MASSACHUSETTS MEDICAL SOCIETY

Every physician matters, each patient counts.

MASSACHUSETTS MEDICAL SOCIETY
COMMENTS ON OUT-OF-NETWORK BILLING
BEFORE THE JOINT COMMITTEE ON FINANCIAL SERVICES
May 2, 2023

The Massachusetts Medical Society (MMS) is a professional association of over 25,000 physicians, residents, and medical students across all clinical disciplines, organizations, and practice settings. The Medical Society is committed to advocating on behalf of patients, to give them a better health care system, and on behalf of physicians, to help them provide the best care possible. As of January 1, 2022, patients in the Commonwealth are protected from surprise medical bills, which are prohibited under the federal No Surprises Act (NSA). While we appreciate the intent of House bill 997, An Act to Protect Health Care Consumers from Surprise Billing and Senate bill 645, An Act Relative to Out-of-Network Billing, we do not believe the time is ripe to address out-of-network billing or "surprise billing" at the state level.

The Medical Society strongly supports a comprehensive approach to the issue of out-of-network billing that protects patients from surprise out-of-network bills and establishes a fair reimbursement mechanism, which helps to maintain healthy negotiation in the physician-carrier insurance market such that out-of-network bills are reduced, and health care costs are minimized. **With those goals in mind, the Medical Society strongly recommends that Massachusetts take no action on the state level and allow the federal No Surprises Act to take effect in the Commonwealth.** The NSA is a reasonable and fair compromise that protects patients from surprise billing while maintaining Massachusetts' healthy insurance market. This law is the result of lengthy, thoughtful, bipartisan negotiation that benefited from the experience of various individual states' attempts at legislative fixes. The law accomplishes all that Massachusetts hopes for while providing mechanisms for successful implementation. While arbitration is not without costs, the benefit of payment that accurately reflects the costs appurtenant to health care services delivered under exceptional circumstances cannot be understated. It is for these situations that the IDR process will be most beneficial in determining fair reimbursement.

Attempting a separate state-level fix, as proposed under H.997 and S.645, at this time would be unnecessarily duplicative and costly at a time when critical resources could be spent addressing other pressing access issues and fundamental inequities in the health care system exacerbated by the COVID-19 pandemic. Significant state governmental resources would be required to create and administer a state-level system to resolve out-of-network billing disputes, with the potential outcomes of such a program largely speculative and highly debated. It would be incredibly administratively challenging and burdensome to maintain two separate processes for resolving surprise billing disputes – one for federally-regulated plans and one for state-regulated plans – especially as health plans, health systems, and physicians have dedicated tremendous time, money, and effort to implement and comply with the No Surprises Act.

Instead, Massachusetts can use the federal law to glean important insight into how our Commonwealth's health care system will respond to various aspects of surprise billing law while dedicating critical time and resources to more pressing issues in our health care system. Our Health Policy Commission is well-suited to collect and analyze data on the impacts of the federal law, while our state is well-positioned to learn from this data and implement appropriate changes if they should eventually be needed. The NSA will ensure consistency in out-of-network approaches across all commercially insured plans and all employer, self-funded plans that are exempt from state insurance laws. This aspect is key to administrative simplicity considering that a significant percentage of the health plans in Massachusetts are ERISA plans. Moreover, this consistency will foster effective management of the health care market by promoting consumer protections, cost reductions, and uniform data collection for all health plan participants.

Most importantly, the NSA holds patients harmless from surprise out-of-network bills, leaving them responsible for only in-network cost-sharing amounts in situations of unanticipated out-of-network care. With patients out of the middle, this law provides a thoughtful process to provide reimbursement by first requiring insurers to pay physicians for their services and then requiring both parties to negotiate a fair price for out-of-network services if the initial payment is not appropriate. Only after 30 days of open negotiation, in cases where the parties are unable to reach an agreement, either party may initiate an independent dispute resolution (IDR) process to determine the reimbursement rate. Critically, the impartial arbitrators in the IDR process are not permitted to consider usual and customary rates or billed charges in their determination of the

reimbursement rate, nor can they consider payment rates of public payors, including Medicare, Medicaid, CHIP, and Tricare. The factors that may be considered help the arbitrator to consider circumstances that are unique to each case, such as, the complexity of the case, the training, experience, quality, and outcome measurements for the physicians, the market shares of the parties, and the Qualifying Payment Amount, which is based on the carrier's median in-network contracted rate adjusted over time increases in the Consumer Price Index. It is important to note that the parties may continue to negotiate throughout the IDR process, giving them additional time to come to agreement.

Importantly, the No Surprises Act is expected to save patients money by reducing out-of-network bills, outlying physician payments, and the cost of premiums. It will also save the health care system overall, as the Congressional Budget Office (CBO) estimates that it will result in overall savings of greater than $17 million over the next ten years, leading to a decrease in insurance premiums by 0.5 to 1 percent.

By allowing the thoroughly considered federal law to govern out-of-network billing disputes in Massachusetts, patients will be protected from surprise medical bills, physicians will have appropriate processes for being fairly reimbursed, and our health care system will benefit from the market dynamics that incentivize carriers and providers to contract in good faith.

For the above reasons, the Medical Society strongly urges the legislature to take no action on H.997 and S.645, and instead allow the No Surprises Act to be fully implemented and take effect in Massachusetts while allowing policymakers the time to collect data on the impacts of the legislation in order to tailor the best approach for the Commonwealth in the long term if appropriate. We thank you for your consideration of our comments on this important issue and look forward to working with you to help craft solutions that best fit the needs of our patients.