



Ohio Society of Pathologists

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Ohio House Finance Committee

Wednesday, December 11, 2019

Opposition Testimony – HB 388

Chairman Oelslager, Ranking Member Cera and Members of the Ohio House Finance Committee, my name is Dr. Lori J. Elwood, MD and I am the Immediate Past President of the Ohio Society of Pathologists (OSP).

On behalf of the hundreds of practicing pathologists in the State of Ohio, we are testifying today in opposition to House Bill 388. This legislation is imprudent and would place Ohio in a public policy posture unique in the nation in providing a payment structure for out-of-network services that will impair the financial viability of the health care delivery system, including the provision of pathology and laboratory services. In health care delivery, pathology and laboratory services, in many cases, are integral to medical decision making and can be critical to patient diagnosis and effective treatment.

Should HB 388 be enacted in its current form, it would undoubtedly be the most pro-insurance out-of-network (OON) payment law in the nation, in allowing insurance companies to unilaterally establish payment for out of network services based upon their own rate schedules, or alternatively pay such services at 100% of Medicare, whichever is greater. The OSP supports patient protections from OON charges (i.e. ban on balance billing) that result from the failure of the health insurance plans in providing reasonable and timely access to in-network physicians at in-network hospitals and facilities. Furthermore, we support a payment and regulatory oversight structure that provides clear incentive for health plans to contract with hospital-based physicians. HB 388 fails on many levels and does not emulate the acceptable public policy approaches to the out-of-network billing issue, taken in states as

diverse as New York, Florida, Texas and Washington. Thus, HB 388 contemplates a radical approach to this issue that deviates from many bi-partisan consensus positions that have had the support of medicine in other states.

For example, from a public policy perspective, as should be noted by members of the Ohio House, presidential candidate Senate Elizabeth Warren has proposed payments to hospitals at 110% of Medicare under her draft nationalization plan for private health insurance. Moreover, even the State of California safeguards (non-emergency) OON payments at 125% of Medicare under their respective OON law.

By contrast, Ohio HB 388 proposes a safeguard payment for all OON hospital-based physician services at 100% of Medicare (line 73). **Thus, the Ohio House is contemplating private insurance financial payments for out-of-network hospital-based physicians below that even proposed by Senator Elizabeth Warren or the State of California**, both of whom are contemplating and seeking a transition to a single payer health care system. **Accordingly, the 100% Medicare payment safeguard in HB 388 is grossly insufficient and would have a highly negative impact on the financing of all hospital-based physician services.**

Of further concern, the arbitration provision in the bill does not emulate the process effectively used in other states, like New York. The sole purpose of arbitration in HB 388 is to determine the “accuracy or inaccuracy” (Line 192) of whether the health insurer properly calculated the payment based upon their own in-network, out-of-network fee schedule, or the Medicare rate. **Thus, under HB 388 the arbitration process is illusory and not designed as any objective process to ascertain nor determine whether the clinical circumstances of providing diagnosis or care to the enrollee of the plan merits a value-based payment greater than the state-mandated payment formula under the statute.**

The legislation also fails the patient community, by omitting any requirement for health plan network adequacy. House Bill 388 establishes no obligation on the health plan to provide enrollees with reasonable or timely access to in-network physicians specialists at in-network hospitals and facilities. Both national patient advocacy groups and physician groups have been united in expressly calling upon state and federal regulators to adopt requirements to assess

health plan network adequacy for patient access to in-network hospital and facility-based specialty physicians. States that have adopted such requirements in regulation or law include Washington State, New Hampshire, Louisiana and California.

For these reasons, the Ohio House should recognize many harmful repercussions of establishing a highly adverse OON payment methodology for health care delivery, as set forth in HB 388, including that:

- It will incentivize health plans to cancel contracts with the 50% of physicians who are paid above the Median in-network rate of the health insurance payer;
- It will further incentive health plans to slash payments for physicians under contract, in order to unilaterally lower median payment calculations in the future;
- It will decimate the health care delivery system, by rationing patient access to specialized physicians in the hospital setting who must diagnose and treat a greater volume of patients in order to maintain financial viability;
- It will likely result in some hospital closings, especially those facilities in rural areas that are currently at financial risk, or currently relying on private health insurance payments to offset health care delivery costs for their Medicare and Medicaid patient populations;
- Lastly, it will result in greater delays in health care access for patients, increased diagnostic wait times for patients and physicians, and consequently a potential depreciation in health care quality for the citizens of Ohio.

In sum, for these many reasons, we urge your opposition to House Bill 388. Thank you for your consideration and I hope to answer any questions you may have at this time.