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**COMMENTS SUBMITTED TO THE EXECUTIVE OFFICE OF HEALTH AND
HUMAN SERVICES AND THE HEALTH POLICY COMMISSION RELATIVE TO
LISTENING SESSIONS ON OUT-OF-NETWORK CARE
JUNE 24, 2021**

The Massachusetts Orthopaedic Association (MOA) appreciates the opportunity to comment as part of the Listening Sessions convened by the Executive Office of Health and Human Services (EOHHS) and the Health Policy Commission (HPC) relative Chapter 260 of the Acts of 2020 and the charge to issue recommendations on Out-of-Network (OON) reimbursement for emergency and non-emergency services. The following comments are relative to the issues of patient access and affordability and healthcare system and market impacts.

The MOA urges EOHHS and the HPC to recommend that the legislature allow the federal No Surprises Act, signed into law Dec 27, 2020, to take effect in Massachusetts. By doing so, patients would be protected and a fair and uniform system would be enacted to determine the reimbursement rates for Out-of-Network services for all commercially insured patients in Massachusetts.

Among many other provisions, the No Surprises Act benefits patients by:

- Protecting patients from receiving surprise medical bills resulting from gaps in coverage for emergency and non-emergency services;
- Holding patients liable only for their in-network cost-sharing amount, while giving providers and insurers an opportunity to negotiate reimbursement.
- Requiring both providers and health plans to assist patients in accessing health care cost information.
- Does not establish a benchmark, but allows providers and insurers to access an **independent dispute resolution** process in the event disputes arise around reimbursement.

The federal No Surprises Act allows for cost savings, predictability across all plans, and consistency in the Massachusetts health insurance market.

An important point in favor of the No Surprises Act is that it applies to employer, self-funded plans that are exempt from state insurance laws under the Employee Retirement Income Security Act (ERISA) of 1974, 29 U.S.C. §1144, and to state-regulated plans if a state does not have its own balanced billing law. This is an important consideration, given that approximately 60% of the health plans in Massachusetts are ERISA exempt. Moreover, most states believe that ERISA impedes their ability to ensure adequate consumer protections, collect data on all health plan participants uniformly, or enact health cost reductions, and thus, is an obstacle to their ability to effectively manage their health care markets.

The MOA is concerned that state legislative action on this issue would be risky at a time when we are just emerging from a national healthcare crisis. In the last 18 months, we have seen great turmoil in the health care community among patients, providers and facilities. The emotional and financial costs have been high. Legislation that favors insurance companies over providers would make this situation worse, creating significant financial pressure on small physician practices, and rural and community hospitals who lack leverage to negotiate fair rates – all of which will ultimately shrink provider networks, and reduce patient access to care. Standing in stark contrast to the financial picture for hospitals and providers, health insurers across the nation are reporting record high profits coming out of the pandemic.

Setting a default out-of-network rate at 135% of Medicare, such as the health insurers supported on the first Listening Session, would allow insurers to ratchet down rates, and reduce their incentive to negotiate in good faith or offer reasonable rates – the result of which will ultimately impact all insurance negotiations, not just those relative to OON care. Fair negotiations support robust provider networks that ensure access to care for patients.

The MOA does not support tying OON reimbursement to a percentage of Medicare. Medicare is an inappropriate benchmark for payment by commercial insurers. Medicare is not currently, and was never intended to be, a source for commercial physician payment. Medicare rates have no relationship to fair market value or the cost of providing care and are based on federal budgetary considerations. OON billing solutions based upon Medicare rates will cause long-term damage to the health care delivery system in Massachusetts. While the MOA understands and supports no balance billing for any health care consumer, we feel strongly that impeding the ability of physicians to negotiate for fair reimbursement is an over-reaching response to the OON issue in Massachusetts.

Allowing the federal No Surprises Act to take effect in Massachusetts on January 1, 2022, will take the patient out of the middle, increase transparency, ensure fair reimbursement for physician services, and implement a timely and fair dispute resolution process in cases of disagreement. It is a well thought out, nationally supported approach that will ensure consistency among all commercially insured plans and, according to the Congressional Budget Office, will save approximately \$17 billion over the next 10 years. Moreover, it will save Massachusetts stakeholders the time and expense of “re-creating the wheel” and afford the administration and the legislature time to monitor implementation and re-visit the issue in the future if necessary.

For all of the above reasons, the MOA urges EOHHS and the HPC to recommend that the legislature allow the federal No Surprise Act to take effect in Massachusetts.