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December 10, 2015

The Honorable Nia H. Gill  
Chair  
Senate Commerce Committee  
State House Annex  
PO Box 068  
Trenton, NJ 08624

Re: AMA concerns re: Senate Bill 20, the Out-of-Network Consumer Protection, Transparency, Cost Containment and Accountability Act

Dear Chair Gill:

On behalf of the American Medical Association (AMA) and our physician and student members, I write to state our concerns with Senate Bill (S.B.) 20, the Out-of-Network Consumer Protection, Transparency, Cost Containment and Accountability Act.

To begin, the AMA fully understands the consumers' perspective and the frustration that comes with making every attempt to access in-network care at a participating facility, only to be billed by an out-of-network provider. We agree that there are problems with the way out-of-network coverage is offered to patients and support efforts to find solutions.

### **Transparency in out-of-network coverage**

First and foremost, we are very supportive of provisions in S.B. 20 that would increase transparency in out-of-network coverage for patients. As you know, too frequently, consumers believe that they have a certain level of out-of-network coverage, and come to find out, often at an incredibly vulnerable time, that their coverage was much less than anticipated. By requiring insurers to clearly describe their coverage, including with real dollar amounts and in comparison to usual and customary out-of-network rates, as well as disclose the methodology used to determine these amounts, patients will have a better sense of their financial responsibilities for out-of-network care.

### **Assignment of benefits**

Additionally, we are very supportive of the inclusion of an "assignment of benefit" provision in this legislation. This provision goes a long way in removing the patient from billing situations and allowing out-of-network providers to work directly with insurers. Recognizing a patient's assignment of benefits to out-of-network providers is a critical component of any provider network legislation.

### **Impact of S.B. 20 on the market**

As you know, for a health care market to be competitive, a balance of power must exist between insurers and health care providers during contract negotiations to ensure adequate networks and to maintain competitive payments to providers. Unfortunately, S.B. 20 would disrupt that stability by significantly reducing the negotiating power of providers.

Current requirements in New Jersey law protect patients from certain types of balance bills. The changes proposed in S.B. 20 would not provide significant additional patient protections, but instead, would largely result in physicians losing leverage they have with insurers during contract negotiations. From our perspective, this is an untenable result, especially in the current environment.

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

Additionally, S.B. 20 threatens options for physicians in New Jersey's health care market. 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 New Jersey's economy as well. Not only would patients lose their access to care, but New Jersey's economy will suffer. Physicians are a significant economic driver in New Jersey, creating \$39.0 billion in economic output, supporting 234,906 jobs and contributing \$1.7 billion in state and local tax revenues.

### **S.B. 20 is incomplete**

While we understand that the issue of out-of-network billing needs attention, we urge you to place a stronger emphasis on the larger set of challenges around provider networks that may result in patients receiving unanticipated out-of-network care. The AMA asserts that these challenges stem from the way that health insurers market and price their products to consumers, organize their provider networks and interact with non-contracted providers. 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, as assembled, do not provide reasonable and timely access to in-network care, including emergency care, for patients at participating facilities. We suggest the adoption of measurable standards to evaluate networks – standards that include the coordination of participating hospital-based physicians and participating hospitals.

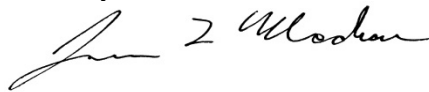
Similarly, it is important to examine the regulation of provider directories in New Jersey and revise them as necessary. Provider directories need to be accurate and up-to-date so that patients are able to easily determine in-network and out-of-network providers online through the directories, including 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.

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While recognizing the hard work and important consideration that have gone into drafting S.B. 20, the AMA is very concerned that this legislation, as drafted, will have a negative impact on patients and their physicians. Rather than focusing on this legislation, we urge the legislature to consider the broad issues connected to out-of-network care. We would look forward to an opportunity to work with you toward alternative solutions. Please contact Emily Carroll, Senior Legislative Attorney, Advocacy Resource Center at [emily.carroll@ama-assn.org](mailto:emily.carroll@ama-assn.org) or (312) 464-4967 with any questions.

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: Medical Society of New Jersey