

January 6, 2017

Ms. Lori Wing-Heier, Director  
Division of Insurance  
Department of Commerce, Community  
and Economic Development P.O. Box 110805 Juneau, AK 99811-0805  
Via email: [chip.wagoner@alaska.gov](mailto:chip.wagoner@alaska.gov)  
Dear Director Wing-Heier:

RE: Letter form the Alaska Chapter of the American College of Emergency Physicians (ACEP) in support on keeping the 80th percentile rule in Alaska.

Dear Ms. Wing-Heier,

I am Dr. Anne Zink, a board certified, residency trained emergency physician practicing at Mat-Su Regional Hospital. I have been caring for emergency patients in Alaska for 8 years. I am the current President of the Alaska Chapter, American College of Emergency Physicians, a group that represents greater than 80% of the Emergency Physicians across the State in both very remote and very urban areas who staff and maintain the emergency safety net of our health care system, 24 hours a day, 7 days a week, 365 days a year. I have also had the honor of working with many of you over the past year with the creation on SB 74 in an attempt to improve the value and quality of health care for the hard working people of Alaska.

Thank you, Madam Director, for the opportunity to appear here today on behalf Alaska ACEP chapter and in support of the hundreds of other physicians whose patient care is provided entirely within the hospital setting. This testimony reflects the collaboration of numerous emergency physicians around the State. You have also already heard from other Emergency Providers and additional letters have been submitted from those who could not testify in person today. As Emergency Medicine providers we feel strongly about this issue because we are always on the front line of failed health policies and in other states the cost sifting that could happen to patients as a result with removal of the 80th percentile regulation would unequally and unfairly burden patients in an emergency and the providers who care for these patients. As also mentioned, other states have now implemented similar regulation such as New York and Connecticut, which have used the 80th percentile of all charges as a consumer protection issue to prevent balance billing and control cost. Connecticut's July 1, 2016 "Surprise Billing" legislation uses the 80th percentile rule and is thought to be the best consumer protection bill for patients in an emergency in this country.

We support the mission of the Division of Insurance to protect Alaska consumers while encouraging the growth of a strong and competitive marketplace for all Alaskans. We particularly support the Division's intent in the matter before us to reduce "surprise" bills when insurance companies have left a gap in coverage, such as when the patients are either billed for large

deductibles, or out-of-network balance bills. This has been a growing problem locally and nationally. The number of people enrolled in low-premium, high-deductible health plans has increased by 40 percent in the last six years, according to the CDC. Nearly one in four Americans (registered voters) reported their medical conditions got worse — because they didn't go to the emergency department out of fear their health insurance companies wouldn't cover the costs (Morning Consult 2016).

Also, nearly one in five Americans (19 percent) said they contacted or went to urgent care centers or doctors' offices but were sent directly to an emergency department because they needed higher levels of care than those facilities could provide (Morning Consult 2016). Think about the last time you called a closed pharmacy or your doctor's office after hours. How many of you have heard "if this is a medical emergency please call 911." These patients should also not be worried about a medical emergency creating financial crisis afterwards in their time of greatest need.

My oath and both moral and legal obligation is to my patient. If a mother presents to the emergency department with her daughter unable to breathe, I do not ask what insurance she has, I care for her. When a 50 year old male presents with chest pain I work them up for chest pain, whether they are drunk or sober, pleasant to work with or not, and whether or not they have an ability to pay. This is not a fair market system, this is a health safety net. This is what we have been trained to do, what I took an oath to do and what I love to do, but it is also what the federal law, EMTLA (Emergency Medical Treatment and Labor Act) requires us to do. The need for evaluation is based on the patient's perception of an emergency. We cannot turn away a patient prior to evaluation, seek prior authorization or ask if they are "in network". We see everybody and we treat everybody. But to keep those doors open, and have adequate specialty back up, we must be able to be fairly compensated and must have the legal ability to fairly negotiate with insurance companies. Fair payment is a patient protection issue. This is why we feel compelled to speak out about any intent to eliminate the 80<sup>th</sup> percentile rule. Insurance companies have slowly been driving a wedge between patients and physicians, and this is one more attempt to do so.

