

MASSACHUSETTS SOCIETY OF PATHOLOGISTS, INC



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June 29, 2021

Lauren B. Peters
Undersecretary for Health Policy
Executive Office of Health and Human Services

Dear Ms. Peters:

The Massachusetts Society of Pathologists opposes the establishment of a default out-of-network commercial rate for emergency and non-emergency services. We believe the best approach at this time is for Massachusetts to follow the federal *No Surprises Act*, enacted with bipartisan Congressional support after an arduous process that included substantial compromise by all parties.

The federal law, which does not stipulate a default payment rate, provides a robust arbitration process for resolving claims disputes between health insurance payers and health care providers. Thus, the *No Surprises Act* is designed to provide an equitable balancing of stakeholder interests to ensure the continued functioning of the commercial insurance market while preserving the economic incentive for health plans to contract with health care providers. And, most importantly, the law includes vital patient protections.

With respect to pathology and laboratory services and the patients we serve, we believe the optimal way to preserve access and high quality in these services is through in-network

contracting. Such in-network contracting serves the interests of all parties, including patients, and we believe the *No Surprises Act* ensures that in-network contract incentives for both payers and providers are vigorously maintained.

In addition, the unimpeded implementation of the *No Surprises Act* in Massachusetts will minimize conflict and confusion as well as reduce administrative encumbrances because ERISA plans and non-ERISA plans will both be governed under federal law. We strongly believe that state regulation of ERISA plans will not be sustained or permitted by the federal government after January 1, 2022. Accordingly, the administrative simplification of having the entire insurance market under one controlling federal law will reduce administrative overhead and thereby reduce health care costs.

In contrast, we believe that any Massachusetts use of a default rate for out of network payment that is substandard or incentivizes health plans to not contract with pathology and laboratory providers will undermine the basic rationale for maintaining the private insurance market. For example, it is well established that the private insurance market subsidizes health care costs incurred in both Medicare and Medicaid services provided at hospitals and other facilities. An inadequate payment will further aggravate problems of network adequacy. Thus, it critical to ensure that health care providers' services are provided under equitable contracts with health care plans.

Furthermore, any out of network payment system that favors health insurance companies over health care providers will destabilize the entire health care delivery system that is still financially fragile as we emerge from the COVID-19 pandemic. In contrast to providers and hospitals, health insurance companies during the past year accrued record profits and the stock prices of these companies reflect that good fortune.

For Massachusetts to independently craft an out of network payment methodology that disrupts the commercial contracting market and favors health insurance plans will only serve to enrich their shareholders and corporate executives. It is precisely for that reason that the vast majority of states that have enacted out of network billing laws over the last five years do not prescribe a payment methodology and were thus conceptually aligned with the *No Surprises Act* even before its passage last year.

If default rates are set too low, this would erode the financial viability of pathology and laboratory services with negative downstream consequences for our patients that should not be overlooked or underestimated.

In summary, as long as the private health insurance market exists to extract profit from the health care system, the rationale for Massachusetts to chart its own path rather than follow the *No Surprises Act* is counterproductive and detrimental for our patients. Accordingly, Massachusetts should allow the federal law to take full effect for both ERISA and non-ERISA plans and allot time to evaluate what we believe will be a successful transition.

The *No Surprises Act* is a monumental achievement that thoughtfully balances the concerns of patients, providers, and payers. We should give it time to work and make adjustments to Massachusetts law only if necessary.

Thank you for your consideration of our comments.

Sincerely,

Handwritten signature of Rebecca Osgood in black ink, including the initials "WMD" and the date "6/29/21".

Rebecca Osgood, President