MHA MASSACHUSETTS HOSPITAL ASSOCIATION

The leading voice for hospitals.

May 18, 2016

The Massachusetts Hospital Association (MHA) appreciates the opportunity to provide comments on out of network and surprise billing to the Health Policy Commission (HPC). Speaking on behalf of MHA and its members, we agree that patients and their families should have protection from the financial burdens resulting from surprise billing, defined as bills for services rendered by a non-participating physician at a participating or in network hospital. We appreciate the HPC's recommendations that would provide more transparency and additional disclosure for patients and a dispute resolution process that removes the patient from the middle. Patients typically don't choose these providers, often referred to as the PEAR or Pathology, Emergency, Anesthesiology, or Radiology specialties, and therefore are generally not aware of their network status. This is very different than other types of out of network care which may be the result of:

- Pure patient choice by an HMO patient
- Patients using the out of network component of a PPO product
- An illness or injury occurring during travel outside of Massachusetts
- Ambulance transportation

Another complicating factor that contributes to the out of network/surprise billing problem is the proliferation of narrow network products, where a local hospital and/or it's doctors may not participate with the patient's insurer. As the HPC considers how to address surprise billing, it is critically important to distinguish among these very different situations and determine where to put resources to develop effective resolutions.

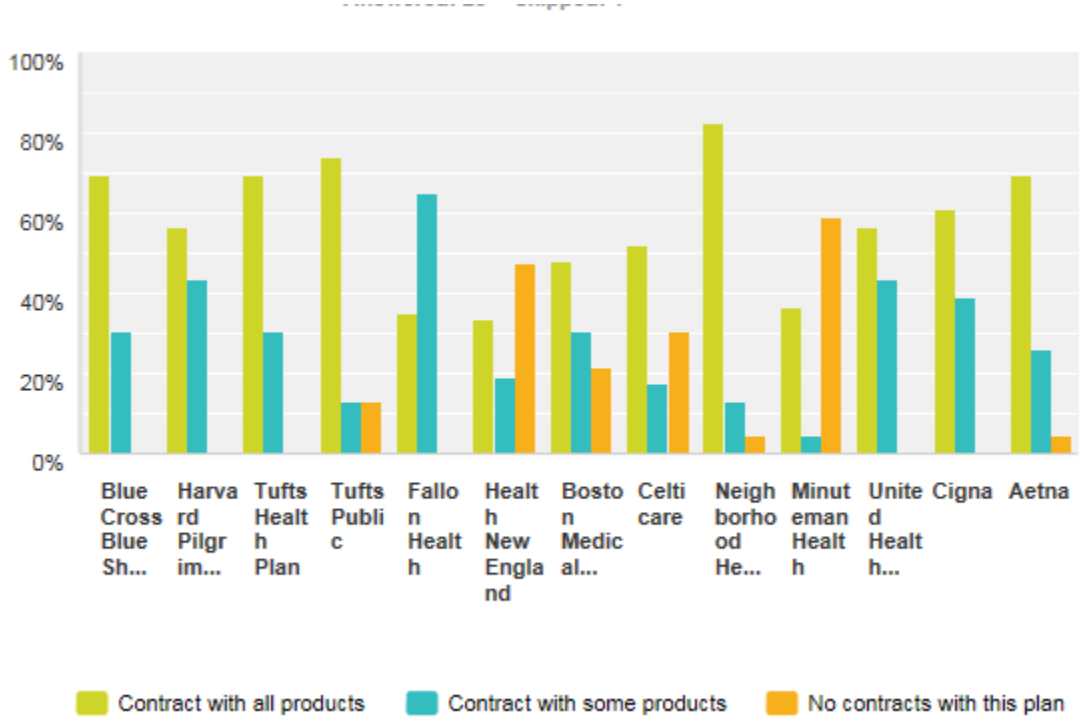
According to the HPC's report on out of network billing, "comprehensive data on the frequency and extent to which out-of-network billing concerns occur in Massachusetts is difficult to obtain or quantify. While data specific to Massachusetts is unavailable**,** there are some out-of-network billing data available on a national level as well as in certain other states, and the HPC understands that both balance billing for emergency care and surprise billing may occur in Massachusetts." While we do not disagree that there is surprise billing in Massachusetts, **it may not be appropriate to rely on data from states like Texas, where the three insurers with the largest market share reported that 41-68% of dollars billed for ED physician care at in network hospitals were submitted by out of network emergency physicians. We have not seen any evidence that Massachusetts has a comparable situation.**

During the first listening session, Blue Cross stated that it had incurred $134 million in out of network services in 2015. This number appears to represent aggregate out of network services, including ambulance transportation, which is not helpful for providing sufficient actionable information to determine a reasonable course of action on surprise billing going forward.

