



December 21, 2016

Honorable Butch Otter
Governor of Idaho
State Capitol Building
West Wing, 2nd Floor
PO Box 83720
Boise, Idaho 83720-0034

Dear Governor Otter:

As organizations representing physicians providing emergency health care to the people of Idaho and across the United States, the American College of Emergency Physicians (ACEP), the Idaho Chapter of ACEP, and the Emergency Department Practice Management Association appreciate the opportunity to provide you with our perspective on draft legislation (“Act Relating to Network Adequacy”) coming out of the Department of Insurance that we believe will negatively impact the ability of Idaho patients to have access to quality medical care. The comments we submitted to the Department regarding key provisions in the draft were unfortunately dismissed by the Department, and the result is a proposed bill that would essentially provide insurers nearly unrestrained authority to unilaterally dictate how much emergency care providers are to be paid.

The most concerning provision is contained in proposed section 41-6207, which addresses “Requirements for Carriers and Non-Participating Providers.” Under that section, a non-participating provider would be reimbursed by the carrier the lesser of the provider’s charges, the carrier’s contracted payment rate, or 150% of the Medicare payment rate.

As you probably know, emergency physicians are bound legally and ethically to treat all patients that come to emergency departments in need of emergency medical care, regardless of their ability to pay. It is an obligation under federal EMTALA law and a responsibility that emergency physicians proudly uphold. Unfortunately, it also frees insurance companies from having to worry about reimbursing fairly for emergency services, since they know physicians in emergency departments will provide treatment to their enrollees regardless of payment and regardless of whether they are in network or out of network. With insurers increasingly offering plans with narrower networks, the problems associated with insurers not offering fair contractual rates and paying inadequately for out-of-network emergency care have gotten worse. This has resulted in more patients receiving bills for services they thought were covered by their insurance plans.

These surprise gaps in insurance coverage must be closed, and we support the state’s efforts to eliminate the need for balance billing of any patients who unknowingly receive emergency treatment from out-of-network physicians. However, the solution proposed by the Department of Insurance would



grant insurers complete autonomy to develop whatever arbitrary payment scheme they deem appropriate for paying for out-of-network emergency care. Emergency care providers would receive the lesser of their charges, the insurer's contracted rate, or a Medicare based rate. This serves only as an invitation to insurers to drive down contracted rates for emergency physicians to levels that are below costs for delivering such care, ultimately harming patients and inhibiting Idahoans' ability access to emergency services. Further, we would note that contractual rates are not transparent to out of network physicians, and, furthermore, physicians would be forced to accept a contractual rate in spite of the fact that insurers are offering no consideration to the physician in return, such as would happen in a contractual situation. Finally, we would note that Medicare rates are developed based on federal budgetary needs and frequently are not sufficient even to cover the cost of delivering care.

Instead of empowering insurers to have complete autonomy in determining how much will be paid for out-of-network emergency care, we strongly suggest a more fair and transparent approach to the balance billing problem that places neither insurer nor provider in charge of determining payment rates. We urge you to support adoption of substitute language that would set a minimum benefit standard for out-of-network care based on actual and reasonable physician charges for the same services in the same geographical areas utilizing a truly independent, robust, and transparent database of physician charges. In using such a database, benchmarking to the 80th percentile of physician charges would protect insurers from having to base payments on anything other than reasonable charges, with outlier physician charges removed from consideration in the payment formula.

Other states looking to address this issue are recognizing the fairness and wisdom of this approach and have enacted legislation utilizing such a database (FAIR Health) to effectively and fairly address the out-of-network payment issue. We strongly urge Idaho to do the same, and we respectfully request that you direct the Department to amend this draft legislation in a manner that continues to protect patients from suffering the financial effects of surprise gaps in their insurance coverage but in a way that creates a minimum benefit standard based on a formula that treats both providers and insurers fairly and does not jeopardize the sustainability of emergency physician practices in the state.

Thus, we would suggest that Idaho legislation address reimbursement using language similar to what was adopted recently in Connecticut:

If emergency services were rendered to an insured by an out of network health care provider, such health care provider may bill the health carrier directly and the health carrier shall reimburse such health care provider the greatest of the following amounts: (i) The amount the insured's health care plan would pay for such services if rendered by an in network health care provider; (ii) the usual, customary and reasonable rate for such services, or (iii) the amount Medicare would reimburse for such services. As used in this subparagraph, "usual, customary and reasonable rate" means the eightieth percentile of all charges for the particular health care service performed by a health care



provider in the same or similar specialty and provided in the same geographical area, as reported in a benchmarking database maintained by a nonprofit organization specified by the Insurance Commissioner. Such organization shall not be affiliated with any health carrier.

We would welcome the opportunity to talk to you or your staff further about these critical issues and to work with you on improving this legislation. Thank you for your time and consideration.

Sincerely,

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