Most Alaskans do not realize how fragile and thin our medical network really is until they need care. We have minimal thoracic surgery even in Anchorage, no burn unit, occasional facial surgery, no on call cardiology in Juneau, and no on call neurosurgery in Fairbanks. In just these past few weeks there were no inpatient beds available in South Central Alaska. With every hospital on diversion, patients have been "boarding" in the emergency departments for sometimes days as we await an inpatient bed or until we can jury rig a "less than ideal" outpatient plan for them, often resulting in their return to the Emergency Department in a few hours to days. We board psychotic patients for days to weeks in the emergency department because of a lack of inpatient psychiatric care. A lack of intensive care physicians in the Valley left us looking to transfer some of our sickest patients to Seattle, 6 crucial treatment hours away. Transfers are not only expensive, they can be dangerous despite our amazing flight crews. Boarding in Emergency Departments has been shown to increase patient mortality.

We believe that the 80<sup>th</sup> percentile rule has helped to fill its intended purpose, to provide Alaska's patients with quality healthcare providers by allowing us to recruit and retain capable physicians to practice and live in Alaska. However that job is not yet done. The physicians who are on call often go above and beyond and outside of their "normal scope of practice" to care for our community when no other care is available. I often spend hours every shift making phone calls, negotiating, looking for specialist care for acute medical emergencies, and this is with the protection on the 80<sup>th</sup> percentile rule. When I wake up a specialist in the middle of the night asking them to come care for an injured or sick patient they come regardless of the insurance. I want the consultant to be assured that at least in an insured patient they will have fair compensation. A patient shouldn't have to worry if the EMTLA specialist is in network, or if their in network hospital is on divert, or worry about being taken to the other hospital when the care could be provided locally. Removing the 80<sup>th</sup> percentile rule without some other clear protection for fair payment would result in the loss to the safety-net EMTLA care in this state. This would shift costs to the patients and potentially increase total cost by with increased transfers. This would delay stabilizing care and potentially result in avoidable suffering and death. This is cost shifting NOT a cost saving measure.

We, as Alaska's emergency physicians, get that insurance is expensive, and the State is in a financial crisis. We share your same goal of protecting the patient and trying to save the patient and the system money. We have heard moving testimony about the cost of health care. We have those conversations every day with our patients and we, like many of you are also employers providing health care, we also are patients and parents to patients ourselves. The devastating news a child has a cancer, is quickly followed by the question "how will we ever pay of this?" The tears I share with a mother of 5 who finally came to the emergency department when a breast mass ate through her chest wall, as she was too afraid of the health care cost, are real. The anger that we don't have a better system for her to access that care earlier, so she can live to see her children grow, is also real. These are the stories and the patients that fill my days at work and we are committed to finding solutions with everyone in this room, patients, providers, insurers, and the government.

We share your same goal of protecting the patient and trying to save the patient and the system money. We have taken a proactive approach to reducing low acuity emergency department visits, decreased opioid prescriptions, improved care coordination and produced financial savings though our involvement with legislative initiative SB 74, the Emergency Department Coordination Project (EDCP). Washington State used a similar method and saved Medicaid \$33.6 million in one year, and we hope to have similar per-patient savings. We care about cost and efficiency in the delivery of effective emergency care. With these changes we can effect a systems based change, savings that will be realized in the private insurance market as well.

There has been testimony on the high cost of Alaska health care and there have been some significant miss direction in testimony. We would encourage everyone to look at the as Fair Health Consumer database ([www.fairhealthconsumer.com](http://www.fairhealthconsumer.com)) created after a law suit where an insurance company was found to have been manipulating charge data in determining what is

“usual and customary.” As mentioned before a “99285” service, billed for the most complex cases in emergency care, has a charge at the 80<sup>th</sup> percentile in Anchorage of \$1,021 while in Seattle that same service has a \$1,120. In Dallas TX that service runs at \$1,488 while in Miami this same service has a charge of \$1,793, and in New Orleans it is \$1,924. Premera countered this and quoted an “in-net work” cost of \$300. This is not comparing apples to apples. The physician then must balance bill this difference. Again, by removing the 80% rule we will cost SHIFT, not cost save. We believe that emergency physician care in Alaska is less expensive than in many parts of the country because of local competition and the strength of independent, locally owned Emergency Medicine groups who live and are invested in their community, rather than being run by large investor-owned staffing organizations. Also Alaska’s existing fair payment provisions allow us to keep charges down because health plans must pay fairly.