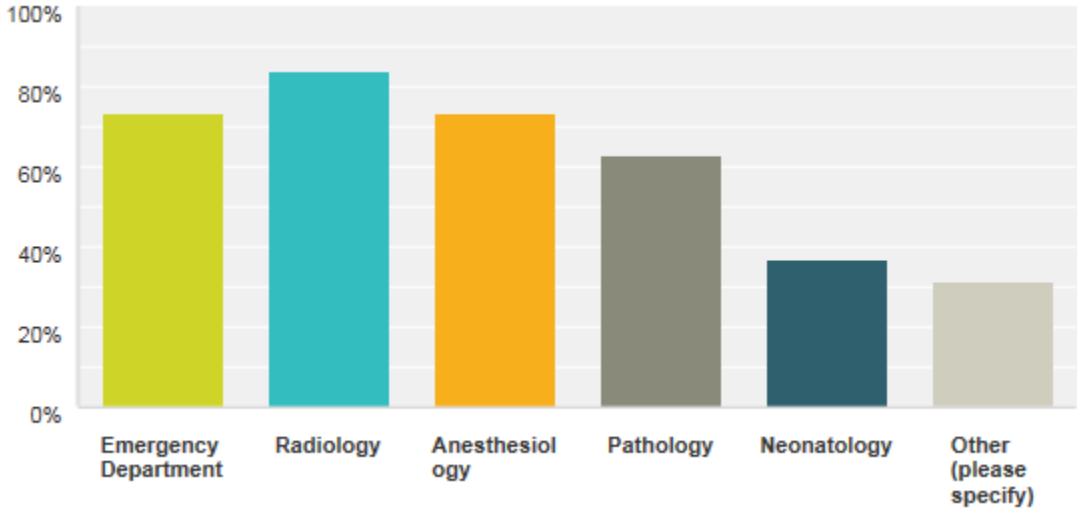
On April 21, MHA submitted a letter to the HPC outlining the type of data that could be collected from carriers to distinguish the different types of out of network services and which could be helpful in focusing on where the actual problems lie. This included determining the percentage of out of network services incurred in narrow network products as well as the percentage of out of network physician services delivered at in network hospitals. The dollar amount of out of network services attributed to ambulance services would also be useful to understand is it may skew the total out of network claims. Understanding how each carrier addresses surprise billing and how carriers work with providers and members in these situations would also be useful information to collect

Hospital Survey

In an effort to better understand the situation among hospitals, MHA sent out a survey to all of our acute care hospital members and received responses from 23 hospitals. We learned that hospitals contract with anywhere from 13 to more than 60 different plans, with the average being 22. In many cases, they do not contract with all lines of business for a particular health plan. The number of different contracts with carriers makes it more challenging to have a one to one match with all physician groups providing services within the hospital. The relationships are illustrated in the chart below.



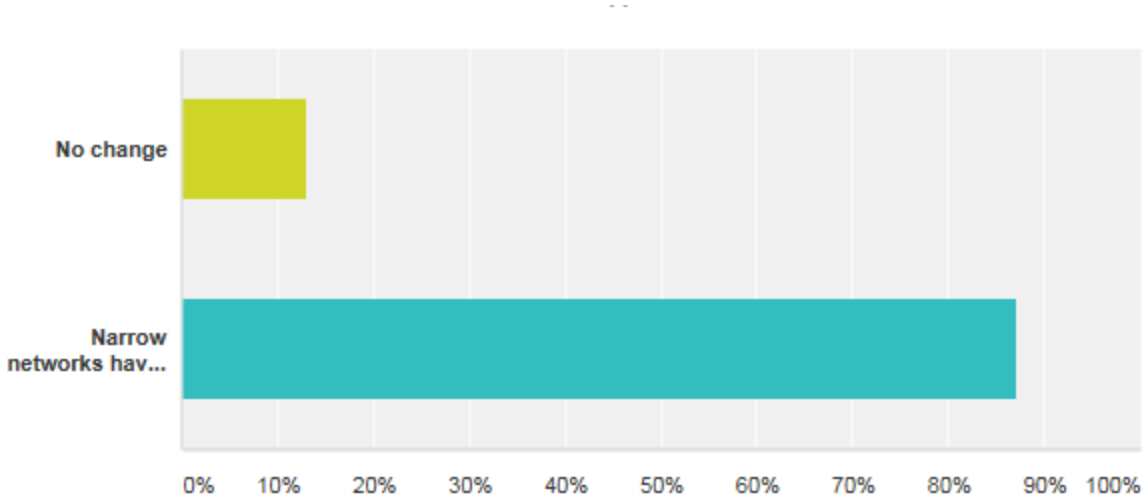
74% of respondents outsource care to one or more of the PEAR specialties while the other 24% do not contract with outside groups. Some hospitals indicated they also have outside contracts for oncology, pain medicine, and behavioral health specialties. The chart below reflects the breakdown for those hospitals that do outsource the PEAR specialties.



