December 9, 2021

Sent Electronically

Dear Members of the North Carolina Congressional Delegation:

On behalf of the American College of Emergency Physicians (ACEP) and the 40,000 emergency physicians we represent, as well as the North Carolina College of Emergency Physicians (NCCEP) and the 1,000 members we represent, we write to share recent, deeply concerning actions taken by insurers in North Carolina to threaten termination of participation agreements with in-network physicians by taking advantage of the latest interim final regulation (IFR) for the *No Surprises Act* (NSA). The NSA, as passed by Congress last year, stands as a critical safeguard to protect patients from out-of-network billing disputes between providers and insurers, but unfortunately it appears that payers are already beginning to exploit how the law is being implemented by regulators and have expanded these efforts to include drastic cuts to longstanding **in-network** contracts.

These deeply concerning actions threaten the continued viability of emergency physician practices, especially those in small- and mid-sized groups who have negotiated contracts with payers in good faith. In numerous cases, these groups have been under stable contracts for years without any changes. Not only have their reimbursements not increased at all during these decade-plus contracts, but in many cases reimbursements have actually significantly *decreased* due to factors such as inflation not being addressed in the contracts, and an increased patient burden due to high deductibles without ability to pay. Yet several large payers have recently contacted in-network emergency physician groups requesting contract reductions from 20 to 40 percent, with the threat of termination if the groups do not accept these massive cuts. These letters even cited the new regulation as the rationale for taking such action.

One affected group of emergency physicians is in North Carolina, serving 11 emergency departments in the state, including a HPSA-designated hospital, a children's hospital, and several rural locations. These providers were responsible for caring for 425,000 North Carolina patient visits last year, acting as a critical safety net of care for the 44 percent of their patients who are either uninsured or on Medicaid. The group is physician-owned and operated, running on thin margins with limited overhead, and with no outside corporate or investor funding to help support it. The group received a letter from Blue Cross Blue Shield of North Carolina last month threatening termination if it did not accept an immediate interim **20 percent cut** to its contracted rate. The letter specifically stated that Blue Cross would then require a new rate closer to the Qualifying Payment Amount (QPA), the new payment standard under the regulation, and that if no new agreement was reached, Blue Cross would terminate the contract and just pay the QPA going forward. Similarly, this same North Carolina group has been in-network with United Healthcare in a stable contract since 2014 and has been threatened with termination after 8 years unless it agrees to a **40 percent rate cut**. A third large insurer with whom they have been in network since 2011 is also requesting to renegotiate the contract with greatly reduced rates.

Over the last few years of the surprise billing debate, emergency physicians have been vilified via erroneous assertions that they purposely stay out of network so that they can charge higher rates. Yet this North Carolina group is an excellent example of the local emergency department practice groups who have been in long-term, stable contracts with the major insurers, and who would continue to be in network were it not for the looming roll-out of the QPA payment standard. These massive proposed reductions by commercial payers will jeopardize the ongoing existence of the North Carolina group just as similar reductions will affect physician-owned emergency department practices across the country.

The North Carolina group is preparing to face some very difficult decisions if the QPA remains the primary payment factor, as the proposed insurer cuts and contract terminations will force the group to cut staff shifts, necessitating that fewer providers will be available to see patients. Unfortunately, when doing more with less, quality can suffer. The emergency departments the group serves will then be less prepared for surges in volume, mass casualty events, or future surges of COVID-19 or other even more minor events that strain the system.

Emergency physicians provide care under circumstances and laws that are unique among other physician and provider specialties. We provide more uncompensated care than any other physicians, as the federal Emergency Medical Treatment and Labor Act (EMTALA) requires that anyone coming to an emergency department must be stabilized and treated,

regardless of their insurance status or ability to pay. The burden of uncompensated care only continues to grow, particularly in communities with high populations of uninsured patients. Additionally, in order to ensure 24/7/365 access to the emergency department, we work under stricter staffing and standby requirements than other types of medical providers so that we can meet the needs of patients who experience a wide range of emergencies every day such as heart attacks, strokes, trauma, and mental health conditions, or as we have all experienced over the course of nearly two years, the ravages of the global COVID-19 pandemic.

Those who support the current approach being taken in implementation of the *No Surprises Act* have stated that cutting reimbursement to providers will enable insurers to lower premiums, allowing for more affordable and accessible coverage for Americans. Yet there is nothing in the law or its regulatory implementation to ensure that happens. Insurers saw record profits in 2020 due to lower health care utilization during COVID shutdowns. Yet premiums for employer-sponsored family health coverage reached $22,221 this year, up 4 percent from last year. We therefore remain skeptical that savings borne on the backs of providers under the current implementation of the new law will ever be passed on to consumers.

In the wake of the greatest public health crisis of our time, that has strained emergency departments and exacerbated physician stress and burnout, cuts of this magnitude could not come at a worse moment and will have major ripple effects throughout the health care system in North Carolina and throughout the United States. It will force some groups to lay off physicians, limiting their ability to meet staffing requirements or pay competitive wages and benefits, which will in turn only incentivize further consolidation or acquisition of groups. The effects will be felt even more deeply in our rural and underserved communities where the health care safety net is already under considerable strain. Simply put, many emergency physician practices will be unable to afford to continue to operate in the areas where patients need them most, and thousands of your constituents will have less access to the lifesaving emergency care they need and deserve.

On behalf of all the emergency physicians in your state and the 40,000 emergency physicians we represent nationally, we urge you to share concerns with the Administration over this type of behavior that has spawned from the current regulatory approach in the *No Surprises Act*. We also ask that you engage directly with the insurers cited above regarding their actions for the sake of continuity of and access to care for your constituents.

We appreciate the opportunity to bring this critical issue to your attention, and would welcome meeting with you to provide additional details and documentation regarding the North Carolina emergency physician group discussed above. Please contact Laura Wooster, ACEP's SVP of Advocacy & Public Affairs at lwooster@acep.org, or Colleen Kochanek, Executive Director for the North Carolina College of Emergency Physicians at colleen@kochaneklawgroup.com if you have additional questions.

Sincerely,

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