We feel that a payment standard that is not publicly available, predictable, enforceable and transparently derived will be easily manipulated by health insurers to the detriment of patients and providers. We share the concerns of the department, the insurance companies and the public of extreme billing practices, but Emergency Medicine providers are setting fair, nationally competitive prices and these are the only prices we can directly comment on. We have also seen locally where increased competition between specialists has resulted in more in-network providers and decreased cost. Where extreme billing practices are found, individual cases or large groups can be investigated. However, broadly addressing this by eliminating the 80<sup>th</sup> percentile rule will have profound and un-intended consequences to the health care system, especially the safety net.

We note that the Division of Insurance’s 2015 Annual Report showed that a full two-thirds of all health insured covered lives in the state of Alaska is controlled by just two insurers, Premera and Aetna. Changing or eliminating the 80<sup>th</sup> percentile rule will serve to benefit these health plans without substantially benefiting even a majority of Alaska’s patients, who, under the current rule, receive no balance bills today because their emergency providers’ charges are below the market rate of the 80<sup>th</sup> percentile. We also do not know what will happen on a federal level and, if the Affordable Health Care act were reversed and the state’s 80<sup>th</sup> percentile rule was taken away with a balance billing ban, insurance companies could set what-ever price they want for reimbursement, make as much profit as they can, and our health care safety net would collapse.

We can support a ban on balance billing if the 80<sup>th</sup> percentile rule is kept in place as this would support fair payment without placing patients in the middle. If the Division of Insurance decides to revise Alaska Administrative Code to eliminate or reduce the 80<sup>th</sup> percentile rule then, in order to preserve the safety net, all EMTLA-obligated providers, including on-call specialists, must be exempt from any out-of-network balance billing ban, although again, this puts the patient in the middle where they do not belong during a medical crisis.

Additionally, we ask that the Division keep intact the AK statute (AS 21.54.020) that recognizes the assignment of benefits to a healthcare provider. Health plans must not pay to the patient health insurance benefits owed to a medical provider, especially when no contract is in place

between the health plan and the provider. Paying benefits to the patient only confuses patients, serves no public interest, increases abuse of the system (now patients can get paid and get treatment) and is only a means of forcing providers to join health plans under otherwise onerous conditions. This is anti-competitive and bad public policy.

The key is to have the definition of “usual and customary” publicly available, predictable, enforceable and transparently derived so that monopoly insurance companies do not set arbitrary standards. Such a publicly available standard eliminates lawsuits over fair payment and a burdensome appeals process as commonly occur in other states with a fair payment standard is not clear or objectively determined. Patients must not be burdened with an appeal process that is complicated by an unclear standard. The matter must be resolvable between the provider and the payer. Placing the patient in the middle is burdensome to the patient and unreasonably benefits the payer.

We would also like to encourage the commissioner to look at having the insurance companies be responsible for collecting their high deductibles, and take the physicians and hospitals out of middle. This would simplify and increase transparency in the billing practice, again saving cost to the system.

Emergency care and access in Alaska is slowly improving, and most of our sickest patients are well cared for within our system. However eliminating the 80<sup>th</sup> percentile rule and putting all power in the insurance companies hands will take us back decades and leave our patients without coverage when they need it the most. We ask this in defense of our numerous patients who live in this wild and wonderful State. Patients should be able to access basic emergent and life saving care at their closest facility without the fear of financial ruin or significant transport away from their communities.

In summary we, AK ACEP, humbly ask the commissioner:

- Consider that Emergency Provider physician in Alaska fees are competitive nationally
- Recognize that removing the 80th percentile rule does not necessarily not save on cost, it cost shifts and will increase the practice of balance billing in Emergency Medicine
- Preserve the 80th percentile rule and allow this to fully mature. Competition, transparency, and simplicity in the market place will drive down the cost, not reducing the insurance industries responsibility to pay.
- Recognize we still have a fragile and limited health care network in Alaska and removing the 80th percentile rule puts this safety network at risk.
- We we can support a ban on balance billing, similar to Connecticut, if the 80th percentile rule is preserved.
- Maintain AK statute - AS 21.54.020 - requiring insurers to pay the provider, not reimburse the patient.
- Require insurance companies to bill for their deductible and co-insurance amounts, instead placing the physician in the middle.

Thank you for considering protecting the 80<sup>th</sup> percentile rule to maintain a safety net for our community. We appreciate your time and attention to this matter, your patients during lengthy testimony and we ask for the opportunity to work with the Division and with the legislature to assure that any revision to state law does not compromise access to quality emergency care for Alaskan residents.

Thank you for your time and effort.

Anne Zink, MD, FACEP  
President, Alaska Chapter American College of Emergency Physicians