



Physician Performance LLC

June 24, 2021

Lauren Peters
Undersecretary for Health Policy
Executive Office of Health and Human Services (EOHHS)
1 Ashburton Place
Boston, MA 02108

Submitted electronically

RE: the establishment of an out-of-network commercial payment rate for both emergency and non-emergency healthcare services in Massachusetts pursuant to Chapter 260 of the Acts of 2020 (An Act Promoting a Resilient Health Care System that Puts Patients First)

Dear Undersecretary Peters:

I am submitting this comment letter on behalf of Physician Performance LLC (PPLLC) in response to Chapter 260 of the Acts of 2020 (An Act Promoting a Resilient Health Care System that Puts Patients First). We appreciate the opportunity to provide comments on the establishment of an out-of-network commercial payment rate for both emergency and non-emergency healthcare services in Massachusetts.

PPLLC is a value-based physician association comprised of approximately 2,300 independent physicians who participate in Beth Israel Lahey Health Performance Network. Our organization is composed of hospital-based physicians, physicians in large practices, as well as one and two physician independent practices. We appreciate the opportunity to provide comments.

Because our organization represents physicians from such diverse practice structures, we understand how this issue would affect, for example, a hospital-based anesthesia group differently than a two-physician practice that takes call at a community hospital. We would therefore urge EOHHS to adopt and follow the federal law going into effect on January 1, 2022 in the establishment of an out-of-network commercial payment rate for both emergency and non-emergency healthcare services in Massachusetts pursuant to Chapter 260 of the Acts of 2020 for a one-year period, based on the following:

- 1. The federal law covers all patients**
- 2. The federal law was reviewed for two years, and using a default payment rate was rejected.**
- 3. The federal law was supported by the Congressional Budget Office (CBO). A review by the CBO adds financial credibility to the structure of the law.**
- 4. Patients are protected in the federal law by having their cost sharing portion be based on the median contracted rate of the health plan.**



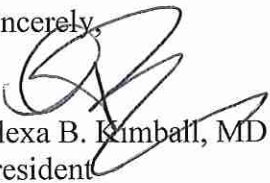
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5. **The independent dispute resolution (IDR) dictates negotiation between payer and provider for 30 days before stepping in to resolve disagreements.** Because the losing party pays the costs, an incentive is created for both parties to come to formal agreement on rate structures. We also note that for small physician practices, this process may be overly onerous, expensive and prohibitory.
6. **There is no evidence that the out-of-network processes in other states has increased premiums for consumers.**
7. **Using a default rate, as is currently outlined in the Massachusetts proposal, sets an incentive for health plans to terminate contracts with providers in order to force them into lower contractual rates.** Providers participating in the listening sessions cited this concern, and this concern is borne out in California's experience in implementing a model similar to that being proposed in Massachusetts.
<https://www.ajmc.com/view/influence-of-outofnetwork-payment-standards-on-insurer-provider-bargaining-californias-experience>

We strongly propose that EOHHS collect data on the IDRs requested in the first year, to learn more about the situations and circumstances that are driving the IDRs. Having this data will allow EOHHS to see which types of practices are most affected by this new process, and determine on a go-forward basis if adjustments to the framework based on the federal law should be made to better suit the specific circumstances of the Massachusetts marketplace.

In the meeting attended by my staff, spokespeople for the Massachusetts Hospital Association, the Massachusetts Medical Society, the Massachusetts Psychiatric Society, the Massachusetts Association of Pathologists, and the Massachusetts Society of Anesthesiology all supported following the federal law for payment of non-contracted services. We urge EOHHS to consider the feedback presented from the providers represented in this letter. Thank you for your consideration of our comments.

Sincerely,



Alexa B. Kimball, MD
President