



RESOLUTION: 31(20)

SUBMITTED BY: Louisiana Chapter
Emergency Telehealth Section

SUBJECT: Insurer Accountability/Policy Weakness Disclosure

PURPOSE: Establish policy that advocates for legislation requiring Policy Weakness Disclosures (PWDs) be provided by health insurers to potential customers before and at the time of sale of any healthcare policy and support legislation imposing penalties on insurers who do not provide PWDs to policyholders as required.

FISCAL IMPACT: Budgeted committee and staff resources to develop a policy statement and convey ACEP’s position to federal Executive and Legislative branch officials.

1 WHEREAS, Many insurance companies sell many different forms of health insurance policies; and

2
3 WHEREAS, People often choose policies based on the costsⁱ, and

4
5 WHEREAS, Many people do not understand the policies that they are being sold or what their financial
6 responsibilities will be should they need medical attention or incur medical costsⁱⁱ and

7
8 WHEREAS, In many cases the physician, hospital, staffing company and/or their staff are the ones that often
9 must explain the insurance policy to patients and not the insurance company that sold the policy; and

10
11 WHEREAS, Many insured have complained about “surprise bills” (balance billing) and ACEP and EDPMA
12 representatives have stated that often turns out to be a “surprise coverage problem”ⁱⁱⁱ; and

13
14 WHEREAS, There has been a lot of national attention regarding surprise billing and will likely result in
15 legislation that could significantly impact reimbursement and patient care that ACEP has been addressing through
16 conversations with legislators, i.e., meetings, Day on the Hill, lobbying efforts, etc.; and

17
18 WHEREAS, Because the average or typical family has about \$400-\$700 in emergency funds, insurance
19 companies are shifting more of the financial responsibility to patients, and after one applies in or out of network
20 status, deductibles, and co-pays, the financial responsibility of the patient often outstrips the emergency funds of the
21 family^{iv}; and

22
23 WHEREAS, Approximately one in five people in the United States have medical debt in collections^v and
24 according to the Commonwealth Fund, two in five working Americans (72 million) are paying off medical debt or
25 have medical bill problems^{vi}; and

26
27 WHEREAS, Physicians explain risks and benefits of procedures to patients and often are required to obtain
28 written informed consent before they proceed with procedures to document the patient’s understanding of the risks
29 and benefits, including the unlikely but most serious risks such as loss of limb, brain damage, permanent disability,
30 vegetative state, or death, etc., it is reasonable that insurers also be required to explain to patients (their customers)
31 what they are selling them; and

32
33 WHEREAS, In an ACEP Fair Coverage Fact Sheet, it was stated “9 out of 10 emergency physicians polled
34 say health insurance companies mislead patients...”^{vii}; therefore be it

35 RESOLVED, ACEP establish policy that advocates for legislation requiring Policy Weakness Disclosures
36 *(PWD) be provided by health insurers to potential customers before and at the time of sale of any healthcare policy
37 that specifically explains the policy that they are selling with specific examples of “worse case scenarios” (including
38 hypothetical emergency department visits resulting in \$10,000 outpatient visit and \$200,000 hospitalization with out-
39 of-network emergency physicians, anesthesiologists, radiologists, telehealth physician and non-physician providers,
40 excluded services, co-pays, deductibles, etc., to help the public understand the potential risks of buying a particular
41 insurance policy that actually can and do occur; and be it further

42
43 RESOLVED, That ACEP support legislation imposing penalties on insurers who do not provide Policy
44 Weakness Disclosures to policyholders as required, i.e., before they purchase the policy that include requiring the
45 insurer to cover 100% of all charges without deductible, co-pay, exclusions, etc.

46
47 *PWD-Policy Weakness Disclosure. A written disclosure that insurance companies would be required to provide to customers
48 before they could receive any benefit (sell) that explains the policy and lists numerous examples of the short fall or worse case
49 scenarios where customers would be financially responsible (insurance would not cover) for large amounts of money based on
50 what actually occurs, i.e., emergency department visits (testing, imaging, out-of-network emergency physicians, radiologists,
51 anesthesiologists, pathologists, etc.).

ⁱ Shaheen, Etch. (2020). *How the healthcare system keeps you... IN THE DARK*. Knowledge is Power Publishing.

ⁱⁱ Venkat, Arvind. February 2017. Pennsylvania ACEP Testimony on Fair Payment and Balanced Billing.