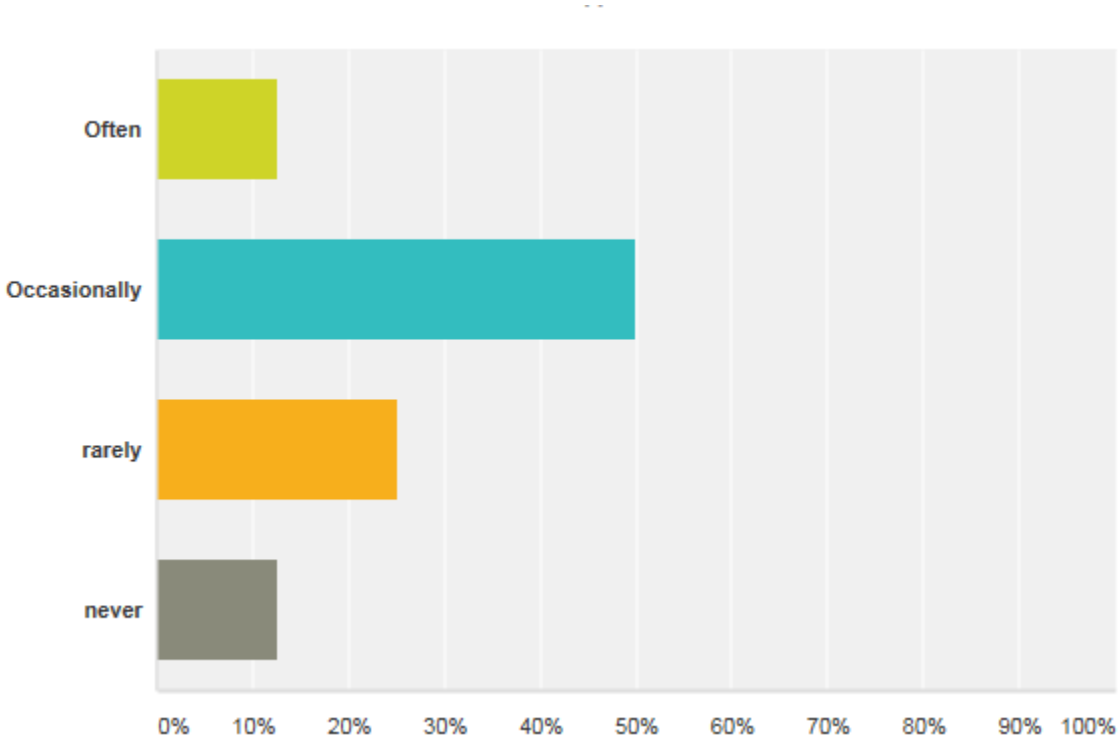
Of those facilities that outsource services, the majority (66%) indicated that those physicians must contract with all or at least the major insurers used by the hospital. Those who have risk arrangements with major health plans, such as the Blue Cross AQC, are required to have the specialty groups participating under the same contract. Most respondents also indicated that they strive to encourage physician practices to contract with the same carriers or they are in the process of updating contracts to require participation.

Challenges faced by hospitals in recruiting PEAR specialties include the need to subsidize the practices, few alternatives for community or more rural hospitals, sometimes low reimbursement rates from commercial and government payers for certain specialties, difficulty finding physicians willing to take call, and provider independence. **It is also important to remember that just because a provider is not in the same network as the hospital, it does not automatically mean that he or she balance bills the patient for payment beyond what is covered by the patient's insurance.**

When asked how **limited network products** affect the prevalence of surprise bills for patients, **87% believed that these insurance products have exacerbated the problem.** A complicating factor is that while the hospital will usually get paid for emergency services, the physicians providing the services may be denied any payment at all by the health plans as the service is viewed as out of network.

