



EDPMA ACTION ALERT: Weigh In on New Jersey Proposal to Ban Balance Billing

In October, we asked you to oppose the legislation under consideration by the NJ Assembly's Budget and Appropriations Committee which would prohibit out-of-network providers from balance billing while also placing an artificially low cap on out-of-network reimbursement levels. On December 5th, a different version of this legislation will be considered by the NJ Senate Budget and Appropriations Committee.

If you practice in New Jersey, we urge you to weigh in again, but this time please reach out to the applicable Senate committee members (contact information provided below) before December 5th. Note that the legislation is not expected to be finalized until 2017, so it is OK if you make your calls after the 5th.

The problematic Senate bill now under consideration would, like the earlier Assembly version, prohibit balance billing and mandate hospital-based providers to accept the insurance that the hospital accepts even when it is a highly disadvantageous contracted reimbursement rate. Equally problematic, if not more so, would be a possible amendment to the Senate bill on December 5th, which would cap out-of-network reimbursement to a far lower rate of reimbursement tied to percentage of Medicare (making it similar to the version passed at the committee level in the Assembly):

Talking Points for Your Telephone Calls and Emails:

- Tell your state Senator your name and NJ address, which NJ hospitals you serve, and how many NJ patients your group serves each year. You are sharing this information so they understand that your viewpoint is important and they should pay attention to you.
- Tell your state Senator that you oppose the bill for many reasons, but you would like to focus on one issue today:

Oppose Provisions Mandating that Hospital-Based Physicians Unilaterally Accept the Insurance Contracts Accepted by the Hospital Where They Practice

a) **This language encourages insurers to offer unreasonably low reimbursement rates for emergency care to those hospitals who contract with independent emergency physician groups because:**

- the insurance company is not expected to negotiate in good faith with the independent emergency physician group as a means to determine a fair market value and equitable reimbursement for the care provided; and
- the insurance company is no longer beholden to patients to ensure it offers physicians market-based contract rates or fair-market-based out-of-network reimbursement based on usual, customary physician charges for the medical care delivered.

b) Passage of this bill would also have a significant negative impact on patients. Low reimbursement rates for emergency care threaten the very existence of emergency departments in New Jersey - a key part of the health safety net.

c) It is important to remember this bill addresses reimbursement rates between two private parties. It does not address government subsidized programs such as Medicare and Medicaid. Thus, these provisions encourage opportunities for insurers to engage in coercive contracting and arbitrary rate setting which are tantamount to "restraints of trade".

d) **If these provisions are not removed, the Senate bill must either exempt emergency physicians or set a minimum benefit payment standard for out-of-network emergency care which is tied to usual and customary physician charges in a community based off of a transparent, independent (unbiased) charge database, like FAIR Health.** FAIR Health was created after conflicts of interest were discovered in the methods that health insurers were using to underpay providers for out-of-network services. As part of the settlement agreements with health insurance companies, the FAIR Health database was established to bring fairness and transparency to the out-of-network reimbursement system. Please note that, starting this year (July 2016), the Connecticut legislation which was based on a transparent, independent charge database went into effect.

e) A minimum benefit payment standard based off of a percentage of Medicare would be inappropriate and problematic:

* Medicare rates have no relationship to fair market value or the cost of care. These rates were determined based on the amount of funds available under the federal budget. It is inappropriate to extend government promulgated reimbursement rates to commercial insurers which are not based off of market standards.

* A recent study by RAND Corporation concluded that the NJ safety net would be seriously damaged by such a provision.

Below is contact information for committee members and some other key players in the New Jersey Senate. Note that the bill is sponsored by Democrats and Democrats control the NJ Legislature.

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