



March 23, 2018

VIA EMAIL

Representative Ivy Spohnholz
Chair, House Health & Social Services
Representative.Ivy.Spohnholz@akleg.gov

Re: Proposed Substitute for HB 193

Dear Chair Spohnholz:

We are writing to support the proposed committee substitute to HB 193. Banning balance billing poses a serious threat to the healthcare safety net unless the bill also establishes an appropriate minimum benefit standard. At minimum, we urge you to maintain the minimum benefit standard currently in place in Alaska for out-of-network care. Since 2004, the 80th Percentile rule has protected Alaskan patients by making sure that insurers contribute their fair share for out-of-network care, including emergency care.

The Emergency Department Practice Management Association (EDPMA) is one of the nation's largest professional physician trade associations focused on the delivery of high-quality, cost-effective care in the emergency department. EDPMA's membership includes emergency medicine physician groups, as well as billing, coding, and other professional support organizations that assist healthcare providers in our nation's emergency departments. **Together, EDPMA's members deliver (or directly support) health care for about half of the 141 million patients that visit U.S. emergency departments each year.** We work collectively and collaboratively to deliver essential healthcare services, often unmet elsewhere, to an underserved patient population who often has nowhere else to turn.

The 80th percentile rule protects the healthcare safety net, patients, providers and insurers. **Emergency departments are the nation's health safety net. Even though emergency physicians are only 4% of physicians, they provide 50% of all care given to Medicaid and CHIP patients and 67% of all care to uninsured patients.** They contribute far more than their share of uncompensated and undercompensated care. If emergency physicians are also undercompensated by private insurers in Alaska, fewer emergency physicians may choose to practice in the state, lines in emergency departments in Alaska would grow, and some emergency departments may even close down.

The 80th percentile standard helps patients. Patients shouldn't be responsible for all of the costs related to "covered" emergency care simply because it was provided by an out-of-network

provider. Emergency care is an “essential health benefit” that must be “covered” whether it be in-network or out-of-network care. Insurers should contribute their fair share.

Further, the 80th percentile standard encourages insurers to negotiate lower in-network rates, resulting in more in-network providers. Without the minimum benefit standard, there is no incentive for insurers to negotiate fair in-network rates with emergency providers because federal law (the Emergency Medical Treatment and Labor Act) requires those providers to treat everyone no matter the ability to pay. The 80th percentile standard requires providers to be paid the usual, customary and reasonable rate when the patient has insurance coverage. This, in turn, helps shore up the healthcare safety net and helps ensure access to emergency care, even in remote areas.

The standard also protects insurers by establishing a standard where the top 20% of charges are not considered in the calculation of the minimum benefit standard. Overly high charges – outliers – are not even part of the formula. So it is no surprise that the National Council of Insurance Legislators adopted model legislation in 2017 that defined “usual, customary, and reasonable rate” as 80th percentile of an unbiased charge database. Even in states where there is no minimum benefit standard, some private insurers typically pay the 80th percentile. For example, in its “Information on Payment of Out-of-Network Payments”, UnitedHealthcare states “Affiliates of UnitedHealth Group frequently use the 80th percentile of the FAIR Health Benchmark Databases to calculate how much to pay for out-of-network services of health care professionals ...”

And when CMS asked an outside contractor to look at what benchmarking database to use for the minimum payment standard for out-of-network emergency care, the National Opinion Research Center (NORC) at the University of Chicago recommended the FAIRHealth database (“Data Sources for Establishing Payment Rates for Out-of-Network Emergency Room Services” (2014)). NORC reiterated this in a similar report addressing a benchmarking databases for all out-of-network care (“Qualitative Assessment of Databases for Out-of-Network Physician Reimbursement” (2017)).

Thank you for considering our comments, we look forward to working with you on this issue. If you have any questions, please do not hesitate to contact Elizabeth Mundinger, Executive Director of EDPMA, at emundinger@edpma.org.

Sincerely,

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cc: Members of the House Health & Social Services