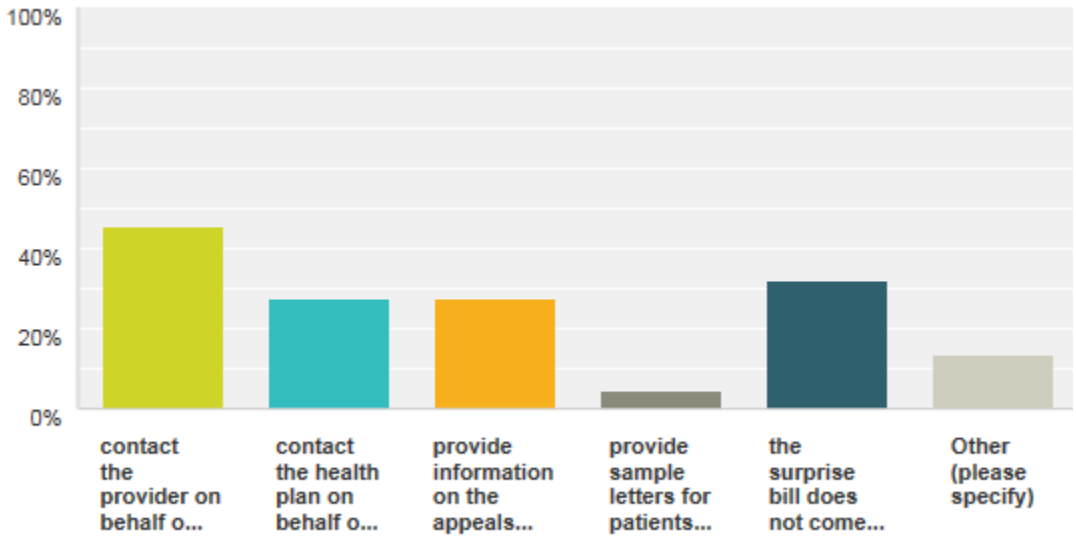


The frequency with which hospitals learn about surprise bills from their patients varies considerably as noted in the chart below:



Hospital staff take a variety of steps to inform patients prior to receiving services and to assist patients who ultimately receive surprise bills. Prior to elective admissions, patients may be reminded to check with their surgeon or admitting physician regarding who else might be providing services. Some hospitals list participating plans on websites or include information with admissions materials. Others are looking at options to improve patient education. If a patient notifies the hospital about a surprise bill, the majority of hospitals will contact the

provider and/or health plan on behalf of the patient. However, almost one third of respondents don't hear at all from the patient since the bill does not come from the hospital.



Summary and Recommendations:

Prior to moving forward with any recommendations, it is important to understand the magnitude of the problem in Massachusetts and the contributing roles of insurance plans and health care providers in order to target the most effective solutions.

- **MHA agrees that patients should be protected from surprise bills as previously defined**. Patients are typically not aware of the network status of physicians who provide hospital based services – these are generally not specialties that are chosen by patients under most circumstances and therefore patients should not be penalized for trying to follow the requirements of their health plans.
- **Additional data from insurers is necessary** to determine scope of problem in Massachusetts and where to focus efforts. Health policy should not be determined based on anecdotal information.
- The National Association of Insurance Commissioners (NAIC) has developed the **Health Benefit Plan Network Access and Adequacy Model Act** that requires insurers to have a process in place to ensure that covered benefits can be accessed at the in-network level from non-participating providers when the insurer's network is insufficient. It requires insurers to establish a program for payment of facility based out of network physician bills which includes a provider mediation process. The NAIC also adopted several notice requirements for both insurers and in-network facilities. **We would encourage the HPC to review the NAIC model act as it offers some meaningful processes for reducing out of network issues.**

- **Solutions that increase transparency, particularly in narrow network products, could help patients to understand at the time they enroll in the product that they have a more limited network that may require more scrutiny prior to receiving services**. Health plans can do a better job of member education and improving transparency around which physicians are participating providers, insuring that there are adequate range of all specialties in their networks, and simplifying when/why/what patients should verify prior to elective procedures.
- **Whenever possible, letting patients know in advance that there may be out of network providers involved in their care is important. However many of these situations are unanticipated and providing a patient with a disclosure at the time of service (as is required by New York's law) is not effective and will do little to improve the situation.** So, while MHA supports increased disclosure to patients, this information will be of limited usefulness once the patient is in the hospital and receiving services. And for urgent/emergent services, this information will not be helpful at all.
- **Developing dispute resolution processes that remove the patient from the middle of the billing conundrum and requiring the plan and provider to work together has merit as a potential resolution** as it protects the patient and gives both the payer and provider an opportunity for a formal arbitration process.

Thank you for the opportunity to provide additional feedback. MHA and its members are committed to continuing to work with the HPC and other stakeholders on these issues.