

## ***Ohio Society of Pathologists***

**Hillcrest Hospital  
6780 Mayfield Road  
Pathology, 2<sup>nd</sup> Floor Atrium  
Mayfield Heights, OH 44124**

### **Memorandum**

**Re: HB 388 (Sub)**

The Ohio Society of Pathologists is strongly opposed to HB 388. In a national pandemic, this legislation is both ill-timed and ill-considered. At this time, hospital-based physicians and physician practices are working under both professional and financial duress. At the same time, many experts predict the health insurance industry is likely to accrue windfall profits from reduction in routine medical services. This legislation does not protect patients; it undermines the very fabric of hospital-based healthcare and in doing so is likely to exacerbate current financial strain the pandemic has placed upon all physician services. Specifically, we are opposed to this Out-of-Network (OON) payment legislation for the following reasons:

- 1) The OON payment formula for out-of-network services contemplated under this bill will incentivize payers to slash contractual payments to 100% of Medicare or lower, as such reductions would be in the clear economic interest of the health insurance payer who can unilaterally dictate the amounts established for in-network and OON payment. With contract offerings at 100% of Medicare or lower physicians will have no negotiating options, but to accept such contracts.
- 2) Hospital-based physician services cannot be operationally sustained at payments set at 100% of Medicare or below; thus, no other state has used a Medicare benchmark at 100% for this legislation, and recognizing this financial and operation reality, states have opted for a benchmark at 125% to 150% of Medicare.
- 3) The bill fails to exclusively and expressly rely upon commercial payments for median in-network rate-setting, thereby potentially including both Medicare Advantage and Medicaid Managed Care in diminution of the OON payment calculation.
- 4) The median in-network calculation is not determined by an independent, transparent database; thus allowing health insurance plans to manipulate the payment methodology through opaque payment calculations that are not subject to department of insurance scrutiny nor enforcement.
- 5) The legislation potentially enhances the profit margins for insurance companies at the expense of patient care and health care delivery by allowing 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.
- 6) The arbitration system in this legislation will not remedy nor mitigate the adverse effect of the out-of-network payment calculation and its distorted incentive to lower contractual payments.

For these many reasons we are strongly opposed to HB 388.