



Ohio Society of Pathologists

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May 4, 2020 Statement In Opposition to HB 388

On behalf of the hundreds of practicing pathologists in the State of Ohio, we are in strong opposition to House Bill 388. As hospital-based physicians on the front lines of providing patient diagnosis and treatment in the current COVID19 public health emergency, we want to express our strong concerns regarding this legislation.

We believe our operational and financial concerns in opposition to this legislation are now visibly validated by the current public health emergency, in which hospital-based physicians are critical to facing this state's and our nation's challenge from the COVID19 pandemic. Furthermore, as the result of this crisis, the financial viability of many physician practices and many hospitals are endangered in Ohio and around the nation. Additionally, some physician staffing companies for hospital-based services are reportedly near bankruptcy. Quite simply, the consideration of this legislation, at this time, shows a disregard for patient access to physician care and, therefore, the future economic viability of hospital-based physician health care services. Please bear in mind that every one of your constituent lives are at stake and depend upon the very hospitals and physicians you are economically undermining with this legislation in this national public health emergency.

To inform your public policy judgment, it should be noted that under recently enacted federal law for COVID19 out-of-network (OON) services, the Families First Coronavirus Response Act (the FFCRA), and the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act) there now exists certain patient protection against OON balance billing. Importantly, the acts base insurance payments to OON physicians for COVID19 diagnostic testing and related services upon the "the cash price for such service that is listed by the provider on a public website. (The plan or issuer may negotiate a rate with the provider that is lower than the cash price.)" Clearly, with this move, the United States Congress and the President understood the importance of maintaining the financial viability of hospital-based patient diagnostic services, as needed to fight the pandemic.

Moreover, two states this year enacted broad out-of-network anti-balance billing laws that were supported by the physician community. The State of Maine enacted a new OON law that includes an arbitration mechanism to address disputes between providers and health plans when OON payments are deemed inadequate by the provider. However, when the disparity between the provider's charge and the payer-allowed amount is under \$750, the carrier must pay the provider at the 80th percentile of billed charges as determined by the states all-payer claims database.

Under a new Virginia law, enacted on April 11th, payers must compensate out-of-network providers at a “commercially reasonable rate” based on payments for the same or similar services provided in a similar geographic area. The legislation passed the legislature unanimously. The Virginia law was modeled after Washington State law enacted last year, also with unanimous, bi-partisan consensus. All of these state examples, in which Democrats and Republicans came together to address balance billing, we believe support health care delivery, protect our patients, your constituents, and reject the absolutely false, financially self-serving, arguments offered by the insurance industry.

In sum, our patients cannot afford the ill-considered OON payment policy established under HB 388. Unquestionably, the payment policy set forth in that bill, which is keyed to Medicare rates, financially favors the insurance industry (an industry who many believe will be financial beneficiaries in the current crisis by the suspension of elective procedures and routine medical care). The consideration and support of this legislation at this time of national economic anguish is unconscionable while physicians are risking their lives and health insurance executives are raking in enormous profits.

We urge you to consider the bi-partisan state examples as a path forward to ensure that patients in Ohio continue to have access to high quality hospital-based physician services, including physician pathology services, especially in the challenging months and year ahead. Thank you for consideration of our comments.

Sincerely,

Sean Kirby, MD
President, Ohio Society of Pathologists