*** Tenth DRAFT - Edited by Anne Zink for her testimony***

Statement before the Division of Insurance, Lori Wing-Heier, Director, January 6, 2017.

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.

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). And many people are sent to the Emergency Department even when they try to access other care.

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.

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 breath, 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 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.

Emergency physicians, and specialists on call for the ED, are required by this law to evaluate and stabilize all patients presenting with a possible medical emergency without regard to any patient's ability to pay. The need for evaluation is based on the patient's perception of an emergency. We cannot turn away a patient prior to evaluation, in other words, unlike any outpatient clinic, we cannot fire a patient. Prior debt, multiple visits, intoxication, prior abusive behavior, bad guy or good guy when they got sick or injured, 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 the DOI's intent to revise the 80th percentile rule.

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.

We believe that the 80th 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. 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 80th 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 I don't want them to feel the need to ask "What insurance do they have?" before coming up with a treatment plan. I want them 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, worry about being taken to the other hospital. Removing the 80th 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 the system with increased transfers. This would delay stabilizing care and potentially result in avoidable suffering and death.

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 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.

We also argue that while health care costs in Alaska are high, emergency physician charges are cheaper in Alaska than many other places in the country, as evidenced by the Fair Health Consumer database (www.fairhealthconsumer.com). For example a "99285" service, billed for the most complex cases in emergency care, has a charge at the 80th percentile in Anchorage of $1,021 while in Seattle that same service has a $1,120 charge rate. 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.

We believe that emergency physician care in Alaska is much 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. Alaska's existing fair payment provisions allow us to keep charges down because health plans must pay fairly. Elimination of the 80th percentile rule will likely hurt Emergency Physicians disproportionally as seen in many other states.

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 pubic of extreme billing practices, but Emergency Medicine providers are setting fair, nationally competitive prices. We have also seen locally where increase 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 80th 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 80th percentile rule will serve to benefit the 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 80th 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 80th 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 80th 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 80th 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 in 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 patents can get paid and get treatment) and is only a means of coercing 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 and objectively determined. A dispute process should only occasionally be necessary and should be controlled by a published standard with the dispute process focused on whether the payment amount meets the law. 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 taking the patient out of the middle of physicians and hospitals billing for the deductibles. We support regulatory reform with insurance companies paying fees to providers and hospitals and collecting their co-pays and deductible from their members.

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 80th 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 who 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 fees are competitive nationally and in line with, and sometimes cheaper than Seattle.
- Preserve the 80th percentile rule.
- If the 80th percentile rule is preserved we can support a ban on balance billing, if it is not Emergency Providers will need to balance bill more often.
- 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 of physicians and hospitals.

Thank you for considering protecting the 80th percentile rule to maintain a safety net for our community. We appreciate your time and attention to this matter 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 by Alaskan residents.

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