NCOIL- Remarks March 7, 2020

Good Morning,

My name is Andy Guggenheim. I am here on behalf of the American Bankers Association which represents the nation's $18 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2 million people, safeguard more than $14 trillion in deposits, and extend $10.4 trillion in loans.

I am here today to discuss the NCOIL Patient Dental Care Bill of Rights Model Act. ABA fully supports the idea that dentists and other providers should have full transparency as to the methods of payments available to them and any fees related to those methods.

We also believe that providers are best served if they have choices between payment methods and the ability to freely choose the method that best fits their needs.

The marketplace is effective in determining payments options on commercial transactions. All payers are not alike, and all providers are not alike. Payers must be able to address and utilize a variety of EFTs to address their costs, and providers should be free to select the payment method that best serves their needs, after considering relevant factors, including cost of acceptance.

The payment method a health care provider elects may depend on a variety of considerations, including the type of payer (*e.g.,* a health plan, a third-party administrator-TPA, a government entity), how often the provider gets paid by the payer, the type of provider (*e.g.,* a hospital or a solo practitioner), the amount of the claim, the processes by which the health care provider reconciles the payment, and the practice management system utilized by the health care provider. In many cases, health care providers may determine a blend of EFTs (*e.g.,* ACH and virtual card) across their spectrum of payers is the best course of action.

Every payment method as a cost of acceptance. Health care providers pay bank lockbox services and revenue cycle management companies to process their check and ACH payments. There are holds on funds when depositing checks, and internal staff time to re-associate remittance advice with ACHs. If a health care provider accepts a virtual card, merchant fees, also referred to as interchange, will be assessed on the transaction. The amount of interchange is dependent, in large measure, on the agreement the health care provider has with the business that provides them a card terminal. The rates for these merchant card services are negotiable.

With Respect to the NCOIL Patient Dental Care Bill of Rights Model Act, I would suggest the following:

Section E(I):

1. Suggest deleting the notice requirement in (3) for the following reasons:

a. This provision could require the disclosure of confidential information in violation of contractual covenants and/or trade secrets and proprietary information of a payer otherwise protected under state law. Further, what a provider may be charged in interchange is unique to that provider. There is not "one credit card company" involved in the transaction. The card network is one participant, but there is also an issuing bank, a merchant acquirer and perhaps others involved in a single card transaction.

b. This provision is not included in any existing federal or state law pertaining to healthcare claim payments. If the goal of the Model Law is to create uniformity across jurisdictions, this provision is inconsistent with nine other jurisdictions that have enacted statutes addressing virtual card payments on healthcare claims.[1]

[1] Arizona, Arkansas, Georgia, Louisiana, Maryland, Missouri, North Carolina, Oklahoma, and Oregon have all passed laws that address provider choice and fee transparency with virtual card payments, as reflected in the draft model legislation. None of these state laws require the disclosure described in subsection E(I)(3) in the draft model legislation.

2. Suggest deleting the statement that lists offerings by a dentist's agent for the following reason:

Many parties that may assess a fee pursuant to an agreement with the provider may not be an "agent" as that term is generally understood under applicable law. In order to reflect the intent of the model legislation, this section should guarantee that *any* party that has made an agreement with the provider to provide *any* services associated with a payment should be required to disclose whether and what fees may apply. This broader guarantee is made in the first sentence of the section requiring the provider to consent to the fee.

 Technical edit: Under Definitions, if the statement in Section E(I) on Dentist Agent is removed, then "Dentist Agent" does not need to be defined.

Reasons Why Payers and Providers Choose to Use Virtual Payment Cards

For Payers:

- Reduced check and ACH processing cost,
- Greater visibility and control over claims payment, and
- Increased fraud protection.

For Providers:

- Ability to use existing payment card infrastructure to process virtual card transactions,
- No need to disclose banking information to health plans,
- No need to enroll with each health plan to receive payment,
- Reliable and secure way to receive payment, and

Guaranteed payment, with zero liability, in the event of fraud.

Our shared experience has found that, given a choice and knowing the associated fees, providers may choose virtual cards over other payment methods for the following reasons:

- • Virtual cards give providers the ability to use existing payment card infrastructure to process virtual card transactions;
- • There is no need to disclose banking information to health plans;
- • There is no need to enroll with each health plan to receive payment;
- • Virtual cards provide a reliable and secure way to receive payment; and
- • Virtual cards provide guaranteed payment, with zero liability, in the event of fraud.

Relevant State Laws and *Pending* Bills (as of January 31, 2020):

Alabama: HB293 (2016)
Arizona: HB2494 (2019)
Arkansas: HB1125 (2019)
Georgia: HB818 (2018)
Louisiana: SB73 (2019)
Maryland: HB639 (2016)
Missouri: SB302 (2019)
North Carolina: SB252 (2019)
Oklahoma: HB1157 (2019)
Oregon: HB3021 (2015)
Nebraska: LB954 (2020) – Introduced 1/13/2020
Rhode Island (2020) – Introduced 3/19/2019
Vermont: H734 (2020) – Introduced 1/16/2020