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Samuel R. Marshall
President & CEO

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Honorable Teresa Miller
Insurance Commissioner
Pennsylvania Insurance Department
13th Floor
Strawberry Square
Harrisburg, PA 17120

Re: Surprise balance billing in health insurance

Dear Commissioner Miller:

I am unable to participate in tomorrow's hearing but endorse the comments from my colleagues at Aetna and AHIP. We also offer the following as you join legislators and regulators here and across the country dealing with this.

The paramount goal is to protect consumers from the unanticipated financial hardship of a provider's out-of-network bill when the consumer had no knowledge of or control over whether he or she would be treated by a non-network provider, and had every reasonable expectation to the contrary.

Three general answers emerge, tied to disclosure, a prohibition on balance billing, and ensuring robust networks. Coming to specifics will require the involvement of not just insurers and consumer groups but also providers – both hospitals and physician specialties. It will also require the involvement of the Health Department and possible licensing boards, since they regulate the provider side of the equation. And it will require the involvement of the General Assembly, as it controls any legislative remedy.

Disclosure: For insurers, this means not just accurate and updated directories for our policyholders, but also warnings of the potential for a policyholder being treated by a non-network provider without advance knowledge or approval or an understanding of the potential cost. It also means disclosure of options and questions the policyholder may have and should be asking.

Providers also have responsibilities in making these disclosures. We realize the Department doesn't have authority over them (nor do we, or at least not as much as some think); hence our recommendation that the Health Department and licensure boards be involved with this inquiry from the outset. Hospitals should inform consumers of any engagement of non-network providers and the potential for balance billing exposure – and the physicians providing the care should do so as well. These disclosures have to be timely, too: Consumers need not just knowledge but also some ability to make decisions to limit their exposure. Being notified of the involvement of a non-network provider as one is going into surgery doesn't help.

Consumers have responsibilities, too. They need to question their hospitals and providers as they select who to see for treatment. They should be asking not only whether each provider involved in their care is part of the network – but if not, why not? The answer will likely be that the particular provider didn't want to sign up, generally looking for more money. That's part of the marketplace. Let's make sure another part is the patient asking the provider to join and hold down costs.

Prohibiting balance billing of consumers: In the immediate sense, this is the most direct consumer protection – no financial exposure when the consumer unexpectedly and unintentionally gets treatment from a non-network provider in the course of getting treatment through a network facility, and then gets confronted with the provider's bill that greatly exceeds the insurer's network rates.

The problem is what then happens with that bill – what is to be paid and by whom. There are a number of approaches. The Senate Banking and Insurance Committee just amended and approved HB 347 dealing with an analogous problem with non-network ambulance services, where those providers wanted direct payment. The bill requires that insurers make those direct payments if the ambulances opt for that – but with ambulances paid at network rates, and with a prohibition on balance billing consumers.

Other approaches include implementing a cap on these bills (e.g., Medicare rates) or some form of binding arbitration or mediation between the provider and insurer on the proper amount to be paid. The concern with arbitration is both efficacy and consistency – and that applies to regulators overseeing this as well as providers and insurers. Other states have recently implemented variations of this – Illinois, New York and Texas are among them. Their early results merit examination.

Ensuring robust networks: The best solution to surprise balance billing is to have networks so full that the prospect of non-network providers being part of a consumer's treatment doesn't arise. That isn't easy, as every insurer can attest: Our objective is to provide vibrant networks that can meet the needs of our policyholders with both quality and affordable care. That is a constant challenge, made more difficult as certain provider specialties trend toward free-lancing, both with insurer networks and with hospitals. There are regional dimensions to this, too, as some areas have more provider options than others in building networks.

Again, this will require the involvement of the Health Department, as it is responsible for evaluating network adequacy. It will also necessitate the involvement of the provider community – both hospitals and the non-network providers working in them.

The concern is that any immediate solution for consumers facing balance billing exposure not impede insurers' ability to establish full networks. What constitutes "fair payment" for non-network providers is subjective and depends on whether one is getting paid or making payment. Further, many providers look for out-of-network billings of insurers and consumers to offset what they believe are unduly low levels of payment from government programs (Medicare and especially Medicaid). We don't think our policyholders should subsidize that, and we hope regulators and legislators don't do anything that undermines our abilities to negotiate good rates and good service.

Thank you for the opportunity to submit these comments. We look forward to working with the many different perspectives of consumers and providers, and with the Department, other relevant agencies and the General Assembly in coming up with an approach that works for the immediate and long range betterment of consumers.

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Sincerely,

Samuel R. Marshall

C: Seth A. Mendelsohn, Executive Deputy Insurance Commissioner
David J. Buono, Consumer Liaison

Pennsylvania Insurance Department