THE HOSPITAL & HEALTHSYSTEM ASSOCIATION OF PENNSYLVANIA

February 29, 2016

The Honorable Teresa Miller
Commissioner
Pennsylvania Insurance Department
1326 Strawberry Square
Harrisburg, PA 17120

Re: Draft Balanced Billing Legislation

Dear Commissioner Miller:

On behalf of The Hospital & Healthsystem Association of Pennsylvania (HAP), which represents approximately 240 member institutions, we appreciate the opportunity to provide comments to the proposed legislation proposed by the Pennsylvania Insurance Department (PID) to resolve the issue of surprise balance billing. We appreciate the opportunity to provide comments and applaud Pennsylvania's decision and efforts to address this important issue.

Below, we will briefly describe the issue, outline actions hospitals are currently taking to address consumer needs, recommend some preliminary steps the commonwealth can take to address the issue of surprise bills, and provide some general observations relating to the draft legislation.

Background

Surprise balance billing occurs primarily when hospitals and the admitting physicians or surgeons are both in network but other hospital-based physicians (e.g., anesthesiologists, radiologists, etc.) are not. Practically speaking, consumers receive care in the hospital which they believe is covered by their insurance, only to be "surprised" by a bill for services rendered in the hospital by physicians who do not participate with their particular insurance plan. This issue is not new, and Pennsylvania law currently has limited restrictions on balance billing that apply to both Health Maintenance Organizations (HMO) and Preferred Provider Organizations (PPO) during emergencies. Similarly, the federal Patient Protection and Accordable Care Act (ACA) also attempts to regulate this practice. Specifically, the ACA requires insurers to provide coverage for out-of-network emergency services, but does not prohibit providers from balance billing the patient and it does not require the insurer to hold the patient harmless.

We believe that the issue of balance billing has gained more attention due, in part, to a significant increase in the number of people who have health insurance. In Pennsylvania, for example, the uninsured rate has decreased dramatically from 14 percent during 2013, to 8 percent during 2015. Additionally, tiered networks (which involve higher out-of-pocket costs for consumers if they see providers that are considered a less preferred tier out-of-network) have become more popular, especially in many ACA marketplace plans. While the scope and extent of "surprise bills" has not been fully identified, these factors may have contributed to an increase in their occurrence.

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Hospital Efforts to Address Balance Billing

Regardless of the reason for a surprise out-of-network bill, receiving one can be a frustrating and upsetting experience. To help address this issue, HAP and Pennsylvania's hospitals are working together to increase the transparency of consumer financial transactions with hospitals. Currently, approximately 70 percent of Pennsylvania's licensed general acute care hospitals have adopted HAP's *Principles and Operational Guidelines for Consumer Focused Hospital Financial Services*. The goal of the transparency efforts explained in these guidelines is to help consumers navigate a complex billing system that involves multiple parties, including insurance companies, physician practices, hospitals, employers and government entities. These guidelines outline how hospitals should explain to patients what they will owe for their health care. Moreover, these guidelines indicate that hospitals should do their best to identify any out-of-network doctors or other providers that may be a part of a patient's care team. Hospitals also are voluntarily implementing individual programs to help consumers better understand costs before they enter the hospital. Many hospitals have transparency tools available at their respective websites.

Recommended Preliminary Steps

The commonwealth could take preliminary steps to address network adequacy and transparency which would, in large part, help address the issue of "surprise" balance bills.

- ***Network Adequacy***. It is important to ensure that insurance products meet the existing network adequacy standards set forth in Pennsylvania law. Network adequacy is more important than ever with the proliferation of tiered networks. While an insurer's overall network might be adequate, the insurer's tiered network could fall well short of the adequacy standards set forth in Pennsylvania law. Moreover, Pennsylvania should consider adopting the National Association of Insurance Commissioners' (NAIC) recently revised Network Adequacy Model Act. Among other things, the NAIC Model Act updates the network adequacy criteria and includes provisions to address surprise balance bills. Finally, network adequacy requirements should consider whether the insurer has contracts with the hospital-based providers at in-network hospitals.

