AMERICAN OSTEOPATHIC ASSOCIATION

TREATING OUR FAMILY AND YOURS

MICHIGAN OSTEOPATHIC ASSOCIATION

October 30, 2019

The Honorable Hank Vaupel
Chairman
Michigan State House Committee on Health Policy
PO Box 30014
Lansing, Michigan 48909

Dear Chairman Vaupel:

The American Osteopathic Association (AOA) and the Michigan Osteopathic Association (MOA) are writing in support of HB 4459 and HB 4460, which protect patients from unanticipated medical expenses, and to request several important changes. The AOA and MOA strongly support the goal of ensuring that patients can access the care that they need in a timely manner without fearing that they may later receive catastrophic medical bills for expenses that they reasonably believed were covered, or for emergency out-of-network services. We support holding patients harmless from unexpected bills in such circumstances, but we are deeply concerned that without accompanying protections to promote insurance network adequacy and transparency, and a fair payment negotiation and dispute resolution process for physicians and insurers, these bills may have the unintended consequence of further reducing access to affordable, quality health care for patients.

The AOA proudly represents its professional family of 145,000 osteopathic physicians (DOs) and medical students nationwide. The AOA promotes public health, encourages scientific research, serves as the primary certifying body for DOs and is the accrediting agency for osteopathic medical schools. More information on DOs/osteopathic medicine can be found at www.osteopathic.org. MOA is a professional organization that represents over 6,000 DOs providing patient care in Michigan.

Core principles of osteopathic medicine emphasize the provision of patient-centered, coordinated care across the health care continuum. These same principles also inform our organizations' perspective on the legislation being considered by this committee. The AOA and MOA are focused on promoting patient access to high quality, physician-led care wherever they live, and fairness for patients and physicians when dealing with out-of-network charges for services that the patient reasonably believed to be in-network, or in emergency situations when such decisions are impractical (if not impossible).

HB 4459 and HB 4460 help to address the issue of patients receiving unanticipated medical bills; however, as written, they fail to address some of the underlying market dynamics that give rise to surprise out-of-network bills in the first place. Unsustainably low in-network rates offered by some insurers can create obstacles to physicians' ability to participate in those insurers' networks. When such an insurer is the only carrier in an area, physicians are particularly disadvantaged by having no other networks to join, which can further exacerbate the lack of specialty physicians in rural and underserved communities. In some cases, these rates are insufficient to even cover the cost of health care delivery by the provider.

This legislation adopts a similarly unsustainable approach by creating its own arbitrary fee schedule that out-of-network physicians would be required to accept. By effectively setting a payment ceiling (even if these rates would be adjusted for inflation), these bills further diminish the need for insurers to negotiate contracts with physicians in good faith. Knowing that any physician who is unwilling or unable to accept the insurer's in-network rates would nonetheless be bound by this payment ceiling (and therefore have no effective leverage) removes incentives for insurers to develop fair contracts to expand their network offerings.

We would also urge the committee to take into account the mandate placed on physicians under the federal Emergency Medical Treatment and Labor Act (EMTALA), which guarantees access to emergency medical care, regardless of a patient's insurance status or ability to pay. Coupled with EMTALA, HB 4459 and HB 4460 would create a dual mandate where physicians are required to provide emergency care while also accepting a low payment ceiling, should they not agree to an insurer's proposed terms. This could further disincentivize physicians from practicing in areas where they are most needed by making medical practice in those areas economically unsustainable.

As an alternative to the approach proposed in these bills, the AOA and MOA request that the committee consider a benchmarking formula that takes into account actual local charges, as determined through an independent claims database. The inclusion of actual local charges in a benchmarking formula would remove the incentive that insurers have to drive reimbursement rates to unsustainably low levels because there will no longer be a benchmark ceiling created by the arbitrary fee schedule described in these bills.

In addition, we would like to request the inclusion of an appeals process in the legislation to address payment disputes that may arise between insurers and physicians. Currently, several states have implemented laws aimed at protecting patients from surprise bills when procedures are performed by out-of-network physicians, while also supporting the sustainability of physician practices. For example, New York's appeals process has reduced the rate of out-of-network billing for emergency department services from 20.1% in 2013 to 6.4% in 2015, a near 70 percent reduction.[1] Additionally, the process has completely removed patients from billing disputes. New York's model allows patients to receive needed care without being burdened with unexpected medical bills, and supports physicians in focusing on treating patients.

Finally, we encourage the committee to strengthen health insurance network adequacy requirements. In recent years, more patients have found themselves in plans with narrow provider networks as employers have chosen to shift to plans with skinnier networks,[2] and narrower network options are offered on state exchanges.[3] Quite simply, narrow networks result in more physicians being driven out of network and limit choices for consumers. Inadequate networks create access challenges to affordable care, and contribute to the issue of patients being forced to accept out-of-network care in emergency rooms.

Strong oversight and enforcement of network adequacy protections is needed from federal and state governments in order to rein in the significant out-of-pocket costs and access challenges that overly narrow networks create. A study published in *JAMA* in 2015 found that nearly 15 percent of health plans were specialist deficient, and enrollees in specialist deficient plans had high out-of-network costs. More than a quarter of these plans did not

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[1] Cooper, Z,; Morton, F.S.; and Shekita, N. (2017). *Surprise! Out-of-Network Billing for Emergency Care in the United States*. National Bureau of Economic Research, http://www.nber.org/papers/w23623.pdf.
[2] https://www.aap.org/en-us/Documents/gettingpaid_emergingtrends_private_insurance.pdf
[3] https://avalere.com/press-releases/health-plans-with-more-restrictive-provider-networks-continue-to-dominate-the-exchange-market

cover out-of-network services and the remainder required 50 percent cost sharing.[4] This is especially concerning in rural areas where access to both providers and coverage options are limited.

Strengthening network adequacy standards will protect patients and lower out-of-pocket costs. Robust network adequacy standards include, but are not limited to, an adequate ratio of emergency physicians, other hospital-based physicians, and on-call specialists and subspecialists for patients, as well as geographic and driving distance standards and wait time maximums. By amending HB 4459 and HB 4460 to address the multiple factors that contribute to the issue of surprise medical billing, the committee will help to ensure that Michigan patients are able to access the care that they need in a timely, affordable manner.

The AOA and MOA thank you for considering our comments. Should you need any additional information, please do not hesitate to contact Raine Richards, JD, Director, State Government Affairs at rrichards@osteopathic.org or (312) 202- 8199.

Sincerely,

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[4] Dorner SC, Jacobs DB, Sommers BD. Adequacy of Outpatient Specialty Care Access in Marketplace Plans Under the Affordable Care Act. *JAMA*. 2015;314(16):1749–1750. doi:10.1001/jama.2015.9375