

The Pennsylvania Insurance Department has proposed a solution through the release of “Draft” legislation on January 19, 2016 on the issue of surprise balance billing when a consumer receives emergency care that they expect to be in their health insurance plan’s network, but is performed by an out of network provider. While we empathize with the consumer, the Department’s premise of resolving this issue solely on the backs of the provider community is irresponsible.

As an Association with members who provide the vast majority of emergency and non-emergency ground and air ambulance transportation in this Commonwealth we need to submit two crucial suggestions to this “Proposed Draft”:

- Emergency Medical Services MUST be exempt from this proposed draft

Emergency Medical Services (EMS) cannot be lumped in with other healthcare provider groups. EMS is mandated by 35 Pa C.S. §§ 8101-8157 and specifically 28 Pa Code 1027.3 (g)(4) to respond to a request for service when a resident or visitor to this Commonwealth is at their most vulnerable, during a medical emergency or traumatic event. It is also true that in an emergent situation, an EMS provider is providing emergency care without regard for payment, and unlike other healthcare providers, will not usually know till after a patient is stabilized and delivered to definitive care what type, if any, health insurance is present. EMS being diverse by call volume, delivery model, geographic location, corporate structure or insurance market area may not desire to contract with third party insurers due to below cost reimbursement.

The EMS provider community has spent more than a decade negotiating with the Administration, General Assembly and Insurance Industry for direct reimbursement. A piece of the final negotiated language the was codified in Act 84 of 2015 permitted and EMS Agency to opt into a third party insurer’s network to receive direct reimbursement as an out of network provider with the caveat of prohibition of balance billing. The law also allows the EMS Agency to do nothing under the statute leaving the status quo and is silent on the EMS Agency’s ability to balance bill. While this does not totally ban “surprise balance billing” as the Department is proposing, it may limit the amount of exposure consumers see in going forward from EMS Agency activity.

- Emergency Medical Services, as a healthcare provider community and a vital component of the community’s healthcare safety net , cannot absorb additional reimbursement for service below the cost to provide that service

Let’s be honest. Balance billing by healthcare providers is the result cost shifting to third party insurers and patients as a direct result of paltry reimbursement by government healthcare programs including Medicare and Medicaid. Third party insurers are now trying to mirror government’s reimbursement practices to increase their margins and cost shift back to providers and their beneficiaries through balance billing and the exorbitant increases in co-pays, co-insurance and deductibles. Additionally, the Commonwealth is quick to propose or tie State Payments for ambulance service (like Worker’s Compensation and Auto Insurance) to percentages of Medicare reimbursement only compounding the issue of below cost reimbursement.

The United States Government Accountability Office (GAO) Report to Congressional Committees on Ambulance Providers (<http://www.gao.gov/new.items/d07383.pdf>) in May of 2007 showed that Medicare payments were 6% below cost on a national level and 17% below cost in “super rural” areas. This report was updated in October 2012 by the GAO (<http://www.gao.gov/assets/650/649018.pdf>) and below cost payments were once again validated.

The Pennsylvania Department of Human Services through the Medical Assistance program amplifies those below cost payments for ambulance remitting only 50% of what Medicare pays. The expansion of Medical Assistance under Governor Wolf is increasing this pool of well below cost reimbursements to ambulance services. Medical Assistance patients are more likely to contact 911 to access the healthcare environment based on a sicker population and new found covered access. Coupled with a ludicrous decision resulting in the loss of reimbursement for loaded mileage, the ambulance provider community in

this Commonwealth essentially provides services to Medicaid beneficiaries free of charge.

The EMS provider community cannot and will not survive the proliferation of below cost reimbursement from all healthcare payers. EMS is a heavily regulated and technically driven industry. The licensure, technical requirements and provider training cost, as well as the cost associated with having a vehicle staffed and ready to respond (cost of readiness), places a high fiscal burden on our industry.

Insurers, with BILLIONS of dollars in reserve, talk about cost containment; however this proposed draft goes far beyond cost containment. It is a back door for insurers to control revenue streams for many emergency medical services and healthcare providers that will have a deleterious effect. Being the State with the second oldest population in the Country and one that produces over 1.7 million EMS responses annually, loss of additional EMS Agencies will increase response times significantly and create an access to care issue for all residents and visitors to the Commonwealth.

Failure to exempt EMS from this proposed draft legislation and the propagation of below cost reimbursements without any recourse to solicit additional revenue will exacerbate the current decline of the EMS System as it currently exists in the Commonwealth.

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