

PROVIDER COALITION for PATIENT ACCESS

The Honorable Bryan Cutler
Speaker,
House of Representatives
Harrisburg, PA

The Honorable Kerry Benninghoff
Majority Leader
House of Representatives
Harrisburg, PA

The Honorable Donna Oberlander
Majority Whip
House of Representatives
Harrisburg, PA

Dear Speaker Cutler, Leader Benninghoff, and Whip Oberlander,

On behalf of the Provider Coalition for Patient Access, we want to thank you for the opportunity to meet with you and your staff to discuss Surprise Medical Bill legislation pending before the House of Representatives. For the past five months physicians on the front lines, like the General Assembly, have been focused exclusively on the response to COVID-19 public health emergency. However, as the Commonwealth begins to emerge to some version of the new normal and you consider the legislative agenda for the fall, we believe that Pennsylvania should protect consumers from surprise medical bills while fostering a balanced, market based framework for contractual relationships between health care providers and insurers.

In this context, we are writing to reiterate our opposition to the current version of House Bill 1862, Surprise Balanced Bills. While we strongly support taking consumers out of the middle of billing disputes, this legislation in its current form will diminish access to care, particularly for vulnerable Pennsylvanians, and compound the financial challenges currently facing all providers. Fortunately if the amendments proposed by Reps, Kaufer and Rothman are adopted, HB 1862 could serve as an appropriate vehicle for ending surprise medical billing in the state.

According to models developed by the Congressional Budget Office, HB 1862 in its current form would result in an overall 20% payment reduction to both in-network and out-of-network providers. Given the scope of the bill, this would adversely impact all providers from rural community health centers and physician practices to EMS, behavioral health providers and safety net hospitals. Neither Congress nor any other state has passed the type of payment framework contained in HB 1862 which would unilaterally mandate in statute the median of the insurer's in-network rate as the payment for all out-of-network providers services with no realistic recourse such as an arbitration process other type of independent dispute resolution process.

As you know, we have consistently opposed state mandated rate setting. Like many other organizations, ranging from Club for Growth and the National Taxpayers Union to the Hispanic Leadership Fund and the Commonwealth Foundation, we believe this approach undermines basic free market principles, inserts the legislature directly into the contracting process between insurers and providers, and in the long run will undermine access to care.

Given what has transpired since March, we now consider the legislation's payment provisions, if enacted in its current form, to be potentially catastrophic to the Pennsylvanian health care delivery system. As the result of the pandemic, the financial viability of many physician practices, emergency medical services agencies, and hospitals is endangered in Pennsylvania and around the nation. In some cases physician practices and safety net providers are near bankruptcy and may never come back. To be clear, despite the fiscal crisis facing providers, we strongly support prohibiting balanced bills. Our opposition is to the legislation's one-sided payment provisions that will devastate the ability of the health care system to deliver care to all Pennsylvanians.

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Significantly, three states this year enacted broad prohibitions on balance billing but, with strong political consensus including providers and insurers. These laws did not include any payment methodology inflexibly tied solely to in-network payments under the control of insurance companies. Maine enacted Chapter 688 that includes an arbitration mechanism to address disputes between providers and health plans when out of network payments are deemed inadequate by the provider. In Virginia the legislature unanimously passed Chapter 1081 which requires payers to compensate out of network providers at a “commercially reasonable rate” based on payments for the same or similar services provided in a similar geographic area, and physicians have 30 days to dispute the initial payment in an arbitration process. Notably, this Virginia law replicates the 2019 Washington law and includes an explicit requirement for the state insurance department to review the adequacy of the health plans hospital-based physician networks. The Georgia legislature passed HB 888 which prohibits balance bills, provides for OON payment at the greater of three different payment levels and is coupled with a dispute resolution process.

The key elements of these laws, the other laws in NY, TX, NJ, FL and the primary legislative proposals in Congress can be summarized by the following:

- Consumer Protection: prohibit surprise medical bills, require providers to directly bill insurers, require insurers to directly pay providers, limit patient cost sharing to in-network levels, and appropriate state oversight of the adequacy of the insurer’s provider network.
- Payments: the statutes do not “pick the winner” by mandating a single payment level favorable to either the insurers or providers, but rather offer a range of options, or select a market based level retroactively from a prior year that is transparent/known to all parties and adjusted for inflation.
- Independent Dispute Resolution: all these laws include an independent dispute resolution process both as a “safety value” to address legitimate disputes and, equally important, as an incentive for both insurers and providers to exercise appropriate market behavior/act fairly.
- Market Based: all these laws respect free market principles and limit government’s role to setting the rules for the market, protecting consumers, and avoiding direct or indirect government intervention on behalf of one party in a private negotiation.

HB 1862, in its current form misses the mark on all four of the key elements outlined above. HB 1862 contains consumer protection provisions that are ambiguous; it picks insurers as the winners by mandating the insurer’s median in-network payment rate on a rolling annual basis; it has no legitimate independent dispute resolution process; and it intrudes deeply into the insurer-provider contract negotiation process. This is why we are opposed to HB 1862 in its current form.

However, a Pennsylvania solution is still possible. If the Kaufer and Rothman amendments to HB 1862 are adopted, the most serious concerns in HB 1862 would be addressed. The initial payment to OON providers would be determined by insurers based on a flexible standard, “all necessary reasonable costs,” contained in existing law for the past 20 years with no specific payment level mandated in statute. A streamlined arbitration process would be instituted to incentivize fair billing and fair payment practices based on similar processes are working today in other states. The General Assembly’s role would be to protect consumers, set the market rules and not dictate the outcome. We urge leadership to support the passage of the Kaufer and Rothman amendments to HB 1862.

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Since March the ongoing COVID-19 pandemic has threatened the health of all Pennsylvanians, disrupted our economy and caused devastating loss for many families. While our attention, and the General Assembly's, is still focused on fighting this terrible disease, if you decide to take up this surprise medical bill legislation in the fall, we hope the General Assembly will focus on a fair solution to ending surprise medical bills that protects our patients without unfairly benefiting insurers at the expense of the financial viability of the healthcare system.

As we have demonstrated over the past several years and especially during this public health emergency, we stand ready to work with you to fix this policy problem to protect our patients, and all Pennsylvanians.

Sincerely,



Erik Kochert, MD
Chair
Provider Coalition for Patient Access

Pennsylvania Medical Society
Pennsylvania College of Emergency Physicians
Physicians for Fair Coverage
Pennsylvania Association of Pathologists
Pennsylvania Society of Anesthesiologists
Pennsylvania Orthopaedic Society
Pennsylvania Radiological Society
Pennsylvania Plastic Surgery Society
Pennsylvania A Society of Oncology and Hematology
Pennsylvania Psychiatric Society
Pennsylvania Section, American College of Obstetricians and Gynecologists
PA Society of Oral and Maxillofacial Surgeons

CC: Representative Arron Kaufer
Representative Greg Rothman