



April 6, 2017

Rep. Kevin Brady – Chairman
House Ways and Means Committee
1102 Longworth HOB
Washington, DC 20515

Rep. Richard Neal – Ranking Member
House Ways and Means Committee
1102 Longworth HOB
Washington, DC 20515

Rep. Greg Walden – Chairman
House Energy and Commerce Committee
2125 Rayburn HOB
Washington, DC 20515

Rep. Frank Pallone, Jr. – Ranking Member
House Energy and Commerce Committee
2125 Rayburn HOB
Washington, DC 20515

Sen. Orrin Hatch – Chairman
Senate Finance Committee
219 Dirksen Senate Office Building
Washington, DC 20510

Sen. Ron Wyden – Ranking Member
Senate Finance Committee
219 Dirksen Senate Office Building
Washington, DC 20510

Sen. Lamar Alexander - Chairman
Senate HELP Committee
428 Senate Dirksen Office Building
Washington, DC 20510

Sen. Patty Murray – Ranking Member
Senate HELP Committee
428 Senate Dirksen Office Building
Washington, DC 20510

Re: Essential Health Benefits: Emergency Care

Dear Senators Hatch, Alexander, Wyden, and Murray and Representatives Brady, Walden, Neal and Pallone:

The Emergency Department Practice Management Association (EDPMA) is one of the nation's largest professional physician trade associations focused on the delivery of high-quality, cost-effective care in the emergency department. EDPMA's membership includes emergency medicine physician groups, as well as billing, coding, and other professional support organizations that assist healthcare providers in our nation's emergency departments. **Together, EDPMA's members deliver (or directly support) health care for about half of the 136 million patients that visit U.S. emergency departments each year.** We work collectively and collaboratively to deliver essential healthcare services, often unmet elsewhere, to an underserved patient population who often has nowhere else to turn.

As you consider legislation repealing the ACA and modifying the Medicaid program, we urge you to make sure that patients currently covered by Medicaid will be adequately insured for emergency care in the future. We also ask that you retain provisions designating emergency care as an essential health benefit in ACA and Medicaid plans – and extend that designation to all insurance plans regulated by federal law. Moreover, we ask that you shrink the surprise gap in insurance for emergency care. If insurers are not required to contribute to the cost of emergency care, “coverage” of this essential health benefit will continue to be a misnomer.

Current Medicaid Patients Must Be Adequately Insured for Emergency Care in the Future

Emergency departments are the nation’s health safety net. Federal law – through the Emergency Medical Treatment & Labor Act (EMTALA) - requires hospitals and physicians to evaluate and stabilize everyone visiting the emergency department, no matter the ability to pay. So, even though emergency physicians are only 4% of physicians, *they provide 50% of all care given to Medicaid and CHIP patients and 67% of all care to uninsured patients.*

The Congressional Budget Office estimated that 14 million children and adults would lose their Medicaid coverage under the previous version of the repeal bill. Many who supported that bill argued that these individuals would still be able to receive EMTALA-mandated care in the emergency department. However, a shift to more uncompensated EMTALA care would seriously jeopardize the nation’s health safety net. The demand for care in the nation’s emergency departments would skyrocket while significantly fewer physicians would be attracted to a specialty that is not fairly compensated. This, in turn, would significantly threaten access to care for everyone.

Therefore, as you consider shifting current Medicaid patients into a less robust Medicaid program, into a different program altogether, or off the rolls, we urge you to ensure that these patients continue, at minimum, to be fully insured for emergency care so EMTALA-mandated care is compensated care. As part of this request, we ask you to ensure that the prudent layperson standard (PLP) is incorporated and reiterated in all Medicaid plans. The PLP is the well-established standard, reiterated in the Balance Billing Act of 1997, which requires plans to reimburse for emergency care when a prudent layperson believes he or she may be experiencing an emergency, including when he or she is experiencing severe pain. Plans may not require preauthorization in these circumstances. And the final determination on reimbursement should take into account the presenting symptoms rather than the final diagnosis.

Emergency Care Must Be Covered as an Essential Health Benefit

The Emergency Department is not only the safety net for Medicaid patients and the uninsured, it is also the safety net for patients covered by private insurance. The rise in narrow networks and ever increasing deductibles are contributing to an epidemic of “medical homeless,” leaving the emergency department (ED) as the only option for many insured patients.

We urge you to retain current provisions that designate emergency care as an essential health benefit (EHB) of ACA plans and to extend the designation to all health plans that can be regulated by federal law. Requiring private insurers to cover EMTALA-mandated care is especially important because, as noted above, emergency physicians already provide a

significant and disproportionate amount of uncompensated and undercompensated care. If the care is so essential that it is mandated, it also should be essential enough to be covered care.

Furthermore, consistent with the importance of covering emergency care as an essential health benefit, the PLP standard discussed in the previous section should be incorporated into and reiterated in all private insurance plans.

It's Time to Shrink the Surprise Gap in Private Insurance

Unfortunately, under current law, private insurance “coverage” of emergency care is often a misnomer. Insurers often are unwilling to negotiate fair and *sustainable* reimbursement rates that reflect the true cost of providing EMTALA-mandated care. So, some patients visiting the emergency department will be treated by an out-of-network emergency physician and be financially responsible for a large portion of those charges. This is especially true as more insurers offer high deductible plans. This surprise gap in insurance – which is often a very large gap - is a serious problem for many patients. It is time to shrink this gap by requiring insurers to contribute to the cost of emergency care.

When implementing the ACA, the Department of Health and Human Services, the Department of Labor, and the Treasury Department stated that “it would defeat the purpose of the protections in the statute if a plan or issuer paid an unreasonably low amount to [an emergency] provider, even while limiting the coinsurance or copayment associated with that amount to in-network amounts.” **Thus, “a plan or issuer must pay a reasonable amount for emergency services by some objective standard.”**

Unfortunately, the Obama Administration’s proposed standard – known as the greatest-of-three rule – is vague and unenforceable. Although it was well-intentioned and also references usual and customary charges, it nonetheless allows insurers to determine reimbursement levels unilaterally and in relative isolation, and pay at levels that have little or no connection to the market rate. And patients and providers are not able to identify or prove noncompliance.

We propose improving this standard so insurers are more clearly required to reimburse for out-of-network emergency care, at minimum, in an amount equal to the usual and customary charge. The usual and customary charge should be defined by referencing an independent (unbiased) transparent charge database, like FAIR Health. We urge you to establish the standard adopted in the state of Connecticut which requires insurers to pay, at minimum, the 80th percentile of an independent, nonprofit, transparent charge database.

With these changes, the payment standard would be an objective standard and would:

- * protect patients from the growing surprise gap in insurance,
- * ensure that physicians are reimbursed for EMTALA-mandated care,
- * avoid setting reimbursement rates that are disconnected from the fair market, and
- * establish transparent standards that are easy to comply with and enforce.

The EDPMA appreciates the opportunity to share our concerns and provide potential solutions.

April 6, 2017

Page 4

Please contact Elizabeth Munding, Executive Director of EDPMA, at emunding@edpma.org if we can be of further assistance.

Sincerely,

A handwritten signature in blue ink, reading "Timothy Seay". The signature is fluid and cursive, with the first name "Timothy" and the last name "Seay" clearly distinguishable.

Timothy Seay, MD, FACEP
Chairman, EDPMA Board of Directors