ⁱⁱⁱ Hammerstedt, MD, MPH, Heather, Parker, MD, FACEP, Rebecca, Seay, MD, FACEP, Timothy. (November 3, 2016). ACEP and EDPMA letter: “Draft of Potential Legislation, An Act Relating to Network Adequacy.”

^{iv} Shaheen, Etch. (2020). *How the healthcare system keeps you... IN THE DARK*. Knowledge is Power Publishing.

^v Christensen-Garcia, Laura. August 27, 2019. <https://thefinancialclinic.org/medical-debt-collection-know-your-rights/>

^{vi} Weyl, Ben. August 27, 2019. <https://www.commonwealthfund.org/publications/newsletter-article/americans-facing-increasing-problems-medical-debts>

^{vii} ACEP Fair Coverage Fact Sheet. February 2017.

Background

This resolution directs ACEP to establish policy that advocates for legislation requiring Policy Weakness Disclosures (PWDs) be provided by health insurers to potential customers before and at the time of sale of any healthcare policy and support legislation imposing penalties on insurers who do not provide PWDs to policyholders as required.

A 2016 [survey](#) conducted by PolicyGenius in partnership with Radius Global Research of 2,000 American health insurance consumers found that 96% of Americans overestimate their understanding of four key health insurance concepts – deductible, co-insurance, co-pay, and out-of-pocket maximum. There was a significant difference between the respondents’ confidence (68%) that they “definitely understood” these terms and their overall comprehension (42%) of these terms. Only 4% could actually define all four terms.

In 2019, PolicyGenius used Google Consumer Surveys to poll a nationally representative sample of 1,500 people and [found](#) more than one in four people said uncertainty over their coverage led them to avoid treatment. It also found few people understand what health insurance plans must cover by law. They have also conducted surveys about health insurance literacy for the past three years and found people are increasingly confused about the Affordable Care Act (ACA) and what coverage is required. In 2018 and 2019, the surveys asked about the same six (of 10) essential health benefits (EHBs). While 28% thought health insurance plans were not required to cover any of the six EHBs in 2018, 44% held this incorrect belief in 2019.

With the reinstatement in 2017 of short-term (up to one year) health insurance plans by the Trump Administration, there is further confusion amongst consumers about their health insurance coverage. A 2019 [report](#) from Kleimann Communication Group, which was commissioned by a group of consumer representatives to the National Association of Insurance Commissioners (NAIC), found most consumers struggled to understand the marketing materials for a popular short-term plan and many misunderstood the basic concept of that type of insurance plan because they expect

their health insurance to reflect the Affordable Care Act's consumer protections.

Kleimann also asked about the federally mandated disclosure and whether consumers thought it adequately conveyed the limitations of the policy. The federally mandated disclosure requires short-term plans to state, on application materials and the contract, that the plan does not have to comply with the ACA and may have coverage limitations and annual or lifetime dollar limits. However, the disclosure went largely unnoticed and was ineffective at reducing consumer confusion. Few participants looked at the disclosure language included on the cover page of the short-term plan brochure. Participants in the study did not notice the disclosure because it was de-emphasized through its placement on the cover in very small font. When the disclaimer was pointed out to them, participants thought it was important, but few noticed it on their own and it did not eliminate or reduce the confusion about coverage and cost-implications.

ACEP Strategic Plan Reference

Goal 1 – Improve the Delivery System for Acute Care

Objective E – Pursue strategies for fair payment and practice sustainability to ensure patient access to care.

Fiscal Impact

Budgeted committee and staff resources to develop a policy statement and convey ACEP's position to federal Executive and Legislative branch officials.

Prior Council Action

Substitute Resolution 10(03) Changing Payer Market adopted. It directed ACEP to: 1) study the effect of changes in the private payer market (caused by health care insurers' changes in coverage and payment policies) to access to emergency medical services, including increases in premiums, co-payments, and deductibles incurred by insured individuals, as well as discounted fees to health care providers; and 2) develop a strategy targeting the business community and insurers to address adverse effects of changes in the private payer market. A report was developed and distributed to the 2004 Council. The report focuses on the lack of evidence supporting a relationship between payer policies and ED access.

Prior Board Action

None

Background Information Prepared by: Brad Gruehn
Congressional Affairs Director

Reviewed by: Gary Katz, MD, MBA, FACEP, Speaker
Kelly Gray-Eurom, MD, MMM, FACEP, Vice Speaker
Susan Sedory, MA, CAE, Council Secretary and Executive Director