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Senator Renee Unterman
Chair, Senate Health and Human Services Committee
Georgia State Capitol, Room 121-J
Atlanta, GA 30334

Re: Request for data

January 12, 2017

Dear Senator Unterman:

The Georgia College of Emergency Physicians has been advised that you are proposing an average of Medicare, Medicaid, and Usual and Customary Charges to serve as a baseline for allowed benefits for out-of-network (OON) emergency care claims for Georgia. You have asked us for some data from our Chapter, and the attached spreadsheet provides a good representation of the amounts paid in 2016 by Medicare and Medicaid, and the median amounts charged by ED providers (according to the FAIR Health database of charges for Georgia) for a few important CPT codes commonly used by emergency physicians. This spreadsheet also includes some amounts representing various averages of these three fee and charge schedules, plus the 80th percentile of FAIR Health Usual and Customary Charges for comparison. As you recall, your current bill (SB 8) includes the 80th percentile as the basis for allowable ED professional charges in certain circumstances.

It was only a few years ago that health plans in Georgia, and most everywhere else, were routinely determining the allowed benefit for a wide range of OON physician services based on the 70th to 80th percentile of Usual and Customary Charges (UCC), using their own database, Ingenix. This plan-owned database was determined by the NY Attorney General in federal district court to be fraudulently UNDER-REPRESENTING usual and customary charges, thus cheating enrollees and clinicians out of hundreds of millions of dollars in benefit coverage for these services. This is what led directly to the development of the independently operated, not-for-profit FAIR Health database of usual and customary charges, funded by millions of dollars in fines levied against these plans. Since then, many health plans have abandoned the use of ANY usual and customary charge database to determine out-of-network benefits because they can no longer manipulate them to suit their profits, thus shifting hundreds of millions and perhaps billions of dollars in liability on to the backs of their enrollees. They have even attempted to change the definition of UCC to being based on costs instead of actual charges. This comes at a time when plans have also increased deductibles and coinsurance payments, further shifting liabilities on to their enrollees (and providers are currently REQUIRED to collect these sums from their patients) while at the same time limiting their patients' access to in-network emergency services via the construction of narrow networks.

If we understand your proposal correctly, you would prohibit emergency care providers from collecting the difference between our charges and the plan's allowed benefit (the

balance bill), and you would set this benefit based on an average of Medicare and Medicaid rates, and UCC. Based on the attached spreadsheet, if the allowable benefit for OON emergency care provider services were set at the average of Medicare, Medicaid, and the median U&C charge in Georgia (even using the higher Atlanta area Medicare rates), and balance billing was prohibited, **the result would be payment for these services at between 42% and 52% of MEDIAN usual and customary charges**, depending on the code. Since much of the income for emergency physicians is derived from 99284 and 99285 services, which would both be paid at the lower end of the range at 42% of the median of U&C charges, **this would represent a drastic reduction in the revenues for emergency care services to OON enrollees**. In fact, **we are not aware of ANY other state that has proposed an out-of-network benefit standard this low for emergency care services in conjunction with a prohibition against balance billing**. Connecticut, for example, has a standard for OON emergency care based on the 80th percentile of FAIR Health Usual and Customary Charges (see the column at the far right of the spreadsheet). Your proposal would not only result in a multi-million dollar decrease in collections for out-of-network emergency care services in GA, every year, it would also undercut EVERY contract for in-network services for emergency physicians with health plans in Georgia (and this is a far greater threat to the emergency care safety net).

Most emergency physicians, when they contract with health plans in GA, agree to accept between 65% and 80% of their usual and customary charges. Keep in mind that this discount is exchanged for valuable considerations from the plan, such as faster payment and increased volume through patient referrals. **Your proposal would force emergency physicians to accept an allowed benefit for OON services of between 30% and 45% of their usual charges, without any considerations** exchanged for this huge discount. Some (and often, much) of this allowed amount must be collected from patients by physicians as deductibles and coinsurance payments, and as these amounts grow they are becoming even more difficult to collect. Taking advantage of the federal (EMTALA) and the state obligation to provide emergency care to everyone, regardless of ability to pay: **health plans would have absolutely no incentive to maintain current contracts with emergency physicians in Georgia, when they can get these services at half price without contracting for them.**

Your proposal, as we understand it, would represent not only **an unconscionable undermining of the emergency care safety net in Georgia**, it could also represent **an unconstitutional taking of our services**. If on-call specialists are also included under your bill, you would also **completely undermine the voluntary specialty on-call rosters**, which are already unraveling. Given that proposed changes to our health system may place even more burdens for care of the under and uninsured on this safety net; this is the worst possible time to undercut the financial viability of emergency care services.

I strongly urge you to reconsider your proposal, and consult with GCEP to arrive at a more equitable solution.

Sincerely,

D. W. "Chip" Pettigrew, III MD FACEP
Past President
Executive Committee

1 attachment