



## *Ohio Society of Pathologists*

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### DECEMBER 9, 2020 OSP TESTIMONY IN OPPOSITION TO HB 388

Mr. Chairman and members of the Insurance Committee, my name is Sean Kirby, MD, President of the Ohio Society of Pathologists (OSP). I am here today in strong opposition to House Bill 388. The out-of-network payment formula currently provided in HB 388 is the payment formula applied under federal law (ACA) *exclusively* for "emergency services" in states that have no prohibition on balance billing. The federal payment formula for "emergency services" does not categorically apply to out-of-network "clinical laboratory/pathology services." Applying the federal "emergency services" out-of-network payment formula to non-emergency services (based upon the greater of: median in-network rates, the out-of-network rate, or 100% of Medicare) was expressly rejected in CA, NY, CO, NM, MI, NJ, WA, VA, FL, TX, AZ, NH, MN, and ME. For non-emergency services, states have modified the payment safeguard to be a higher percentage of Medicare (125% to 150%<sup>1</sup>), or higher in-network rate (above the median), or retrospectively tied to a default date<sup>2</sup>, or a "commercially reasonable" rate.<sup>3</sup>

HB 388 potentially enhances the profit margin for insurance companies at the expense of patient care and health care delivery. The legislation statutorily empowers health insurance companies to drive down the amounts they pay under contracts with providers in order to commensurately lower the median in-network payment calculation for their own economic advantage. The "*unintended consequences*" of using "median in-network rates" to calculate OON payment was noted by the Brookings Institute in their June 5, 2019 correspondence to the United States Senate. Brookings noted "this approach would create incentives for insurers to terminate contracts with physicians who they are currently paying more than the median."

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<sup>1</sup> See: Out-of-Network laws in California, New Mexico, Colorado, Michigan.

<sup>2</sup> See: Out-of-Network laws in Georgia, Oregon.

<sup>3</sup> See: Out-of-Network laws in Florida, Virginia, Washington State

Furthermore, Brookings, on September 11, 2020 published a report in the American Journal of Managed Care, entitled: "[Policies to Address Surprise Billing Can Affect Health Insurance Premiums](#)" in which they found that a financial model based upon a **Medicare payment safeguard of 150%** was the most appropriate for calculating potential premium reductions and balancing competing economic interests.

The Committee should also note that HB 388 lacks any regulatory assurance of health plan network adequacy. Requirements enacted in other states compel insurers to provide reasonable and timely access for patients to hospital and facility-based in-network specialty physician services. Such a requirement is considered by patient advocacy groups and medical societies, including AMA, to be a necessary component of all out-of-network legislation.

With respect to the direct impact of HB 388 on pathology and clinical laboratory services, we are facing a 9.0% payment cut in Medicare next year. The combined effects of cuts in Medicare and the inducement this legislation offers to health plans to slash contracted rates will undermine the financial viability of pathology and laboratory services throughout the State of Ohio. Consequently, as we are still in a national pandemic, this legislation may result in delays in patient diagnosis, more limited access to laboratory and pathology services, and ultimately depreciation in the quality of health care.

In sum, this legislation is ill-conceived and based upon a faulty premise of equitable balance of health care interests with insurance interests. That unfortunate misrepresentation has been conveyed by medical organizations that have disregarded the input of many national coalitions and health care constituencies. While we strongly favor prohibiting "surprise billing" of patients, we believe HB 388 is highly flawed and detrimental to health care delivery. Accordingly, we urge your opposition to HB 388.

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