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April 16, 2015

The Honorable David Balmer
Chair
Senate Business, Labor and Technology
Committee
Colorado State Senate
200 East Colfax
Denver, CO 80203

Re: Senate Bill 259

Dear Chair Balmer:

On behalf of the American Medical Association (AMA) and our physician and student members, I write to state our serious concerns with Senate Bill (S.B.) 259 and to ask that you oppose the bill and encourage further study.

To be clear, the AMA fully understands the consumers' perspective and the unfairness of making every attempt to access in-network care at an in-network facility, only to be billed by an out-of-network provider. Moreover, the AMA has strong policy opposing excessive billing practices by physicians that can result in significant financial burdens on patients.

Our primary concerns with S.B. 259 in its current form include its impact on competition in the healthcare market and the practical, important, and readily available provider network solutions that are excluded from the bill and may not have been taken into account when the bill was drafted. Additionally, we are concerned that this bill represents a step backwards in efforts to improve transparency and fairness in out-of-network care.

Again, we urge your support for further study and look forward to an opportunity to work with you, the Colorado Medical Society and other stakeholders on an interim study looking at stronger patient protections against unexpected bills while protecting competition in the health care market.

Harmful impact of S.B. 259 on the market

As you know, in highly competitive health care markets such as Colorado's, a balance of power exists between insurers and health care providers during contract negotiations that generally results in adequate networks and competitive payments to providers. S.B. 259 would significantly disrupt that balance by taking away the negotiating power of providers.

By setting the rates for many providers who do not contract with insurers, S.B. 259 eliminates any incentive or need for insurers to contract with physicians on financially and ethically viable terms. As a result, providers would come to the table with no leverage because they receive the same payment (or less) if they do not reach an agreement. From our perspective, this is an untenable result.

Moreover, we find ourselves at a time when insurers are structuring their networks to be very narrow. The AMA fears that creating a market where little difference exists - from the insurer's financial perspective - between contracting and not contracting with certain providers will result in very restricted networks for consumers.

Additionally, S.B. 259 eliminates options for physicians in the health care market in Colorado. Under the legislation, insurers would have every incentive to lower in-network rates, as out-of-network rates will also decrease as a result. It is likely that providers across the state will feel the impact of this legislation on their bottom lines, forcing them to make tough decisions that may include leaving the state or abandoning independent practice for hospital employment. This not only impacts patients who may not have access to needed care, but Colorado's economy as well. Physicians are a significant economic driver in Colorado, creating \$20.1 billion in economic output, supporting 132,971 jobs and contributing \$793.2 million in state and local tax revenues. The AMA believes it is impossible to enact S.B. 259 as drafted without numerous, unintended consequences to the health care market.

Incompleteness of legislation

While we understand that the issue out-of-network billing may need consideration, we are disheartened by S.B. 259's focus on out-of-network charges as the problem, rather than a symptom of the larger set of challenges. We would assert that these challenges stem from the way that some health insurers market and price their products to consumers, organize their provider networks and interact with providers who are not contracted. The AMA strongly believes that if policymakers plan to address out-of-network billing in any way, they need to consider the bigger provider network picture and evaluate the causes associated with network issues.

To start, it is important to evaluate the network adequacy requirements in the state. Often out-of-network billing results from networks that may seem adequate, but in fact, as assembled do not provide reasonable and timely access to in-network care, including emergency care, for patients at in-network facilities. Colorado is well represented by its Division of Insurance with the National Association of Insurance Commissioners (NAIC) as NAIC completes its work on revised network adequacy standards. The revised NAIC standards could inform this legislation when they become available later this year.

Similarly, it is important to examine the regulation of provider directories in Colorado and revise them as necessary. Provider directories need to be accurate and up-to-date so that patients are able to easily determine in-network and out-of-network providers online through the directories, including emergency and other hospital-based physicians. Patients must be able to depend on that information when making their health care decisions, including but not limited to, avoiding out-of-network billing.

Finally, it is important for policymakers to examine how insurers pay for out-of-network care and ensure transparency and value for the patients. The majority of patients choose to pay higher premiums for coverage that offers access to both in-network and out-of-network providers, but unfortunately patients have not always received the benefit of those premiums.

For example, an insurer may state that it pays 60 percent of out-of-networks costs for its PPO product, only to have that 60 percent be based on arbitrary methodology that depresses provider payments below competitive levels. As a result, patients do not receive value for their higher premiums and are handed much higher bills for out-of-network care than anticipated and that they would have received if out-of-network providers had been fairly compensated. The legislature might consider whether premiums for health insurance coverage with purported out-of-network benefits in Colorado reflect the actuarial value of the benefits provided so patients are not paying higher premiums for illusory out-of-network coverage.

Moreover, transparency in the scope and limitations of any out-of-network benefit is a critical component of the broad set of solutions that belong in S.B. 259.

Steps backward

Lastly and more broadly, the AMA believes that this legislation is a step backwards vis-à-vis national efforts to improve transparency and fairness in out-of-network health care. Recently, states have begun to explore options to address provider networks and out-of-network care that tackle the many concerns and solutions mentioned above.

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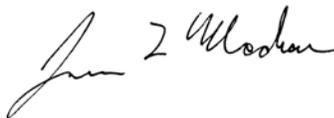
For example, after many years of drafting, negotiating, and debating, New York enacted legislation that, among other provisions, addresses network adequacy; increases transparency and consistency in out-of-network benefits; creates an “independent dispute resolution” process to settle out-of-network payment disputes between insurers and providers; and uses an independent charged-based database to help determine out-of-network coverage. The strong patient protections enacted as part of the New York statute are also expected to foster and encourage competition in the health care market by maintaining a balance of power between insurers and providers.

We are not suggesting that the New York solution, or the advanced solutions being explored in other states, would be right for Colorado. But we are suggesting that Colorado look beyond the outdated idea of banning balance billing and putting price controls in the hands of insurers. At the AMA, we are always looking to Colorado for new and innovative health policy ideas, as Colorado has consistently led the country in this area. We hope you will consider leading again on this issue and working with stakeholders to explore a more comprehensive solution to benefit patients and protect your health care market.

For all of the reasons articulated above, we ask that you oppose S.B. 259 in its current form. The issues raised in S.B. 259 are serious and complex. In order to effectuate innovative solutions to these issues, protect patients and ensure a strong and sustainable health care system in your state – something that Colorado is known for - we further encourage the Colorado Legislature to carefully deliberate and engage in further study. If you have any questions, please contact Emily Carroll, Senior Legislative Attorney, Advocacy Resource Center at emily.carroll@ama-assn.org or (312) 464-4967.

Thank you for your consideration of our concerns.

Sincerely,

A handwritten signature in cursive script, appearing to read "James L. Madara".

James L. Madara, MD

cc: The Honorable Bill Cadman
The Honorable Dickey Lee Hullinghorst
The Honorable Morgan Carroll
The Honorable Brian Delgrosso
The Honorable Susan Lontine
Members, Senate Committee on Business, Labor and Technology
Colorado Medical Society