



OREGON
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Senator Laurie Monnes-Anderson
Chair, Senate Health Care Committee
Oregon State Legislature

**Oppose House Bill 2339A
Out of Network Physician Payment & Balance Billing Prohibition**

Dear Chair Monnes-Anderson and Committee Members:

On behalf of the Oregon Pathologists Association and the College of American Pathologists, we urge you to oppose House Bill 2339A that would benefit health insurance companies by keying physician out-of-network payment to Medicare. The Oregon Pathologists Association (OPA) is a state wide medical society that represents practicing pathologists in the state. The College of American Pathologists (CAP) is a national medical specialty society representing over 17,000 physicians who practice anatomic and/or clinical pathology. CAP members practice their specialty in clinical laboratories, academic medical centers, research laboratories, community hospitals, and federal and state health facilities.

We support the primary purpose of HB 2339A, that is, taking the patient out of the middle of billing issues; however, our concern regarding House Bill 2339A is that it limits what a health plan can pay to an out of network physician, including pathologists, based upon the Medicare fee schedule, thereby devaluing certain physician services and encouraging the roll-back of private insurance coverage and contracting. Please note, the Medicare fee schedule was designed only for medical services rendered to persons over the age of 65. Some medical services, including some pathology and some genetic screening services are not covered by Medicare. Furthermore, the fee schedule is created in the context of a government program, not to serve the private insurance market. (For example, because of federal budgetary constraints, Medicare payments in recent years have been re-directed to emphasize primary care with dollars diverted from medical specialists commonly found in the hospital setting.) For these many reasons, using a Medicare mechanism, will remove economic or regulatory incentives for health insurance plans to contract with hospital based physician specialists for their services.

The Oregon Pathologists Association (OPA) and the College of American Pathologists (CAP) support payment to out of network physicians in accordance with *usual and customary rates* that reflect the market value of physician services based upon an independent database of charges that are determined by geography. Other states (e.g. Florida, Minnesota, New York) have adopted such a market-based formula for payment. We urge that the payment formula to physicians be amended to reflect the market value of physician services so that the bill can receive further legislative consideration. Without such market incentives, health insurance plans will not be economically compelled to contract with hospital based physicians.

A recent report from the RAND Corporation concluded that for the State of New Jersey, an analog payment rate for out of network payments set **between 90 percent and 200 percent of Medicare could reduce payments to hospitals by between 6 and 10 percent.** (See: "Evaluating the Impact to Regulate Involuntary Out-of-Network Charges on New Jersey Hospitals," RAND Corporation, November 2016) **We would expect a similar adverse impact on Oregon hospitals that cannot afford such cuts, especially in light of the uncertainty regarding the Affordable Care Act and the future of Medicare payment.** Quite simply, use of the Medicare fee schedule to control the private insurance market tips economic leverage in favor of the insurance industry to the detriment of providers and the health care delivery system.

Where legislation or regulation on this issue has been enacted, regardless of partisan composition or ideological inclination, states and policy makers have recognized the need to maintain marketplace equilibrium between insurance payers and physician providers. For these reasons, even states as politically divergent as New York and Florida have keyed physician payment for out-of-network services to a market based charge formula that historically has been the basis for the "usual and customary" physician charge and health insurance plan payment. **For these reasons OPA and CAP oppose House Bill 2339A in its current form.** Thank you for consideration of our position.

Sincerely,

A handwritten signature in blue ink, appearing to read "M. Ghofrani", with a stylized flourish at the end.

Mohiedean Ghofrani, MD, MBA, FCAP
President, Oregon Pathologists Association

cc: Members of Senate Health Care Committee
Barry R. Ziman, Director, College of American Pathologists
Courtnei Dresser, Director Government Relations, Oregon Medical Association
Patricia O'Sullivan, O'Sullivan & Associates