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June 2, 2017

Sen. Judith L. Schwank
Sen. Donald C. White
Sen. Jay Costa

Re: Pennsylvania Emergency Physician Feedback on Senate Bill 678

Dear Senators:

Thank you for the opportunity to comment on Senate Bill 678 (surprise balance bills for emergency services and certain covered health care services). I am writing on behalf of the Pennsylvania College of Emergency Physicians (PACEP), representing over 1,700 Emergency Department (ED) physicians in the Commonwealth, regarding **our mutual goal to preserve patient access to quality emergency care and protect patients from surprise medical bills.** Emergency physicians believe that all Pennsylvanians should be able to use the closest and most appropriate emergency department when they have an acute need; that patients should receive fair insurance coverage and be kept out of disputes regarding payment of balance bills; and that the emergent episode of care is unique, as no one can predict where or when they might require emergency care. To this end, we must express significant concerns that **Senate Bill 678 as written will lead to decreased access to quality emergency care in Pennsylvania**.

The Situation

The ED is the safety net of the health care system, and emergency physicians serve the people of Pennsylvania when they are in crisis on any day and at any time. We do so without any prior relationship or certainty of their ability to pay for these services, either themselves or through their insurance product. We do this in collaboration with our colleagues in other specialties, as the emergent episode of care extends from the time our patients contact emergency services or arrive in the ED, through the time they are stabilized and discharged from the hospital. **In fact, we provide screening and stabilization for life- or limb-threatening conditions to *every* patient, as mandated by the federal Emergency Medical Treatment and Labor Act of 1986 (EMTALA), *before* asking patients about their ability to pay. We care for all patients even if they have no insurance, or have insurance that is 'out-of-network'. No patient at a time of medical crisis should have to worry about insurance network coverage when presenting with a medical emergency.** Though emergency physicians comprise only 4% of the physician workforce, we provide 28% of all acute care and two thirds (2/3) of all uninsured (charity) care in the Commonwealth. We also provide 50% of all care to Medicaid and CHIP participants.

When Pennsylvanians present to us needing emergency care, they expect that their health insurance company will pay for the emergency services they require. Unfortunately in the Commonwealth, this is not always the case. Many large health insurance companies have developed narrow provider networks in order to maximize their own profits by limiting the number of physicians with whom they contract and excluding those who will not accept their unreasonably low reimbursement rates. Insurance companies know that under the EMTALA mandate, emergency physicians will provide care to all patients who present to the emergency department, even if their insurance company has excluded the emergency physicians from their network. The insurance company then determines the reimbursement rate, without any transparent standard for doing so. This leaves consumers with a coverage gap; the premium for which they paid doesn't actually cover their care.

PACEP agrees that patients in Pennsylvania should not have to worry about an unexpected bill for their unanticipated emergency care. We believe that the insurer that has promised emergency coverage (currently an essential benefit for health insurance) to the patient in exchange for a premium should provide that essential coverage and reimburse those providing emergency care based on a transparent standard. Prior authorization and notification of network affiliation cannot apply to emergency care, which is always unplanned.

In other states where balance billing has been debated, the majority of out-of-network bills issued to patients are due to high deductibles built into health insurance products or from arbitrarily narrow physician networks. Additionally, health insurance companies do not clearly delineate these provisions and inherent restrictions in their plans to their clients and stand to gain by marketing and selling sub-standard products.

The Legislation

Instead of regulating health insurance company practices, SB 678 incorrectly focuses on restricting emergency physicians' ability to collect payment for services for time-dependent and often life-threatening conditions already provided. Provisions that rely on the health insurance companies to set and pay "the out-of-network amount due under the health insurance policy" (Section 304(b)(1)) without an impartial, transparent standard are rife for abuse at the expense of emergency physicians providing care to Pennsylvanians in times of crisis. The requirement for providers to ask for cost-sharing amounts (Section 303(a) (2)) is yet another administrative hurdle for the provider; such information should be automatically provided to the provider by the insurance company any time a bill is sent to the insurer. Additionally, the use of arbitration as a dispute-resolution mechanism (Section 305), especially with

- A "loser pays" payment model
- Mandate of best-offer binary decision making in the arbitration
- Requirement of deposit of arbitration costs prior to resolution, and
- The lack of a floor above which arbitration would kick in

is heavily skewed in favor of insurance companies. Insurance companies have more personnel and resources to contest reasonable charges by physicians who have already provided emergent care to patients at times of crisis without knowledge or concern for insurance network status.

Our Proposal

In order to protect patients and ensure their access to care, PACEP proposes the following recommendations for any balance billing legislation, similar to those enacted in other states (CT, TX):

1. **No health insurance product should require prior authorization for rendering emergency care to its clients; the episode of emergency care extends from the moment the patient makes contact with prehospital services or an emergency department, to the time they are released from the hospital.**

2. **No health insurance product should impose for emergency services rendered to their clients a coinsurance, copayment, deductible, or other out-of-pocket expense greater for an out-of-network emergency physician than would be imposed for an in-network emergency physician.**

3. **Physicians providing treatment during the episode of emergency care, if out-of-network, should be reimbursed by health insurance companies the *greatest* of the following amounts:**
    a. **The amount that would have been paid to an in-network provider**
    b. **The Usual, Customary, and Reasonable (UCR) amount defined as "the 80th percentile of all charges for the particular health care service performed by a health care provider, in the same or similar specialty and provided in the same geographical area, as reported in a benchmarking database maintained by a non-profit organization, specified by the insurance commissioner. Such organizations shall not be affiliated with a health carrier". The database that would best meet this requirement, as recommended by the National Opinion Research Center (NORC) of the University of Chicago, after an independent analysis requested by the Center for Medicare Services, is FAIR Health.**

4. **If arbitration is necessary for dispute resolution, the arbitration process must:**
    a. **Have a floor of $800 per CPT code, for out-of-network physician charges after cost sharing. Bills below this floor should be reimbursed in full by the insurer,**
    b. **Allow for consolidation of multiple disputes in one hearing,**
    c. **Have an impartial arbitrator with experience in healthcare.**

Thank you for your time and consideration of this important matter. We at PACEP are willing to be a resource to you at any time as you consider the best way to protect our patients' access to emergency care. Please contact us if we can answer any further questions or be of assistance in any way.

Sincerely,

Maria K. Guyette, MD, FACEP
President

Attachments:

- NORC Report on Data Sources for Establishing Payment Rates for Out-of-Network Emergency Room Services
- PACEP FAQ Document on FAIR Health