July 21, 2017

VIA EMAIL
Senator Dominick J. Ruggerio, Senate President
State Senate of Rhode Island
sen-ruggerio@rilegislature.gov

Re: Opposition to Recent Changes to Senate Bill 494

Dear Senator Ruggerio:

On behalf of the Rhode Island Chapter of the American College of Emergency Physicians (RI-ACEP), its parent organization, the American College of Emergency Physicians (ACEP), the Emergency Department Practice Management Association (EDPMA), and the emergency patients our organizations serve, we write to express our strong opposition to the amendment to Senate Bill 494 that was adopted during committee consideration on June 30, 2017. We urge you, instead, to consider and pass SB 494 as originally introduced.

SB 494, as introduced by Senator Archambault, would have set a clear and transparent reimbursement rate for out-of-network care: the usual and customary charge defined as the 80th percentile of an independent database of physician charges for the same service in the same geographical area. We, along with the Rhode Island Medical Society and other provider groups, support this eminently fair and consumer-friendly solution. This provision is especially important for emergency physicians who provide federally-mandated care as defined by the Emergency Medical Treatment and Labor Act (EMTALA). The law should require private insurance companies to contribute their fair share to the cost of federally-mandated care.

Emergency departments are the nation's health safety net. 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. They contribute far more than their share of uncompensated and undercompensated care. If emergency physicians are also undercompensated by private insurers in Rhode Island, fewer emergency physicians may choose to practice in the state, lines in Rhode Island emergency departments will grow, and some emergency departments may even close down.

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."

As a result, the Obama Administration established a minimum payment standard – or payment floor – for emergency care. Although it is well-intentioned and references usual and customary charges when determining the minimum payment allowed, the language is vague and confusing, and allows insurers to calculate reimbursement rates using a formula that is not transparent to either consumers or providers. So, in May 2017, the U.S. Congress tried to rectify the problem by passing the 2017 appropriations bill which includes language directing the Trump Administration to clarify the definition of "usual, customary, and reasonable" under this minimum payment standard and suggests defining it by referencing an independent database. We are working to ensure that this Congressional directive is implemented soon.

As introduced, SB 494 was consistent with the intent and purpose of the Obama Administration rule and the clarifying directive coming from Congress this year. SB 494 had based out-of-network reimbursement on a percentile of an independent, transparent database. Thus, it did not drop below any of the three payment floors set by federal law.

Unfortunately, the amended version of SB494 creates a payment plan that could drop below two of the three payment floors set by the federal standard. Further, it allows reimbursement that is not usual, nor customary, nor reasonable. It empowers the insurance commissioner to require out-of-network emergency providers to accept payments as low as either in-network or Medicare rates.

In-network rates can be set unilaterally and arbitrarily by insurers. This is especially true with emergency care because federal law (EMTALA) requires emergency physicians to treat both in-network and out-of-network patients no matter the ability to pay. Forcing emergency physicians to accept in-network rates eviscerates their ability to negotiate contracts at fair market value. Furthermore, in-network rates reflect discounts to usual and customary rates in exchange for the increased volume of patients, reduced administrative expenses, faster payment, and more that is expected from being in-network. Out-of-network physicians (especially emergency physicians) don't enjoy these benefits, so they should not be required to give the attendant discount.

Requiring emergency providers to accept Medicare reimbursement rates is even more problematic. Medicare payments have no relationship at all to fair market rate value. Medicare rates are based on limited funding available in the federal budget. These rates are not intended to reflect usual, customary, or reasonable rates. Moreover, Medicare rates typically fall below the federal floor that is set for out-of-network emergency care. This would substantially undermine the fractured foundation of an already underfunded system. We ask for fairness, for

reasonableness and for transparency as we seek your assistance in responsibly addressing the out-of-network payment issue. We urge you to consider and pass SB 494 as originally drafted.

Thank you for considering our perspective. We will continue to work with you and your office to ensure we achieve the best solution for all patients and providers in your state. If you have any questions, please do not hesitate to contact Elizabeth Mundinger, Executive Director of EDPMA, at emundinger@edpma.org.

Sincerely,

Emergency Department Practice Management Association (EDPMA)
8400 Westpark Drive, 2nd Floor
McLean, VA 22102
Phone: (703) 610-9033
Email: emundinger@edpma.org

American College of Emergency Physicians (ACEP)
4950 W. Royal Lane
Irving, TX 75063-2524
Phone: (972) 550-0911x3204
Email: hmonroe@acep.org

Rhode Island Chapter of the American College of Emergency Physicians
405 Promenade Street, Suite A
Providence, Rhode Island 02908
Phone: 401-331-3207
Email: mbialek@rimed.org

cc: Rhode Island Senate

About our organizations:

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, 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 work collectively and collaboratively to deliver essential healthcare services, often unmet elsewhere, to an underserved patient population who often has nowhere else to turn.

The American College of Emergency Physicians (ACEP) is the national medical specialty society representing emergency medicine. ACEP is committed to advancing emergency care through continuing education, research and public education. Headquartered in Dallas, Texas, ACEP has 53 chapters representing each state, as well as Puerto Rico and the District of Columbia. A Government Services Chapter represents emergency physicians employed by military branches and other government agencies.

Rhode Island Chapter of the American College of Emergency Physicians (RI ACEP) represents over 225 Emergency Medicine Physicians practicing in Rhode Island. RI ACEP is a physician run organization which seeks to promote the highest quality of emergency care, to advance the specialty of emergency medicine and to advocate for emergency physicians and our patients. Our members practice in every part of the state, in every type of setting from academic to rural, and most important, we serve every patient regardless of ability to pay, 24 hours a day, 365 days a year. We are Rhode Island's Safety Net for Medical Care.