



June 10, 2019

His Excellency Charlie Baker
Office of the Governor
State House, Room 356
Boston, MA 02133

Hon. Robert A. DeLeo, Speaker
Massachusetts House of Representatives
State House, Room 356
Boston, MA 02133

Hon. Karen Spilka, President
Massachusetts State Senate
State House, Room 332
Boston, MA 02133

Dear Governor Baker, Speaker DeLeo, and Senate President Spilka:

On behalf of a broad group of organizations representing employers and health plans committed to ensuring access to quality and affordable health care in the Commonwealth, we are writing relative to the issue of surprise billing. We applaud the attention this issue has received from the Legislature and ask that you take action this session to pass comprehensive legislation that will protect patients from surprise medical bills and rein in out-of-control health care costs associated with these billing practices.

Surprise billing occurs when an insured consumer unknowingly receives emergency care or ambulance services from a provider that is not a part of their health plan's network, or receives care at an in-network facility, such as a hospital, but the provider delivering the services within that facility is not contracted with the health plan. This most often occurs with emergency room physicians, radiologists, anesthesiologists and pathologists. These so-called "ERAP" providers increase the cost of care to health plans, employers, and consumers, both directly and indirectly. Typically, when an out-of-network bill occurs, the health plan pays the full charged amount or tries to negotiate a lesser rate with the provider. Often the provider then bills the consumer the balance for the amount not paid by the health plan.

Approximately 1 in 5 emergency room visits result in the potential for a surprise out-of-network (OON) bill. The average spending on OON claims in Massachusetts far exceeds the average spending on in-network claims for these services. Additionally, national data shows that, on average, anesthesiologists are often paid 580% of Medicare, far in excess of normally contracted rates, while radiologists charge 450% of the Medicare rate, and pathologists and emergency medicine physicians regularly charge 400% of the Medicare rate. These charges are unsustainable and ultimately impact the premium paid by employers and consumers.

We believe that a comprehensive legislative solution is needed to prevent occurrences where health plan members are subjected to higher costs through no fault of their own and that out-of-network providers **should not** be allowed to charge higher than typical rates in an emergency situation or when providing care at an in-network facility. We believe the following elements are essential for any comprehensive legislation:

1) *Notice to Consumers in Surprise Billing Scenarios*

Legislation in Massachusetts should require providers to inform patients when a patient is going to be cared for by an out-of-network provider and be liable for additional health care costs.

2) *Prohibition on Balance Billing*

The Legislature should prohibit balance billing of patients by providers. Insured individuals should have a reasonable expectation that they are financially protected when they responsibly seek care at an in-network facility and when they receive emergency services. Failure to provide balance billing protections hurt consumers and undermines the comprehensive health plan benefits offered by employers.

3) *Establishment of Reasonable Payment Rates for Out-of-Network Services*

Finally, the Legislature should adopt the recommendations put forward by the Special Commission on Provider Price Variation (PPV Commission) and the Health Policy Commission (HPC) which call for the establishment of default rates of payment to OON providers. Key principles established by the PPV Commission and reiterated by the HPC can serve as guidelines in setting a reasonable price for OON services:

- The overall impact should result in cost savings to consumers and employers and have minimal additional administrative expense to both providers and payers.
- There should be a reasonable, transparent, and simple approach to applying a rate, not a cumbersome metric that is non-transparent or not easily administered.
- Any rate should ensure that current in-network participation levels by providers are improved upon. The set rate must not inadvertently be at such a high level as to entice providers to leave a network, or at such a low level as to make a health plan indifferent as to whether the provider is in- or out-of-network.

Collectively, we support setting a rate between what Medicare would pay and the average or median in-network rate. We oppose paying out-of-network providers a percentage of charges and likewise, we oppose a cumbersome arbitration process. We believe that a simple and clear approach is the best solution for addressing this issue.

Absent pressure to contain the cost of emergency and OON care, there is no incentive for OON providers to negotiate reasonable reimbursement with health plans, particularly if the service has already occurred. The establishment of noncontracted commercial rates for emergency and nonemergency OON services will encourage providers to charge more reasonable rates and participate in health plan networks, resulting in lower costs for members. Given the prevalence of OON claims in Massachusetts in both circumstances, this requirement should apply equally to

OON emergency services including ambulance services and to OON ancillary services delivered at a health plan's in-network facilities.

All stakeholders in the health care industry have a shared responsibility to help make care more affordable. We remain committed to working with you on a solution to this issue that achieves those goals and ultimately protects consumers, encourages providers to participate in health plan networks, and establishes a reasonable rate for those providers that choose to remain out-of-network.

Sincerely,



Jon B. Hurst
President
Retailers Association of Massachusetts



Chris Powers
President & CEO
Massachusetts Association of Health
Underwriters



Lora M. Pellegrini
President & CEO
Massachusetts Association of Health Plans



Christopher Carozzi
State Director
NFIB



Lisa M. Carroll
President
Small Business Service Bureau, Inc.

Cc

Hon. Jennifer Benson, House Chair, Joint Committee on Health Care Financing
Hon. Cindy Friedman, Senate Chair, Joint Committee on Health Care Financing
Hon. James Murphy, House Chair, Joint Committee on Financial Services
Hon. James Welch, Senate Chair, Joint Committee on Financial Services
Marylou Sudders, Secretary, Executive Office of Health and Human Services
Gary D. Anderson, Commissioner, Massachusetts Division of Insurance
Maura Healey, Attorney General
David Seltz, Director, Health Policy Commission