

April 7, 2022

MASSACHUSETTS SOCIETY OF PATHOLOGISTS, INC



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OPPOSE SB 2774 **Re: Out-of-Network (OON) Payment Formula**

The Massachusetts Society of Pathologists (MSP) strongly opposes the out-of-network (OON) payment provision of Senate Bill (SB) 2774. **The proposed legislation does not help protect patients, who are now protected in Massachusetts under the federal *No Surprises Act (NSA)*-effective January 1, 2022- from "surprise billing."** Under the strong protection of federal law, Massachusetts patients receiving unanticipated OON services at in-network facilities and hospitals are only liable for in-network payment amounts to such providers and are removed from the middle of billing disputes.

Thus, the state proposed legislation that displaces federal law only enhances the profits of health insurance companies through a payment formula that benefits these companies to the detriment of patients. Specifically, under the bill, payments for OON services would be tied to the "median in-network" payment amounts. These amounts, while promulgated by the State under the bill, are unilaterally determined by health insurance payers and thus would be optimized for their profits. This is particularly egregious as these companies have accrued record profits throughout the COVID-19 pandemic.

The MSP strongly opposes a state-regulated OON payment formula that relies upon median in-network rates set for insurers and opposes the proposed rates not keyed to a retrospective year. By contrast, the federal NSA establishes the default payment year of 2019 in law. Accordingly, the federal NSA was carefully crafted to remove the patient from surprise billing disputes and balance the interests of patients, providers, and health plan payers.

Importantly, the federal law establishes an independent dispute resolution (IDR) process to resolve payment disputes between health care providers and health insurance plans. While the criteria for IDR determinations is currently a subject of litigation, we believe the underlying federal statute can lead to equitable outcomes in payment that will financially sustain the health care delivery system and our provider workforce.

However, unlike the NSA law, the OON payment formula in the bill is not indexed to inflation, thereby negating an essential component in the federal law that ties a qualified payment amount (QPA) to a base year with an annually adjusted inflation index. The critical importance of relying upon a retrospective base year is designed to avert prospective gaming of the system by health plan payers, including the incentive and induced potential to implement draconian payment reductions for critical physician services or to otherwise terminate physician contracts.

The "*unintended consequences*" of using "median in-network rates" to calculate OON payment were noted in congressional discussions to "...create incentives for insurers to terminate contracts with physicians who they are currently paying more than the median."¹ As evident from Congressional discourse, the contemplated use of "median in-network rates" as a payment methodology was intentionally rejected by the U.S. Congress and most states that have enacted OON laws due to the highly flawed public policy approach to resolving OON payment.

This policy approach is heavily weighted in financial favor of health plan payers and will only serve to enrich these companies with dire economic consequences for health care delivery, including the termination of physician contracts, as noted by Brookings.

A previous report determined an OON payment safeguard of 150% of Medicare was most appropriate for calculating potential premium reductions and balancing competing economic interests.² As a matter of public record, health plan payers in Massachusetts formally urged the use of a payment methodology tied to "135% of Medicare, consistent with the rate established by the Baker-Polito Administration during the COVID-19 state of emergency." Accordingly, the repercussions of setting a default rate too low would be devastating not only to the financial viability of pathology and laboratory services but to the very patients, we serve.

The net effect of Senate Bill 2774, if enacted, would displace the equitable OON payment and arbitration provisions of the federal NSA law and would subsequently replace it with a state-based formula that only serves to fill the pockets of health insurance payers to the detriment of our health care delivery system and our patients during such fragile times.

¹ [June 5, 2019 correspondence](#)

² [Policies to Address Surprise Billing Can Affect Health Insurance Premiums](#)

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We respectfully urge your opposition to Senate Bill 2774. Thank you for your consideration of our comments.

Respectfully yours,
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