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

Re: Draft Balanced Billing Legislation

Dear Commissioner Miller:

Thank you for the opportunity to provide feedback regarding the draft Balanced Billing Protection Act (“BBPA”) that was recently released by the Pennsylvania Insurance Department (“PID”). On behalf of Geisinger Health Plan (“GHP”) and the providers of the Geisinger Health System<sup>1</sup> (“GHS”), we appreciate the chance to contribute to the dialogue regarding the issue of “surprise” patient balance billing from non-participating providers. As an integrated health system, with both insurer and provider components, we believe that we bring a unique perspective to this important issue.

There is no debate that patients have been billed and paid for services that were rendered by providers who the patients did not know or understand were non-network providers. The unexpected bill arrives from “hospital-based” professional providers that are not participating with the patient’s insurance company. The participating hospital accepts the insurer’s contracted rate as payment in full; however, the non-participating provider over whom the patient has no control does not. Given our focus on our patients and members, we applaud the PID’s desire to address this difficult issue. We think, however, that the BBPA, while well intended, contains provisions that may result in additional challenges. We have summarized our primary concerns below:

- *Appropriate Incentives* – The BBPA may exacerbate the problem of payors and certain providers not contracting with each other. If an insurer can pay a default rate that is well below market, there is no incentive for the insurance company to contract with

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<sup>1</sup> Throughout this letter, “GHS,” “Geisinger,” or “Geisinger Health System” shall refer to the Geisinger Health System Foundation as parent and its affiliated corporate entities, excluding Geisinger Health Plan and its health insurance affiliates.

providers; conversely, if an insurer can obtain a default rate which is above what an insurer would otherwise typically pay, there is no incentive for the provider to contract with the insurer. It is critical that possible solutions strike the right balance between payor and provider interests. We believe the legislation should be applied to emergent and non-emergent non-participating professional providers for services rendered in a participating facility only.

- *Appropriate Default Payment Rate* – The BBPA contains language that potentially ties a default payment rate to the Medicare Fee Schedule, or to a median amount typically paid by an insurer for a particular service, depending on the option outlined in the BBPA. We see potential problems with both approaches. From the provider perspective, a more appropriate default rate than the Medicare fee schedule would be competitive commercial product market rate. From the payor perspective, an insurer-specific market-based alternative likely would be difficult to administer. While it is important for a solution to be as fair as possible to all parties involved, we believe that the solution should not undermine the goal of trying to reduce, or at the very least control, the total cost of care. Solutions that add to administrative complexity and/or tie to rate structures that may not be reflective of truly competitive markets could well undermine that goal. We suggest more closely examining approaches that other states have taken to address the issue of developing fair rates in these types of situations.
- *Efficiency and Complexity* – We are concerned about the administrative burden that the dispute resolution provisions of the BBPA would place upon both providers and payors (in addition to the administrative burden related to “median” rates as noted above). This will result in a bureaucratic and cumbersome process that will require staff and resources. As a result, the inefficiency and complexity associated with this process will ultimately drive up the costs of health care.
- *Shared Responsibility* – We believe that patients/members should be protected from financial liability in scenarios where they are not aware of and/or have no control over the provision of services by non-participating providers. We also believe, however, that patients/members should retain shared responsibility for healthcare decision making and costs. We are concerned that the BBPA may unintentionally remove the shared responsibility of the patient/member. If the member will have all services covered by all non-participating providers with no cost sharing, then the member has no incentive or obligation to take responsibility for their own benefit limitations. If a patient has an opportunity to understand that an affiliated provider is not in the patient’s provider network, yet still opts to receive services from that non-participating provider, then it does not make sense from a shared responsibility or cost of care perspective to insulate the patient from appropriate cost sharing.

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- *Transparency* – In order for the shared responsibility dynamic described above to work, transparency to the patient/member is critical. Both insurers and providers can play an important role in ensuring transparency—insurers through regularly updated provider directories and providers through communication to members that affiliated providers who will be providing supporting services (such as anesthesiologists, radiologists, etc.) may not be part of the same provider network as the primary provider. It may be helpful for the BBPA to more directly address this issue. Of course, it will be important that efforts to increase transparency do not result in greater complexity or undue administrative burden for insurers or providers.

In addition to addressing these concerns, we believe the PID should consider incorporating into the BBPA a requirement that affiliated providers (e.g., anesthesiologists, radiologists, pathologists, emergency physicians, etc.) must contract with all insurers with whom the affiliated hospital/facility contracts.

Thank you for allowing us to comment on the draft BBPA. We appreciate the opportunity to offer our concerns and views and would welcome the opportunity to participate in further discussions to assist you and your team as you continue to work on this issue.

If you have any concerns or questions in regards to the content of this letter please feel free to contact me at the above number.

Respectfully,



Frank Trembulak  
EVP COO  
Geisinger Health System



Steve Youso  
President and CEO  
Geisinger Health Plan