



## *Ohio Society of Pathologists*

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Mayfield Heights, Ohio 44124

July 9, 2019

**RE: URGENT ACTION ALERT: From Leadership of the Ohio Society of Pathologists**

Dear OSP Members:

Things are moving rapidly at both Federal and State levels regarding “surprise billing legislation”.

Without any legislative hearings, testimony, or opportunity for input from pathologists, the Ohio Legislature is currently contemplating, as part of the budget process, a ban on all out-of-network (OON) balance billing, including for pathology and laboratory services, when the covered person did not have the ability to select an in-network provider. The Ohio House passed legislation that limits OON payments to “the average contracted rate for the service”. This puts essentially all negotiating control of fees into the hands of insurers. The difference between the House and Senate budget bills are currently being resolved in a conference committee composed of six members:

Sen. Matt Dolan (R-Chagrin Falls)  
Sen. Dave Burke (R-Marysville)  
Sen. Sean O’Brien (D-Cortland)  
Rep. Scott Oelslager (R-North Canton)  
Rep. Jim Butler (R-Dayton)  
Rep. Jack Cera (D-Bellaire)

Members of CAP and OSP in those districts received an Action Alert from CAP this morning. Members of OSP leadership are urging you to contact these legislative members as soon as possible. If you received an Action Alert, you can use the buttons provided in the alert to facilitate the process. If you did not receive the Action Alert, we still urge you to contact the legislators regarding the specific issues listed below:

- The use of “average contracted rates” to determine out of network payment will incentivize health plans to reduce payments to contracted physicians and to not contract with physicians. “Average contracted rates” are unilaterally controlled and established by health plans. Granting health plans the unilateral ability to set rates for physicians will, undoubtedly, undermine the financial viability of the health care delivery system. Using average contracted rates as the payment amount gives health plans a disproportionate amount of leverage in determining payment.

- Out-of-network (OON) legislation must require health plans to disclose on their Explanation of Benefits (EOBs) sent to out-of-network providers whether the plan is subject to the state law, or exempt as an ERISA plan. Unless this information is provided, there will be widespread confusion over the legal status of medical bills by consumers, and their physicians.
- Pathologists cannot provide written estimates to patients in order to secure patient consent for OON services. It is not medically feasible to project what type of diagnostic analysis is required on a patient specimen prior to assessing the specimen. Requiring estimates will delay obtaining a diagnosis particularly for complex diseases which may delay essential treatment.
- The use of \$700 threshold for arbitration will largely preclude pathologists from ever using arbitration to resolve payment disputes with health insurance plans. Pathologists need the legal ability to bundle disputed claims for arbitration with the health plan, or not be subject to a threshold that is above the most common out-of-network pathology service bill charge of \$250.00.
- Lastly, there should be an explicit requirement in any OON law for the health plan to directly pay the provider the amount required of the plan, and not divert payment for OON services by sending payment to the patient.

It is critically important that these messages be communicated to members of the Budget Conference Committee as we believe that these issues have not been adequately or effectively raised or addressed with members of the Ohio Legislature to date.

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