Ohio ACEP
American College of Emergency Physicians
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House Bill 388
Testimony of Dr. Bryan Graham
November 6, 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 House Bill 388.

My name is Dr. Bryan Graham and I am here representing the American College of Emergency Physicians, Ohio Chapter (Ohio ACEP) as a practicing emergency physician in Northeast Ohio. On behalf of the nearly 1600 emergency medicine physicians Ohio ACEP represents, I am here to discuss our concerns with HB 388.

I want to start with a little background on how emergency physicians practice. Emergency physicians and emergency departments must adhere to a federal mandate known as 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 insurance coverage or ability to pay. We have our doors open 24 hours a day, 7 days a week, 365 days a year. We proudly treat patients with limited medical history and information. We are the true safety net of the health care system and every patient who walks through our door is given the care they need, with no exceptions.

Since we can not choose our patients, and our patients can often times not select us, it is in the best interest of our physicians to contract with a wide range of insurance carriers. This not only benefits our patients, but also benefits our physicians as it expedites payments and allows us to keep our Emergency Departments open and staffed appropriately. If a patient comes to the ED without any insurance coverage, they will still get the same level of care as fully insured patients. These uninsured patients will get a bill, but much of the care ends up being uncompensated/charity care. However, I would like to emphasize that the fact that a patient may have an unpaid medical bill will not preclude them from being seen if they present to the emergency department to be seen again – and our physicians will ALWAYS care for the patients who come through our doors. This is a unique scenario in medicine and therefore gives us a unique perspective on this issue.

I do not practice medicine to be a bill collector. I want to treat my patients to the best of my ability and have good outcomes for them and their families. I also do not want my patients to get a surprise bill for seeking the care they need when an emergency arises. It is currently in the best interest of both me and my patients to be in-network with insurance plans.

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However, there are situations where a patient may have insurance coverage, but I am not in that insurer's network. Ohio ACEP agrees that patients need to be kept out of the middle of disputes between physicians and insurers. As I stated, emergency physicians cannot turn anyone away who walks through our door. Federal law mandates that. We can not discuss potential costs or insurance details until patients are screened and stabilize. Patients shouldn't second guess needed care for fear of a surprise bill.

While surely well intended, this bill will have grave consequences for the medical safety net that is emergency care. Currently under HB 388, if a physician sees an out-of-network physician, the insurer would reimburse the greater of 3 amounts: the median in-network rate, the out-of-network rate, or the Medicare rate. What this bill essentially does is creates a default contract for emergency services. This is because insurers will never be incentivized to negotiate a contract over the median in-network rate or the Medicare rate if they know that is all they will ever have to pay. Further, it incentivizes insurers to push physicians out of network who are getting an over "in-network" rate to drive down that median rate even further.

This bill as it stands will create more narrow insurance networks for patients and actually limit their ability to seek appropriate and timely care. While it will cap the perceived initial financial impact to patients who are seen by an out-of-network provider or at an out-of-network facility, lack of access to care by incentivizing insurance companies to go out of network will actually lead to increased overall health care costs due to delays in medical intervention and appropriate care.

The bill purports to have a "baseball style" arbitration mechanism. However, under the bill, the physician could only arbitrate to dispute the "accuracy" of the median in-network rate. Physicians have no way of knowing what the true in-network rate is, and even if they "win" arbitration, reimbursement is still set by the greater of 3 rule. Further, under HB 388, if the physician were to "win" in arbitration, they would be responsible for 30% of the arbitration cost, so the physician will have to pay to fight for what is essentially the least adverse of three already inadequate reimbursement rates.

As it stands, HB 388 proposes a solution that is detrimental to the healthcare of Ohioans because of the many unintended consequences that may arise from its utilization. In order to understand these consequences, one must understand the fragility for which an Emergency Department exists within our system. Expectations for providing immediate care during unexpected emergencies for all Ohioans result in the average Emergency Medicine clinician providing $250,000 of un-reimbursed care per year. In addition, the current healthcare system purports a pay structure where Medicaid, Medicare, and uninsured patients largely provide reimbursements that do not cover the cost of care provided.

Arbitration is meant to settle potential disputes between parties, and this legislation is in effect preventing Emergency Medicine clinicians from coming to the table with reasonable outcomes. The three options as provided hinder clinicians from receiving the proper reimbursement for the care they provide. Through arbitration, physicians are limited to three ineffective outcomes that are dictated solely by the private insurance companies. Medicare program payment rates as an option are not sustainable at current rates, which has been repeatedly demonstrated in research.

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Using in-network rates is an unfair expectation as well, as more insurers have purposely moved Emergency Medicine providers out-of-network with artificially low rates. Again let me be very clear with this point: it is the insurance companies who are increasingly moving the label of "out-of-network" on to providers in an effort to shift the cost to the consumer who comes to them with the expectation to provide coverage for their medical care. For an effective arbitration method to be enacted, I implore you to look across the country at options which provide for fair and reasonable arbitration that allows each party to move forward with a cost of care deemed appropriate from their perspective, while also setting reasonable amounts above which we would move forward with arbitration.

We certainly understand the sponsor's concerns with rising insurance premiums. Our members have health insurance, and also share those concerns. However, this bill contains no provision regarding insurance premiums. It creates no incentive or guarantee that premiums will decrease. Historical data shows that premiums rise year over year while insurance companies are making record profits. This bill will take patients out of the middle of these disputes, but it ultimately is just a mechanism to cap reimbursement and further contribute to the record profit margins of the insurance industry. Meanwhile, hospitals are closing at a record rate due to decreasing reimbursement.

The results of this bill as written will ultimately put patients at risk. It will cause rural and critical access hospitals to close, it will limit subspecialty services available to patients in the emergency department. It will increase patient wait times and decrease quality of care as departments will be forced to decrease staffing. Emergency departments are the safety net of healthcare, but if we cannot keep the doors open and the departments staffed, that safety net will fall apart – and our patients will suffer. Having always been strong patient advocates, we share the support of keeping patients out of the middle of disputes between insurers and physicians, however this is not a plan we can support.

Emergency physicians are mandated by federal law to see every patient who presents to our emergency departments. Patient safety and care is our number one priority. Please do not support this legislation that would jeopardize access and safety. This is not a free market solution, but instead government rate capping. The consequences of this legislation will ultimately jeopardize the sustainability of Ohio's healthcare safety net. If the concern is insurance premiums, then those should be addressed directly and not through a mechanism which by no means guarantees this will occur and instead puts YOUR safety at risk.

I challenge you to consider what would happen if you or a family member had an emergency, had nowhere nearby to go, or had to wait hours for emergency care all because an already stressed system was further crippled by this legislation. If anything, we need more support to deliver the care our patients need and this legislation accomplishes the opposite.

Thank you for your consideration. I welcome the opportunity to answer any questions you may have.

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