

# NEW HAMPSHIRE SOCIETY OF PATHOLOGISTS

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January 20<sup>th</sup>, 2022

The Honorable Jeb Bradley  
New Hampshire State Senate  
State House, Room 302  
107 North Main Street  
Concord, NH 03301

The Honorable Tom Sherman  
New Hampshire State Senate  
Legislative Office Building, Room 5  
33 North State Street  
Concord, NH 03301

The Honorable Christy Bartlett  
New Hampshire House of Representatives  
77 Sanborn Road  
Concord, NH 03301-1819

Dear Senators Bradley and Sherman, and Representative Bartlett:

**RE: Senate Bill 287, AN ACT relative to balance billing for certain health care services**

The New Hampshire Society of Pathologists (NHSP), with the support of, the College of American Pathologists (CAP), submit the following comments relative to Senate Bill 287, detailing our concerns on the legislation:

- First, under section 420-J:12, the bill specifically permits the adoption of rules relating to 'price transparency' for health care services. This provision lacks fundamental clarity as to the substance of such rules and is unclear which entities could be subject to such requirements. Our concern is that such requirements could apply to, and broadly encompass, all licensed health care providers or health care practitioners. Thus, this provision could establish an onerous administrative requirement on all physicians that is of little to no value for enrollees or consumers whose benefits are determined by their particular health insurance plans.
- Second, the legislation provides great deference to the Insurance Commissioner to promulgate rulemaking in light of the federal No Surprises Act (NSA). In section 420-J:8-e, the bill grants the Commissioner exclusive jurisdiction to determine the out-of-network rates and commercially reasonable compensation under section RSA 415-J:3. However, the bill provides that the Commissioner may adopt future rules to define the qualifying payment amount (QPA). Under federal law, the QPA is not a default payment methodology for out-of-network providers. Moreover, current New Hampshire law expressly requires that payment for out-of-network providers be consistent with a "commercially reasonable" standard.

It is important to note that HHS has deemed the current New Hampshire law as meeting the federal requirements of the NSA law. Thus, the current standard of determining a "commercially reasonable" payment amount for out-of-network providers should not be diminished or diluted by the federal QPA formula based upon median in-network rates. **Accordingly, the use of the QPA should be expressly limited in the legislation under section 420-J:8-g, for alignment with the NSA law, to limit patient's cost-sharing for emergency services or items provided by nonparticipating providers at participating facilities to be calculated by utilizing the qualifying payment amount.**

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Furthermore, the effective date of the bill is set sixty (60) days after passage, which fails to allot sufficient time and flexibility given federal litigation opposing the current NSA rulemaking by HHS, filed on behalf of the American Medical Association, the American Hospital Association, and other provider groups. The College of American Pathologists has also filed an amicus brief in support of the AMA and AHA's lawsuit to ensure an equitable and balanced system is enforced for resolving out-of-network disputes.

**For these many reasons, we request the following changes to the bill:**

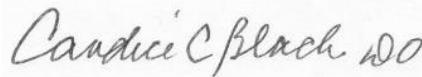
- 1) uphold current New Hampshire law by making expressly clear that the QPA cannot not be used by the Commissioner to determine "commercially reasonable" amounts for payments to out-of-network providers;
- 2) clarify that any price transparency rules issued by the Commissioner be exclusively applicable to health plans in order to provide enrollees with a calculation of prospective costs and covered benefits expected for certain services, under the terms and condition of enrollees health insurance policies; and
- 3) the effective date of the legislation be no earlier than January 1, 2023, to ensure ample time for conformance with any changes to federal regulations, pending a judicial outcome on litigation that may compel changes to current federal HHS regulations on implementation of the NSA law.

In conclusion, the bill's deference to the Commissioner's rulemaking is overly broad in delegating expansive authority to promulgate rules without adequate statutory limitation or prescription. We, therefore, request that the effective date be delayed and that alignment with the No Surprises Act should remain under the purview of statute, rather than delegated to the Commissioner's sole discretion.

Thank you for your consideration.



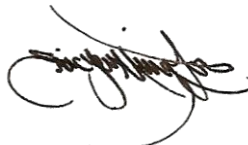
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