PFC
PHYSICIANS FOR FAIR COVERAGE

September 13, 2017

William D. Melofchik, Esq.
Legislative Director
NCOIL Support Services, LLC

Dear Mr. Melofchik,

Physicians for Fair Coverage (PFC), a multi-specialty, non-profit alliance of physician practices representing more than 63,000 physicians nationwide, respectfully submits these comments to the National Conference of Insurance Legislators (NCOIL) on the Draft Out-of-Network Balance Billing Transparency Model Act.

The out-of-network balance billing issue continues to be of profound importance, particularly when overlaid with the many healthcare challenges facing our nation today.

We appreciate the efforts by NCOIL to address solutions that protect our patients from large out-of-pocket expenses after receiving unexpected out-of-network care, and to bring clarity to the overall surprise billing issue.

It is important to first note that patients face these types of medical bills because of:

1) insufficient coverage provided by insurers' inadequate and increasingly narrow networks that often leave patients with few in-network provider choices;
2) the extremely high deductible policies that are now becoming more prevalent in the marketplace, putting confused patients on the hook for thousands of dollars before coverage kicks in;
3) insurers offering physicians unacceptable take-it-or-leave-it reimbursement deals that are so low providers and hospitals are increasingly forced to practice out of network; and,
4) significantly below-market standards regularly paid by insurers for care provided in out-of-network settings.

Notably, these actions have converged in recent years to create an ever-growing delta leading to the problem at hand: surprise medical bills. Simply put, these surprise bills are the symptom of a larger problem - a surprise insurance gap.

A Comprehensive Solution

To address this important issue, PFC respectfully recommends NCOIL's draft model legislation reflect a series of effective guidelines outlined below. In so doing, you will be taking a highly comprehensive approach - one that:

- includes provisions that limit patients' out-of-pocket costs to in-network cost-sharing requirements and takes them out of the middle of any dispute between insurance companies and providers; and,
- provides fair reimbursement for services based on an independent, non-profit, non-conflicted, transparent and verifiable database.

To achieve these goals, PFC has worked closely with coalition partners of numerous national physician specialty organizations to advance the following legislative guidelines we believe any bill – including NCOIL's draft legislation -- must contain to end the surprise insurance gap and adequately address the problem of surprise bills – ***for both emergent and non-emergent care.***

- First and foremost, for unexpected out-of-network (OON) care, ***any patient out-of-pocket costs should be limited to in-network cost-sharing requirements***. Effectively, any patient deductibles, co-insurance and co-pays for unexpected OON care should be applied to the in-network rates of their insurance plan.

- ***An appropriate and fair minimum benefit standard*** should be created for out-of-network services that establishes a charge-based reimbursement schedule connected to an independently recognized and verified database, such as the FAIR Health database.

- ***Physicians should no longer submit balance bills*** to patients for unexpected out-of-network medical care when payments are tied to this independent database.

- When and if needed – as in the case when a physician's unique background and skills are not addressed within a minimum benefit standard - ***mediation should occur only between the physician and the insurer, taking the patient out of the middle.*** Physicians should be allowed to initiate the mediation process and bundle claims in doing so. Mediation should be minimally tied to this independent database of charges.

- ***Greater transparency should be required*** of insurers. Specifically,
    - Network provider directories should be easily accessible for both patients and physicians, updated immediately and completely accurate, and
    - Patients should have access to information on the average charge, reimbursement rate, and expected out-of-pocket costs for any health care service or procedure in all Geo-Zips.

- ***Insurance carriers should be prevented from providing false, misleading and/or confusing information*** in regards to coverage and reimbursement standards.

To be clear, physicians are dedicated to providing affordable quality health care to their patients, and are willing to accept a ban on balance billing for unexpected out-of-network care. However, if balance billing in these situations is banned *without addressing fair reimbursement*, the unintended consequences could be profound.

Without fair reimbursement, barriers to access to services could be erected. If physicians aren't reimbursed adequately for the health care services they provide and their patients rely on, many – especially independent practice physicians already operating on the margins – may not be able to sustain their businesses. If physician practices go out of business, hospitals and emergency departments will not be adequately staffed. This is especially profound for rural areas which already often lack adequate access.

To this end, PFC strongly supports NCOIL's proposal to use the 80th percentile of charge data from an independent source as the basis for "usual and customary" charges. Benchmarking reimbursements to a non-profit, non-conflicted independent database of billed charges within a geographic area is a fair approach that makes sense. Doing so ensures the benchmarked database is not controlled or influenced by insurance carriers or physicians, and allows for adequate reimbursement. NORC at the University of Chicago compared a series of databases for out-of-network benchmarking purposes, and concluded – in 2014 and again in May, 2017 – FAIR Health to be the most appropriate database. The May, 2017 report highlighting this is attached for your review and consideration.

While we applaud NCOIL's reimbursement proposal, we would be remiss if we did not address recent efforts in some states to benchmark reimbursement to a percentage of Medicare. It is important to note that Medicare is **not** an appropriate benchmarking standard or database for a number of important reasons:

- First, the Medicare program was established for the purpose of reimbursing medical services for an age-specific population, and, as such, rates do not significantly reflect key under age-65 health services, such as obstetrics and pediatrics. Additionally, reimbursement rates are based on federal budgetary and regulatory constraints, and all too often, on major political considerations.
- Medicare rates were never designed to represent the fair market value of healthcare services or to even cover provider costs, and are consistently set at below market rates.
- Using such artificially low Medicare rates for determining out-of-network reimbursement will take away any incentive for insurers to negotiate fairly with physicians and bring them in-network.
- Utilizing a politically-derived funding methodology like Medicare promises to significantly impact the healthcare safety net.

Given this, PFC believes setting a basis for "usual and customary" charges at the 80th percentile of charge data from an independent source is a fair and appropriate standard to ensure access to care and best protect patients from unexpectedly high out-of-pocket costs. Additionally, we believe it is equally important to require insurers to recognize patients' assignment of benefits to out-of-network physicians. This is another measure to ensure patients are truly taken out of the middle between insurers and providers.

We are concerned, though, that NCOIL's draft bill currently does not adequately address patient out-of-pocket costs for unexpected out-of-network care. To this end, ***we strongly encourage you to include provisions requiring – as outlined above – any patient deductibles and cost-sharing be applied at the in-network rates for any given service.***

To further protect patients, we stand with other national physician stakeholder groups and coalition partners to strongly denounce deceptive and manipulative business practices by the health insurance industry, and urge NCOIL to adopt a network adequacy model that protects patients from exploitative business practices and ensures greater access to care.

Finally, PFC again shares the concerns of our partner physician organizations regarding the complexity of the proposed notice and disclosure requirements, and the real fear that implementation as such could lead to significant confusion for patients and a potential delay in patient care. While transparency is important to both patients and their physicians, it should never come at the cost of providing much needed care. PFC would welcome the opportunity to work closely with NCOIL to find a solution that encourages transparency without affecting patient care.

In conclusion, PFC is encouraged by NCOIL's efforts to address surprise billing by developing draft legislation to improve protections for our patients while ensuring fair and reasonable reimbursement for physician services, and ultimately preserving access to care. We stand ready to assist you in this important work now and throughout the process.

Thank you for the opportunity to comment.

Sincerely,

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