- ***Transparency***. Pennsylvania should take steps to ensure that consumers have access to their insurer's most recent network status information. Among other things, insurers should be required, consistent with the NAIC Network Adequacy Model Act, to maintain up-to-date provider directories. Insurers also should be encouraged to proactively take all reasonable steps to ensure that consumers better understand their health insurance coverage, particularly around possible out-of-pocket costs.

Observations Relating to Draft Legislation

HAP, in concert with its members, identified a number of common observations and themes relating to the proposed approach.

- ***The Draft Legislation Appears to be Unduly Broad.*** This proposal appears to cover situations beyond true "surprise" billing scenarios. For example, the language, as written, appears to inappropriately apply to services provided by an out-of-network hospital or by an out-of-network practitioner. Further, the legislation does not appear to recognize that there may be instances where individuals may, in fact, choose to receive care from an out-of-network provider within an in-network hospital.

- ***The Legislation Should Not Be Expanded to Apply to Tiered Networks.*** Charges associated with tiered networks should not constitute surprise bills subject to the proposed legislation. The concern is that expanding the legislation in this manner could potentially undermine the purpose of a tiered network benefit design, where consumers choose the product in order to pay a lower premium, knowing the tradeoff is a limited choice in providers. Concerns regarding tiered networks would be best addressed by current laws and/or modifications to current network adequacy criteria.

- ***It May Be Appropriate to Provide for a Competitive "Default" Rate in Emergency Situations.*** HAP recognizes the merit in additional efforts to protect the patient from charges associated with emergency services beyond the existing protections in state and federal law. In these situations, the consumer has little to no control over the selection of the treating providers. That said, efforts to identify the appropriate "default rate" in emergency situations is a difficult undertaking. HAP believes that the appropriate formula should be a "competitive" rate based on market data, rather than an arbitrary rate tied to existing fee schedules or databases that may be unduly influenced by the health insurance industry.

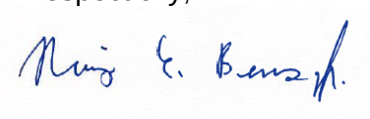
- ***The Legislation Does Not Appear to Appropriately Define the Role of the Insurer.*** As previously noted, Pennsylvania should take steps to ensure that consumers have access to their insurer's most recent network status information. Among other things, insurers should be required, consistent with the NAIC Network Adequacy Model Act, to maintain up-to-date provider directories. Insurers should also be encouraged to take all reasonable steps to proactively educate their members, so they better understand their coverage and its limitations. This could include providing member advance notice, as part of the prior authorization process, of which providers are non-participating. Additionally, marketing requirements should be revised to ensure that insurers more fully disclose the impact of limited or tiered networks to potential members.

- ***The Proposed Arbitration Process Raises Significant Concerns.*** HAP member hospitals have expressed concerns relating to the proposed arbitration process. Among other things, HAP has been advised that the arbitration protocols utilized by New York have imposed significant administrative burdens on providers, and have not met the goal of establishing a process that appropriately balances the interests and resources of providers and insurers. In particular, HAP has concerns with the Binding Resolution Process Option 2, which provides that an arbitrator would issue a decision and apportion costs based on findings of fact. This process would be unduly expensive and could ultimately drive up the cost of health care. We also question the purpose and need for mandating the participation of hospitals in the arbitration process under this option.

Again, thank you for the opportunity to comment on the PID's draft balance billing legislation. HAP appreciates the opportunity to offer its views and concerns. We believe a healthy discussion regarding the issue of surprise balance billing will help ensure that as many Pennsylvanians as possible have access to comprehensive and affordable health insurance coverage and that hospitals and health systems are better able to serve the citizens of the commonwealth.

If you have any questions or concerns regarding the contents of this letter or this matter in general, please feel free to contact me at (215) 575-3737.

Respectfully,



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