

February 29, 2016

Ms. Teresa D. Miller
Commissioner
Pennsylvania Insurance Department
136 Strawberry Square
Harrisburg, PA 17120

Dear Commissioner Miller:

I am writing on behalf of the Safety-Net Association of Pennsylvania (SNAP), a group of private hospitals that care for especially large numbers of low-income, Medicaid-covered, and uninsured patients, in response to your invitation for public comment on the Insurance Department's proposed Balance Billing Protection Act.

SNAP supports your desire to protect consumers from surprise balance billing and appreciates the Insurance Department's desire to take a comprehensive approach to this issue. This has been a subject of concern to safety-net hospitals, and to the patients and communities we serve, for many years. With this in mind, we would like to offer our perspectives on the proposal and where SNAP believes this process should go from here.

First, SNAP believes the state needs to take a closer and harder look at Pennsylvania's distinct health care market. A careful examination of the marketplace is critical to understanding the broader context needed to determine the specific factors that are contributing to surprise billing problems. Is the issue more prominent in a particular type of insurance product? Does it vary from insurer to insurer or provider to provider? Are there certain consumer communication practices that result in fewer instances of surprise billing? Does it vary across regions? A more in-depth analysis of the issue may reveal that additional considerations, such as provider network adequacy, should be addressed prior to enacting legislation that approaches the issue of balance billing in a one-size-fits-all manner. Consequently, we believe the Department of Health, in its role of ensuring network adequacy, and other stakeholders should be brought to the table to examine more closely the contributing factors unique to Pennsylvania that may be resulting in surprise billing issues.

Second, SNAP believes that any attempt to address surprise balance billing must require greater transparency and better notifications and communication among providers, hospitals, and insurers. All interested parties need to work collaboratively to ensure that as little care as possible is delivered by non-participating providers. We believe any proposal addressing surprise balance billing should begin by focusing on transparency, patient notification, and front-end communication when patients seek care. Studies of initiatives like the one the Insurance Department now proposes have shown that significant effort should be put into these areas to address the challenge comprehensively while also avoiding future unintended consequences. Undertaking these steps would represent a huge advance toward addressing and solving this problem.



Third, SNAP believes a better balance needs to be struck between providers, insurers, and consumers. The draft legislation the Insurance Department has developed is very consumer-oriented, as perhaps it should be, but it also tends to absolve consumers of any responsibility. By addressing the transparency issue we can give consumers some of the tools they need to be responsible for ensuring for themselves that only providers willing to accept payments from their insurers are involved in their care. Beyond that, though, consumers should be given additional information to help them understand the implications of the health insurance choices they have made. Specifically, the tiered approach to health insurance plans that is so much a part of the Affordable Care Act plays a major role in the provider networks insurers are developing. The public, lawmakers, and regulators all seek low-cost insurance products, but there has been little public education about the potential implications of selecting a low-cost, low-tier insurance plan – specifically, potentially greater out-of-pocket costs. Any future effort to address surprise balance billing needs to give consumers a role in protecting their own interests, and that role needs to be spelled out by the public sector and supported with measures such as mandating and enforcing greater transparency and by public sector scrutiny of the adequacy of the provider networks insurers have created to serve their members. Addressing these challenges and implementing these safeguards in Pennsylvania will go a long way toward naturally eliminating surprise balance billing.

Fourth, SNAP has specific concerns about the proposed legislation's attempt to create a formula for resolving reimbursement disputes. When those disputes involve emergency care, those measures, we believe, are not needed: in Pennsylvania, Act 68 of 1998 already provides adequate protection for consumers receiving emergency care from out-of-network providers. These protections are working, so addressing this issue for emergency care is unnecessary. As for how to address reimbursement disputes for non-emergency care, experience has shown that almost any attempt to set default rates and impose a median-based default payment system favors insurers and eliminates most of their incentive to negotiate in good faith with providers. SNAP believes that any mechanism for settling reimbursement disputes and setting default rates must be acceptable both to providers and to insurers. For safety-net hospitals, moreover, it is paramount that any process for addressing reimbursement disagreements appropriately recognizes the distinct characteristics of these hospitals and the challenges they face: the wider array of services they provide, the larger numbers of Medical Assistance patients they serve, and the generally greater medical complexity of those patients. In light of these considerations, the provisions suggested in the proposed legislation, in their current form, favor insurers and are unfavorable to providers.

Fifth, we believe any new dispute resolution process should involve only the parties directly involved in individual disputes regarding services and not parties associated with the setting in which the disputed services were delivered. Typically, that means insurers and providers. When hospitals are involved in such disputes we believe it is appropriate for them to participate in dispute resolutions. When hospitals are not involved, however, they have no place, and should have no role, in resolving disagreements between insurers and non-hospital-employed providers. Whatever path you choose, SNAP urges you to make any resolution process as minimal an administrative burden on the participants as possible.

For all of these reasons, SNAP urges the Insurance Department to modify its approach to solving the balance billing problem. To do so, we suggest the following steps.

- *Broaden involvement in defining the problem and exploring solutions.* As the agency responsible for addressing the adequacy of insurers' provider networks and licensing providers, the Department of Health's participation is essential. We would like to see greater Department of Health involvement in future efforts.
- *Increase public participation.* Your hearing last fall was a good start, but we need more than one session of public input. We appreciate the opportunity to offer these comments and look forward

to learning what others have told you and seeing how the Insurance Department responds to their comments.

- *Draw experience from what other states are implementing and take advantage of the path being blazed by others.* As you know, the state of New York has enacted surprise balance billing legislation and that law took effect less than a year ago. Pennsylvania is very similar to New York in many respects, and it would be wise of us to observe and learn from the New York experience, see what is and is not working, and adjust our own efforts according to what we have learned. Someone else has invented this wheel and we should learn from their invention instead of attempting to reinvent it ourselves.
- *Reconsider whether legislation is the best approach to addressing this issue.* It may, for example, be more productive to address the surprise balance billing issue through a regulatory approach. After all, regulations have effectively addressed the problem as it pertains to emergency care, and such an approach could be feasible for non-emergency care as well.

The problem of surprise balance billing is important to Pennsylvania's safety-net hospitals. From our perspective, there are three major non-consumer parties to this issue: hospitals, providers, and insurers. From our perspective, it is a shared responsibility and we are willing to do our part in a reformed system, but a better balance needs to be struck between the roles and responsibilities of insurers, providers, and hospitals; consumers, too, need to be given roles and responsibilities in this complex equation; and there needs to be greater transparency in the entire process so that all of the parties involved can do a better job of preventing balance billing from being a problem at all. SNAP believes that should be our ultimate goal, and we believe that achieving it is within Pennsylvania's grasp.

The Safety-Net Association of Pennsylvania appreciates your pursuit of a solution to this problem and your invitation to participate in developing a solution. We also would welcome working with you and your staff to develop that solution and invite any questions you may have about the views we have expressed in this letter or how we believe we can all work together to achieve the solution we all seek.

Sincerely,



Michael Chirieleison
President