

Memorandum

Date: November 30, 2016

To: Lonnie Johns-Brown
Legislative Director
Policy & Legislative Affairs Division
Washington State Office of the Insurance Commissioner

From: *Coalition of Hospital Based Physicians:*
American College of Emergency Physicians (ACEP)
American College of Radiology (ACR)
College of American Pathologists (CAP)
American Society of Anesthesiologists (ASA)
Washington State Orthopedic Association

Re: Response to Questions Posed by the Commissioner

1. What reimbursement level for providers in the covered surprise billing circumstances would be fair and why?

The Coalition of Hospital Based Physicians believes that Out-of-Network (OON) Balance Billing laws that ban balance billing should directly key physician payment to a **"usual, customary and reasonable rate" meaning the eightieth 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 nonprofit, non-conflicted organization specified by the Insurance Commissioner. Such organization shall not be affiliated with any insurance carrier. (e.g. Fair Health Inc.)**

2. What else would need to be included in the legislation to make the level workable/acceptable?

Protections against balance billing should only be applicable when the enrollee (patient) cannot access an in-network provider. Recently enacted law in the State of Florida to regulate out of network provider billing specifically states that the statutory protection against balance billing only applies when "the insured does not have the ability and opportunity to choose a participating provider at the facility who is available to treat the insured." (Fla. Stat. § 627.64194 (3) (b)). We urge similar language be incorporated into any legislative draft in order to promote the responsibility of the patient to avail such services, when accessible.

The Coalition also urges the Department to include network adequacy language that effectuates American Medical Association policy (AMA) (H-285.908.11) as follows: "Our AMA advocates that health plans should be required to document to regulators that they have met requisite standards of network adequacy including hospital-based physician specialties, (i.e. radiology, pathology, emergency medicine, anesthesiologists and hospitalists) at in-network facilities, and ensure in-network adequacy is both timely and geographically accessible."

The Coalition also supports the use of alternative dispute resolution (mediation) mechanisms to resolve payment disputes between providers and payers that is applicable to provider bills over a prescribed amount.

3. If one, or more, states have surprise billing laws that you support, which are they and why do you support them?

The Coalition supports the payment provisions in New York State law that regulates all out-of-network physician payment at in-network facilities to be at the 80th percentile of the FAIR Health database. A similar provision exists in Connecticut for emergency services which has also designated the 80th percentile of FAIR Health Inc.. as payment for these services.

4. How is your preferred proposal(s) is fair to issuers, providers AND consumers ?

The 80th percentile of FAIR Health Inc. methodology is also used by United Health Inc. for plans in multiple states (see attached). The "usual and customary rate" used to determine out of network payment should reflect the market value of physician services which is embedded in the FAIR Health methodology, which was developed pursuant to a legal settlement between the payors and state attorneys generals.

If payors believe that the UCR (when calculated at the 80th percentile of FAIR Health Inc.) is in excess of what they want to pay for the service, there will exist a strong market incentive for them to negotiate in-network contracts with physician groups.

For states that have adopted the 80th percentile of FAIR Health as the payment rate, consumers are not financially responsible for costs in excess of applicable deductibles, co-payments and co-insurance,

Encl: Attachment