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December 11, 2019

Members of US Congress
Commonwealth of Pennsylvania
Washington, DC

Dear Pennsylvania Members of Congress:

On behalf of the Pennsylvania College of Emergency Physicians (PACEP) and our over 1800 members, I am writing to urge you to express to Congressional leadership your opposition to Title III of the newly-released proposal for the 'Lower Health Care Costs Act of 2019' as introduced by Senator Alexander and Representatives Pallone and Walden and its inclusion in any end-of-year appropriations bill. While PACEP strongly supports ending surprise medical billing, how this legislation will do so will have a severely detrimental impact on our ability to provide emergency care in Pennsylvania.

Key to our opposition is the damaging impact that would occur if several provisions of this new proposal were to be implemented. These include the:

- **Threshold for Independent Dispute Resolution (IDR):** While we appreciate the threshold being lowered from the original \$1,250 included in H.R. 3630 as passed, to \$750, utilizing the median in-network amount at this level remains far too high and would disqualify virtually all emergency physician claims. Typical in-network amounts for emergency physician professional services in Pennsylvania are in the \$200-\$350 range. In order to ensure all claims are fairly adjudicated and patient access to emergency care is preserved, the qualifying threshold for IDR should be eliminated entirely. Recent informal estimates calculated by the Congressional Budget Office have demonstrated that eliminating a qualifying threshold for IDR would have only minimal impact on a score.

- **Median in-network benchmark:** The proposal continues to set the insurer's payment at the median in-network rate. Insurers will now have no reason to contract with physicians because they will have access to a discounted contract rate without needing to provide any of the usual corresponding benefits in exchange. Coupled with our obligations to provide care under the Emergency Medical Treatment and Labor Act (EMTALA), insurers will no longer have any incentive to fairly contract with emergency physicians to bring us into their networks. A more workable approach would be to have a commercially reasonable initial payment – as determined by the insurer – with a robust and accessible "loser pays" IDR mechanism that incentivizes fair payments and charges by either party.

- **90-day “cooling off” period:** This provision as currently drafted could leave either party exposed to unreasonable payments or charges for that service for 90 days following a determination by the arbiter, thereby inviting abuse. Therefore, it should be eliminated altogether or, at a minimum, modified to require the arbiter’s determination to at least apply for all claims in the subsequent 90 days for that same service, provider, and insurer. Such a modification would protect all parties.

The unintended consequences of these provisions in Pennsylvania will be severe. Rural areas will continue to be hardest hit, with further hospital closures as it becomes increasingly more difficult for them to maintain adequate medical staffing. Additionally, by eliminating what few incentives remain for insurers to negotiate fairly with emergency physician groups, the growing trend of consolidation within health care will be exacerbated, further increasing costs of care. In combination, these effects and others will significantly threaten access to high quality, affordable care for patients across Pennsylvania.

Finally, the House Ways and Means Committee today released their own bipartisan framework for addressing the surprise medical billing issue. It is therefore clear that the necessary legislative deliberative process is still moving forward. This makes any rushed attempt to include Title III with its severe unintended consequences for Pennsylvania in the end-of-year appropriations package a step to avoid.

Pennsylvania emergency physicians proudly care for all patients regardless of insurance status and believe that no one should worry about insurance networks in seeking emergency care. PACEP supports ending surprise medical billing, but urges you to address this issue in a prudent manner that avoids detrimental effects to the emergency care system in Pennsylvania.

Sincerely,



Arvind Venkat, MD, FACEP

President

Pennsylvania College of Emergency Physicians