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Executive Director

September 11, 2020

Dear Representative:

For the past several months we as emergency physicians on the front lines, like the General Assembly, have been focused exclusively on the response to the COVID-19 public health emergency. However, as the Commonwealth begins to emerge to some version of the new normal, we have heard there may be a renewed push to address surprise balance bills. In this context, we are writing to reiterate our strong opposition to the current version of House Bill 1862, Surprise Balance Bills. We strongly support taking consumers out of the middle of billing disputes, however, this legislation, unless the Kaufer and Rothman amendments are adopted, will ultimately diminish access to care, particularly for vulnerable Pennsylvanians and compound the financial challenges currently facing all providers.

We have consistently advocated for protections for patients against balance billing, while also avoiding adverse consequences to the relationship between insurance companies and clinicians. Many of the operational and financial concerns we have previously expressed in opposition to HB 1862 in its current form are now visibly validated by the current public health emergency, in which physicians are critical to facing the state and our nation's challenge from the COVID19 pandemic. Moreover, as the result of this crisis, patient access to care is threatened by the loss of health insurance precipitated by the economic devastation necessitated in responding to the pandemic. Similarly, the financial viability of many physician practices and hospitals is endangered in Pennsylvania and around the nation, and many physician practices are near bankruptcy. HB 1862 in its current form will only accelerate these devastating consequences by completely skewing the in-network insurance market to the benefit of insurers while jeopardizing our hospitals and physicians who are every day fighting this pandemic.

House Bill 1862, by keying out of network rates to the median in-network amounts unilaterally established by insurance payers, is legislation that, if enacted, will inflict further harm to patients, their hospitals, and their physicians. Before this crisis, HB 1862 was clearly detrimental; given what has transpired over the last four months, we now consider the legislation, if enacted, to be catastrophic to the Pennsylvania health care system.

Significantly, three states this year enacted broad out-of-network surprise medical billing legislation that both protected patients and preserved the balance among physicians, hospitals, and insurers in contracting. The Georgia legislature passed HB 888 which prohibits balance bills, provides for OON payment at the greater of three different payment levels and is coupled with a dispute resolution process. The State of Maine enacted (Chapter 668) a new OON law that bans surprise medical billing and includes an arbitration mechanism to address disputes between clinicians and health plans when OON payments are deemed inadequate. In Virginia insurers must compensate out-of-network clinicians at a “commercially reasonable rate” based on payments for the same or similar services provided in a similar geographic area. Insurers are required to pay out-of-network bills directly to the clinicians, and physicians have 30 days to dispute the initial offer or the payment in an arbitration process. Notably, the new Virginia law replicates the OON law codified in Washington State in 2019 and includes an explicit requirement for the state insurance department to review health plans for hospital-based physician network adequacy.

Given the clear preference of these recent state and federal public policy actions during the COVID19 crisis to reduce the burden on physicians caring for patients, we would urge the Pennsylvania House to adopt the Kaufer and Rothman amendments to HB 1862. By doing so, the legislature would align surprise medical billing legislation in Pennsylvania with the recent policy actions taken by Maine, Virginia, and Georgia, and as well as those enacted in New York, Florida, and Texas.

In sum, the people of Pennsylvania and our patients cannot afford the adverse and ill-considered policy established under HB 1862 in its current form. The payment policy set forth in that bill financially favors the insurance industry while threatening patient access and our physicians and hospitals on the frontline of the COVID19 crisis. The Kaufer and Rothman amendments will both end surprise medical billing in Pennsylvania and preserve the balance among physicians, hospitals, and insurers in this time when we all must be aligned moving forward.

While our attention is still focused on fighting this pandemic, we hope the General Assembly will focus on a fair solution to this problem that protects our patients without unfairly benefiting insurers at the expense of our financial viability.

As we have demonstrated over the past several years and even during this public health emergency, we stand ready to work with you to fix this policy problem and protect our patients.

Sincerely,



Shawn M. Quinn, DO, FACEP
President, Pennsylvania College of Emergency Physicians