AMERICAN SOCIETY OF PLASTIC SURGEONS ®
THE PLASTIC SURGERY FOUNDATION ®

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June 26, 2019

Members, H.B. 166 Conference Committee
Representatives Scott Oelslager, Jim Butler, and Jack Cera
Senators Matt Dolan, Dave Burke, and Sean O'Brien

RE: H.B. 166 – Support Senate surprise billing provisions

Dear Conferees:

I am writing on behalf of the American Society of Plastic Surgeons (ASPS) to urge you to adopt the Senate version of the language that addresses unanticipated out-of-network medical bills, also known as "surprise" bills, in the final version of House Bill 166 (H.B. 166). ASPS is the largest association of plastic surgeons in the world, representing more than 93 percent of all board-certified plastic surgeons in the United States – including 259 board-certified plastic surgeons in Ohio. Our mission is to advance quality care for plastic surgery patients and promote public policy that serves patients.

ASPS appreciates the House's willingness to address the issue of surprise billing, but we believe that the Senate version is a more comprehensive solution to the problem. Specifically, we support the measures in the Senate version that remove patients from the middle of billing disputes and require the carrier to reimburse the physician directly for all out-of-network payments through automatic assignment of benefits; ensure physicians receive reasonable and timely initial payment; and allow physicians the ability to dispute any inadequate reimbursements. The first provision is especially key, as it will effectively remove patients from billing disputes – the ultimate goal of this section.

When it comes to physician payment for unanticipated out-of-network services, we are in strong support of the inclusion of the 80th percentile of billed amounts as the usual and customary rate. Support of the 80th percentile paradigm has become the industry standard to determine appropriate reimbursement for out-of-network expenses. For example, insurance carriers – including Aetna,[1] Emblem Health,[2] Oxford Health Plan,[3] and UnitedHealthcare[4] – and the National Council of Insurance Legislators (NCOIL) have supported the use of the 80th percentile of billed amounts based on an unbiased charge database.

While arbitration is not our preferred approach, we recognize the success that a similar system has experienced in New York (and has now been passed into law in Texas, as well). However, the proposed list of criteria that an arbitrator is required to consider when deliberating a final determination is overwhelmingly biased toward insurers. This is worrisome for physicians, as paid fees are not always representative of market value for services.

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1 https://www.humbleisd.net/cms/lib/TX01001414/Centricity/Domain/19/2017a/Medical/Aetna_pays_OutofNetwork_benefits.pdf

2 https://www.emblemhealth.com/~/media/Files/PDF/OON_ReimburseExamples_GHI.pdf

3 https://www.oxhp.com/secure/policy/OXHPLgGrpEx.pdf

4 https://www.uhc.com/legal/information-on-payment-of-out-of-network-benefits

We therefore request the removal of "the 50th percentile of contracted rates" as a consideration during the arbitration process and instead require consideration of only the 80th percentile of billed charges. A percentile of ***billed*** amounts collected by FAIR Health is currently used in the following states, with the respective benchmarks:

- Connecticut: 80th percentile benchmark is designated as the usual customary standard for emergency services
- New York: 80th percentile of billed amounts is designated as the benchmark for consumer cost transparency and dispute resolution
- Pennsylvania: "usual and customary" standard in the state's workers' compensation program is based on the FAIR Health 85th percentile
- Alaska: 80th percentile of billed services is used as a benchmark as the usual customary standard for emergency services

As stated previously, ASPS believes the 80th percentile of billed amounts is representative of the market rate for out-of-network physicians who have been unable to contract a fair in-network reimbursement rate with a carrier. The 80th percentile of a third party, independent charge database such as FAIR Health Inc. means that 80 percent of all charges are equal to or lower than the presented amount. This eliminates the outliers by removing the upper 20 percent (i.e., providers who charge above the norm).

For the reasons outlined above, ASPS respectfully urges you to adopt the Senate version of the surprise billing provisions of H.B. 166 – along with our suggested amendment to the arbitration criteria – to improve the out-of-network climate for all affected stakeholders. We look forward to continuing to work with you on this important issue and thank you for your consideration of our comments. Please do not hesitate to contact Patrick Hermes, Director of Advocacy and Government Relations, at phermes@plasticsurgery.org or (847) 228-3331 with any questions or concerns.

Sincerely,

Alan Matarasso, MD, FACS
President, American Society of Plastic Surgeons