Emergency Department EDPMA Practice Management Association

June 8, 2017

VIA EMAIL
Massachusetts State Senator Karen Spilka,
Chair, Massachusetts Senate Ways and Means Committee
Karen.Spilka@masenate.gov

Re: Senate Bill 2076: Concerns Re: Senate Amendment to the House Appropriations Bill

Dear Chair Spilka:

The Emergency Department Practice Management Association (EDPMA) is one of the nation's largest professional physician trade associations focused on the delivery of high-quality, cost-effective care in the emergency department. EDPMA's membership includes emergency medicine physician groups, as well as billing, coding, and other professional support organizations that assist healthcare providers in our nation's emergency departments. **Together, EDPMA's members deliver (or directly support) health care for about half of the 136 million patients that visit U.S. emergency departments each year.**

We write to urge you to remove or amend Section 184 which is currently in Senate Bill 2076 pursuant to the Senate Amendment to the House Appropriations bill. Section 184 would cap private insurance reimbursement for emergency care at 80th percentile of a benchmarking database.

When implementing the Affordable Care Act, the Department of Health and Human Services, the Department of Labor, and the Treasury Department under the Obama Administration stated that "it would defeat the purpose of the protections in the statute if a plan or issuer paid an unreasonably low amount to [an emergency] provider, even while limiting the coinsurance or copayment associated with that amount to in-network amounts." **Thus, the Obama Administration stated that "a plan or issuer must pay a reasonable amount for emergency services by some objective standard."**

So, the Obama Administration established a minimum payment standard – or payment floor – for emergency care known as the greatest-of-three rule. Although this federal standard was well-intentioned and references usual and customary charges, it is vague, confusing, and allows insurers to calculate reimbursement using a formula that is not disclosed to either consumers or providers. So, consumers and providers are not able to identify and prove when the insurer is violating the standard. Since its adoption in June 2010, the history of payer reimbursements has confirmed many serious deficiencies due to this absence of clarity.

Unfortunately, Section 184 makes matters even worse. It does not establish a payment floor that insurers must contribute for emergency care. Instead, it creates a payment cap! Insurers are allowed to pay anything under that cap even if it is unreasonable! Obviously this hurts providers, but it hurts patients too.

Emergency Departments are the nation's health safety net. Federal law – through the Emergency Medical Treatment & Labor Act (EMTALA) - requires hospitals and physicians to evaluate and stabilize everyone visiting the emergency department, no matter the ability to pay. So, even though emergency physicians are only 4% of physicians, they provide 50% of all care given to Medicaid and CHIP patients and 67% of all care to uninsured patients. If emergency physicians are also under-compensated by private insurers in Massachusetts, fewer emergency physicians will choose to practice in the state, lines in Massachusetts Emergency Departments will grow, and some Emergency Departments may close down.

We urge you to remove the language establishing a payment cap and replace it with provisions establishing a payment FLOOR at 80th percentile of an unbiased transparent charge database. This payment floor should apply now and in the future after the commission recommends the "noncontracted commercial rate for emergency services." This minimum payment standard that we are recommending was already adopted in the State of Connecticut and is working well. And a similar provision is on the move in the Rhode Island legislature (HB 494).

We also urge you to exempt emergency physicians from the requirements at Section 98 which amends Section 228 to provide, among other things, that a referring healthcare provider disclose information about the network status of the physicians that they refer the patient to see. This requirement does not make sense in an Emergency Department. Even if the emergency physician were able to comply and spend the time looking up this information, emergency care would be delayed and wait times in Emergency Departments would likely skyrocket.

Thank you for considering our comments. If you have any questions, please do not hesitate to contact Elizabeth Mundinger, Executive Director of EDPMA, at emundinger@edpma.org.

Sincerely,

Andrea Brault, MD, FACEP, MMM
Chairman, EDPMA Board of Directors

CC: Conference Committee