

December 7, 2017

Hon. Matthew E. Baker
Chairman
House Health Committee
Pennsylvania House of Representatives
213 Ryan Office Building
P.O. Box 202068
Harrisburg, PA 17120-2068

Dear Chairman Baker,

The Pennsylvania Coalition on Out-of-Network Services, a coalition of medical specialties and physicians dedicated to preserving quality patient care and fair insurance coverage, looks forward to continuing to work with you and the House Health Committee to address the issue of surprise balance billing and to protect Pennsylvania patients.

We support the goal of protecting patients from surprise balance billing. However, HB 1553, as drafted, raises a host of fundamental issues that need to be addressed in order to avoid unintended consequences that could threaten the viability of physician practices and, in turn, access to care for all Pennsylvanians.

There is a series of policy and technical issues that should be resolved in this legislative proposal. The coalition letter previously submitted reviews many facets, while this letter focuses on a subset.

We are providing you with the following suggested amendment language to address “Provider Payment Methodology,” “Dispute Resolution” and “Threshold Level for the Applicability of the Dispute Resolution Process.”

Provider Payment Methodology and Benefit Standard

Definition:

“Usual and customary rate” shall mean the eightieth percentile of all charges for the particular health care service performed by a provider in the same or similar specialty and provided in the same geographical area as reported in a benchmarking database maintained by a nonprofit organization specified by the commissioner. The nonprofit organization shall be an independent, charge-based benchmarking database that is not financially affiliated with, or otherwise supported by an insurance carrier or provider.

Payment Methodology

Upon receipt of an out-of-network bill covered by this act, the insurer shall pay directly to the provider the lesser of: (i) the usual and customary rate for the service or (ii) the provider’s charge.

Dispute Resolution

The provisions from Sections 11 and 12 of the National Council of Insurance Legislators (NCOIL) Out of Network Balance Billing Transparency Model Act which we feel would best meet the objectives of dispute resolution in this Bill:

(A) A program of Independent Dispute Resolution (“IDR”) for disputed out-of-network charges, including balance bills, shall be established and administered by the Department of Insurance (“DOI”).

(1) The DOI shall promulgate rules, forms and procedures for the implementation and administration of the IDR program.

(2) The DOI may charge the parties participating in the IDR program such fees as necessary to cover its costs of implementation and administration.

(3) The DOI shall maintain a list of qualified reviewers.

(B) The sole issue to be considered and determined in a IDR proceeding is the reasonable charge for the medical services provided to the individual. The basis for this determination shall include, but not be limited to:

(1) Whether there is a gross disparity between the fee charged by the health care facility or provider for services rendered as compared to:

(a) Fees paid to the involved health care facility or provider for the same services rendered by the health care facility or provider to other patients in health care plans in which the health care facility or provider is not participating, and (b) in the case of a dispute involving a health care plan, fees paid by the health care plan to reimburse similarly qualified providers for the same services in the same region who are not participating with the health care plan;

(2) The level of training, education and experience of the provider;

(3) The health care facility or provider’s usual charge for comparable services with regard to patients in health care plans in which the health care facility or provider is not participating;

(4) The circumstances and complexity of the particular case, including time and place of the service;

(5) Individual patient characteristics; and

(6) The usual and customary rate of the service.

(A) A health carrier or nonparticipating provider may initiate an independent dispute resolution process to determine reimbursement for health care services provided by a nonparticipating provider. Failure to respond within fifteen days to the initiation of the independent dispute resolution process constitute acceptance of the initiating party’s submission.

(B) The insurance commissioner shall establish an application process and fee schedule for independent reviewers.

(C) If the parties have not designated an independent reviewer by mutual agreement within 30 days of the request for IDR, the insurance commissioner shall select an independent reviewer from its list of qualified reviewers.

(D) To be eligible to serve as an independent reviewer, an individual must be knowledgeable and experienced in applicable principles of contract and insurance law and the healthcare industry generally.

(1) In approving an individual as an independent reviewer, the insurance commissioner shall ensure that the individual does not have a conflict of interest that would adversely impact the individual's independence and impartiality in rendering a decision in an independent dispute resolution procedure. A conflict of interest includes but is not limited to current or recent ownership or employment of either the individual or a close family member in a health plan, or a health care provider that may be involved in an independent dispute resolution procedure.

(2) The insurance commissioner shall immediately terminate the approval of an independent reviewer who no longer meets the requirements to serve as an independent reviewer.

(E) Either party to a IDR proceeding may request an oral hearing.

(1) If no oral hearing is requested, the independent reviewer shall set a date for the submission of all information to be considered by the independent reviewer.

(2) Each party to the IDR shall submit a "binding award amount"; the independent reviewer must choose one party's or the other's "binding award amount" based on which amount the independent reviewer determines to be closest to the reasonable charge for services provided in accordance with Section 11(B), with no deviation.

(3) If an oral hearing is requested, the independent reviewer may make procedural rulings.

(4) There shall be no discovery in IDR proceedings.

(5) The independent reviewer shall issue his or her written decision within ten (10) days of submission or hearing.

(F) Unless otherwise agreed by the parties, each party shall:

(1) Bear its own attorney fees and costs, and

(2) Equally bear all fees and costs of the independent reviewer.

(G) The decision of the independent reviewer is final and shall be binding on the parties. The prevailing party may seek enforcement of the independent reviewer's decision in any court of competent jurisdiction.

Threshold Level for the Applicability of the Dispute Resolution Process

The dispute resolution process would apply to any balance billed amount, or difference between provider charges and insurer's allowable charge, of greater than \$1,000, per service as described by a CPT code, adjusted for inflation annually.

The dispute resolution process would be between the insurer and the provider.

We appreciate your willingness to work with our coalition on this important issue, and as the bill moves through the legislative process we will continue to work with you on some other policy and technical amendments which we believe will improve the bill. However, given the implications of this issue, we respectfully urge you and the Committee to defer action on this legislation at this time. By doing so, the Committee and all stakeholders will have more time to achieve an equitable resolution on the many outstanding policy and technical issues.

In closing, Chairman Baker we appreciate your continuing leadership on this important issue as well as the hard work and devotion of your staff, particularly Whitney Metzler, in working with us to address these important priorities.

Respectfully submitted:

The Pennsylvania Association of Pathologists

The PA College of Emergency Physicians

The Pennsylvania Radiological Society

The Pennsylvania Society of Anesthesiologists

The Pennsylvania Society of Oncology and Hematology

The Robert H. Ivy Society of Plastic Surgeons

Physicians for Fair Coverage