Ohio ACEP
American College of Emergency Physicians
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House Bill 166 – Opponent Testimony
May 3, 2019

Chairman Oelslager, Vice Chairman Scherer, Ranking Member Cera and members of the House Finance Committee, thank you for the opportunity to express opposition to several provisions added to substitute House Bill 166 yesterday.

My name is Dr. Brad Raetzke and I am the President of the American College of Emergency Physicians, Ohio Chapter (Ohio ACEP) and a practicing emergency physician in Central Ohio. On behalf of the nearly 1600 emergency medicine physicians Ohio ACEP represents, I hope to shed some light on the detrimental impact provisions directly targeting emergency care could have on vulnerable populations in Ohio. I wish I could be with you in person today, but as you can imagine, the schedule of a practicing emergency physician cannot easily be changed. As we only just saw the provisions of substitute HB 166, there was not enough time to arrange for an in person witness.

As I am sure you are well aware, the emergency department is a fast-paced and complicated practice environment. Emergency physicians see and treat conditions that cross the entire spectrum of medicine. We see every patient that walks through our door regardless of presenting symptoms, insurance coverage, medical history, etc.

Emergency physicians and emergency departments practice under a federal mandate EMTALA (the Emergency Medical Treatment and Active Labor Act). This mandate requires that every person who comes to the ED be seen regardless of their coverage status or ability to pay. We also have to treat patients with limited medical history and information. We have our doors open 24 hours a day, 7 days a week, 365 days a year. We are the true safety net of the health care system.

Our association would like to strongly object to several provisions that were added to the bill yesterday. None of these provisions were shared with our Association in advance for comment. There has not been standalone legislation for any of these provision and they have not been vetted by all interested parties. As these provisions could have extreme impacts on the healthcare safety net, I implore you to remove them from HB 166.

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1. ORC 3902.50 and ORC 3902.51– These provisions are intended to address the issue of "surprise bills." Ohio ACEP wholeheartedly agrees that this is an issue that needs a solution. In fact, we have been working on this issue for at least the last three years with other interested parties. This is a national issue. Our national association has instituted weekly calls to discuss ways to address the issue and receive updates on activity in other states.

   The provision included in HB 166 states that for emergency care, if a patient is seen by an out-of-network provider, the provider shall be reimbursed the greater of the in-network rate or the out of network rate. This sounds like a fair solution. However, the bill does not define either the in-network or the out of network rate. The main problem is that these are both non-transparent and under the control of the insurance plans. The physician has no way of knowing how these rates are determined, nor is it possible for the physician to know if he/she has been reimbursed correctly. The reality is this would cause insurance companies to drive down both in-network and out-of-network rates. There are essentially no protections for the provider.

   Even the arbitration provision, which is no doubt well intended to protect the provider, is not clearly written and could be interpreted in several ways.

   The issue of surprise bills and out-of-network coverage is very complex and nuanced and deserves proper vetting through standalone legislation.

2. ORC 3727.49 – This provision creates new prohibitions on free standing emergency departments. Specifically, it would prohibit a free standing emergency department from billing for a facility fee. It also creates signage requirements for the facilities.

   Free standing emergency departments are full service emergency departments. They are not an urgent care as we have heard some contend. Free standing EDs are open 24/7/365 – urgent cares are not. Free standing EDs must comply with EMTALA – urgent cares do not. Free standing EDs have diagnostic and treatment capabilities that urgent cares do not.

   They see sick patients who have heart attacks, strokes, sepsis and are often the first line in caring for devastating traumas. Freestanding EDs allow patients to seek treatment for many illnesses and injuries close to home. They allow ambulances to return to service faster due to shorter travel distances. They are a way to provide definitive care to communities that would not be able to sustain a full service hospital. In a soon to be published study, one of our members demonstrated that FSED's do indeed see real, sick, patients who belong in an ED and do so faster and with higher patient satisfaction. They do not discriminate based on ability to pay.

   Since free standing EDs must be compliant with EMTALA, they cannot do, say, or post anything that might discourage a patient from seeking care. The signage provisions of Section 3727.49 likely would be an EMTALA violation.

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Ohio's free standing EDs provide an important service to communities and increase access to emergency care. The proposed provisions need vetting and interested party conversations and should not be included in a fast-tracked state budget bill.

3. ORC 5164.722 – 5164.723 – These provisions target the Medicaid population for ED utilization. Interestingly, these provisions allow a federally qualified health center to bill for a facility fee, but the bill prohibits a free standing ED from doing the same thing. We have not seen any data to show that Medicaid recipients inappropriately access the emergency department. Nor have we seen data that shows that emergency department reimbursements are a large portion of the Medicaid budget. The provisions only seek to financially punish emergency physicians and emergency departments for providing the safety net healthcare that most others won't provide.

   These provisions are unnecessary and should be removed from the budget. Enacting these would adversely impact those who are most vulnerable, such as the poor and medically underserved and further restrict their access to care.

Thank you for your consideration of this perspective. Ohio ACEP has always been and will continue to be willing to discuss these important topics with members of the General Assembly. We hope you will remove these provisions from the budget and instead allow thoughtful conversations to take place on these issues.

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