American College of Physicians
Leading Internal Medicine, Improving Lives

PENNSYLVANIA CHAPTER
G. Alan Yeasted, MD, FACP, President

February 29, 2016

Honorable Teresa Miller, Commissioner
Pennsylvania Insurance Department
1326 Strawberry Square
Harrisburg, PA 17120

Dear Commissioner Miller:

On behalf of the Pennsylvania Chapter of the American College of Physicians (PA-ACP) and its 7,000 internal medicine physicians, we commend you and the Insurance Department for recognizing that further action must be taken to assure Pennsylvanians of full access to quality health care at a reasonable cost.

PA-ACP, which represents solo practitioners, small groups, large groups and employed internists, generalists and specialists - all doctors for adults - is committed to being part of any administration and legislative discussions on how to deal with network and access issues to ensure our patients get the best medically necessary care.

We applaud you for actively working on this issue, and for creating a Consumer Liaison in the Department. Consumers deserve to know their coverage, cost, billing and treatment options. While the issue of balance billing is important, it's one of just several issues that should be addressed to maintain adequate networks and access to care.

Access and cost are controlled by many things: insurers, health systems, (inadequate) networks, pricing, market share and contract/payment issues. The issue of balance billing is not new. It's been a reality for decades since the inception of managed care plans and the creation of the dichotomy between in-network and out-of-network physicians by health insurance companies. The American College of Physicians and the PA-ACP have long supported many actions that would promote patient protection and transparency on these payment issues.

In many cases, balance billing is already prohibited: when a consumer seeks treatment from a facility or provider in their insurer's network; Consumers choose their plans partly because of factors like having their preferred providers are included in-network, but also because of cost. And they should be aware of higher rates outside their health plan's network.

Although some patients are at risk now for unplanned out-of-pocket costs when the referring/attending physician, specialist, or hospitalist providing services is not part of their network, the reason is not solely driven by physicians. Other issues are at play.

The proposed legislation is perhaps a step toward a solution to this problem. But only one step. Strict enforcement of network adequacy requirements may also be part of the solution, as would consumer/patient education on the realities of today's networks and managed care in hospital situations.

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The ACP has long-standing policy for private contracting that supports the primacy of the relationship between a patient and his/her physician, and the right of those parties to privately contract for care, without risk of penalty beyond that relationship.

Certain patient protections are essential under any private contracting agreement. From an ethical standpoint, PA-ACP believes that the physician's first and primary duty is to the patient. Physicians should be cognizant of their professional obligation to care for the poor and of medicine's commitment to serving all classes of patients who are in need of medical care.

PA-ACP believes any law governing balance billing should keep the patient/physician relationship as a priority and focused on health care services, not administrative issues or educating patients about insurance law. The legislation must include provisions for reasonable physician reimbursement, consumer education and awareness, and an objective process to resolve disputed billing issues.

ACP policy states that operators should make available information about covered benefits, costs, provider networks, and quality, medical loss ratio information, plan coverage rules, and cost-sharing and any balance billing responsibility estimates. We doubt whether posting a sign in a provider's office will significantly impact these issues.

As for transparency and legislation, the ACP supports several important elements that should be included as part of any private contracting agreement or controlling legislation:

(1) a requirement that physicians disclose their specific fee for professional services covered by the private contract in advance of rendering such services, with beneficiaries being held harmless for any subsequent charge per service in excess of the agreed upon amount;

(2) a prohibition on private contracting for dual Medicare-Medicaid eligible patients;

(3) a requirement that private contracts cannot be entered into at a time when the beneficiary is facing an emergency medical condition or urgent health care situation;

(4) a prohibition on private contracting in cases where a physician is the "sole community provider" for those professional services that would be covered by a contract;

(5) a prohibition on private contracts in other cases where the patient is not able to exercise free choice of physician;

(6) that private contracting arrangements should not apply at a time when emergency or urgent care is being rendered, even if the treating physician and patient had previously entered into a private contract.

ACP policy is that State Exchanges and insurers marketing health insurance plans should make available information about covered benefits, costs, provider networks, and quality, medical loss ratio information, plan coverage rules, and cost-sharing and any balance billing responsibility estimates.

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PA-ACP recognizes that emergency care and surprise billings can be a financial hardship on our patients. In a setting where services are required and the patient may not have a choice in care, insurers should compensate these specialists through a fair, direct, reimbursement methodology.

However, with market control, fewer options, and narrower networks controlled by insurers, physicians don't have the ability to negotiate contract terms or payment levels, and patients often don't have a choice except to receive services from out-of-network providers.

The PA-ACP has a two-decade old policy of supporting legislation which would allow any willing provider to treat any patient, and accept reimbursement equivalent to in-network providers, thus ensuring patient choice of physician.

We note that the National Association of Insurance Commissioners has proposed a new model law that incorporates some of our thoughts – and some of the provisions of the proposal on this balance billing issue. It includes a structured mediation process to resolve payment issues, and requirements for insurers and hospitals/outpatient facilities to inform consumers about the potential for out-of-network services.

Again, we thank you for the opportunity to comment on the proposed legislation, and offer our willingness to work with stakeholders and the Administration to develop a broad based plan to protect patients through network adequacy, contracting fairness and reasonable payment levels.

Thank you for the opportunity to comment on the proposed legislation,

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