to see that the state of Connecticut is already using 80th percentile of a transparent and independent database as their OON payment standard for emergency care and many other states are considering the same solution. This solution is simple, transparent, low-cost and fair, yet still encourages insurers and providers to negotiate lower contracted rates.

OON reimbursement should not be allowed to fall below this proposed minimum standard. Allowing reimbursement to be a percentage of Medicare would be inappropriate. Medicare reimbursement rates are based on funds available in the federal budget. They are not intended to reflect market rates, fair payment, or the cost of care. It makes no sense to tie reimbursement between two private parties to the federal budget.

We would also like to address network adequacy. Network adequacy in emergency medicine is complicated by the EMTALA mandate. Insurers know that emergency physicians will provide a high level of care to everyone even if the insurer has no emergency physicians in its network. In other words, there is no incentive for insurers to invite emergency physicians to the negotiating table to discuss a contract rate. Therefore, we support provisions requiring insurers to offer an adequate network of emergency physicians. However, this provision must be paired with a prohibition against coercive contracting. Many hospitals hire outside physician groups to staff their emergency department instead of utilizing hospital-employed physicians. This is because emergency medicine is a complicated business with high risks. Neither insurers nor hospitals should be able to coerce independent emergency physician groups to accept unfair in-network rates. Contract rates should reflect full and fair negotiations between two parties both of whom have negotiating power.

Thank you for considering our comments. If you have any questions, please do not hesitate to contact Elizabeth Mundinger, Executive Director of EDPMA, at emundinger@edpma.org.

Sincerely,

Andrea Brault, MD, FACEP, MMM, Chair of the Board
Emergency Department Practice Management Association (EDPMA)