

**New York American College of Emergency Physicians  
Statement on the Executive Budget Proposal on Regulation of Out-of-Network Health Care  
Article VII Transportation, Economic Development Budget Bill (S6357/A8557, Part U)**

The New York American College of Emergency Physicians (New York ACEP) supports the intent of this bill to provide transparency to consumers and to protect them from excessive bills when a patient unknowingly receives services from a physician who is not part of their health care plan's network of providers. However, New York ACEP is **strongly opposed to provisions put forth in the 2014-15 Executive Budget to allow commercial health insurance companies to dictate fees for all emergency services in the State.** The provisions of this bill that relate to emergency services will **significantly reduce patient access to emergency services** and compromise the quality of New York State's emergency departments and health care safety network.

New York ACEP represents over 2,300 emergency physicians across the State that have a shared mission to provide high quality emergency care at any hour of the day or night, helping those who are acutely injured, acutely and dangerously ill, and those who cannot access the care they need, all of whom arrive on an unscheduled basis.

This proposal requires "out-of-network" on duty emergency physicians who do not participate in an insurer's network of providers **to accept a reimbursement rate for emergency services that is "determined reasonable" by the insurer.** Insurers will be free to dictate fees to emergency providers knowing that these physicians are legally bound to provide emergency care to patients. The physician's only recourse is to file a dispute for **each and every fee.** This could amount to millions of disputes on an annual basis and is impractical, if not impossible, to accomplish.

For scheduled care provided by physicians, the proposed law mandates that insurers make available at least one policy for out-of-network coverage, if requested by the policyholder or contract holder, which will provide coverage of at least 70% of the usual and customary rates (UCR). **Emergency services are specifically excluded from this arrangement. The exclusion is unwarranted and unfair.**

**This proposal will undermine the quality of the emergency services safety network by discouraging physicians from practicing in hospital emergency departments and reducing patient access to on-call emergency specialty care.**

The availability of on-call specialists is a serious problem in this State and the country. A recent survey by the American College of Emergency Physicians found that three quarters of respondents reported inadequate coverage of medical specialists including plastic surgery, hand surgery and neurosurgery. **The report notes that 21% of patient deaths and permanent injuries can be linked to shortages in specialty physician care.**

This proposal will reduce patient access to qualified physicians. In regions outside of the New York City metropolitan area (and some areas within), the non-competitive salaries and the highly litigious environment are causing emergency physicians to migrate elsewhere or to leave emergency medicine for urgent care. The pool of quality emergency physicians available for traditional emergency department shifts in some regions is smaller and more dilute. Regardless of whether an emergency physician is partner,

faculty or employee, the physician's salary and benefits are closely linked to their emergency department's professional services revenue.

New York ACEP supports constraints on the very small minority of out-of-network consultants who charge egregious amounts for their services when summoned to the emergency department. These practices do not pertain to emergency physicians. We are being lumped into the "solution" even though we did not contribute to the problem.

Allowing insurance companies to determine a reasonable fee **for all services in the emergency department** completely undermines the ability of emergency physicians to negotiate a fair reimbursement rate. In the past, when insurance companies failed to negotiate in good faith or determined by fiat what they would pay, emergency physicians had the option of remaining outside of that insurer's network. This law would eliminate that option and place emergency physicians at the mercy of what the insurers feel is "reasonable."

A large percentage of emergency physicians practice independently as part of a group or partnership, and are not employed by the hospital. The negotiating power of such groups is often limited. Physicians are **already** at a significant disadvantage when negotiating with insurance companies because of the insurers' market dominance. In New York State, five health plans insure 75% of the State's managed care enrollees. These plans continue to make record profits.

The failure of health insurers to adequately cover out-of-network health care is a long-standing problem in New York. When Governor Andrew Cuomo was Attorney General, he initiated an investigation into allegations that insurance companies were "unfairly saddling consumers with too much of the cost of out-of-network care." He accused one company of using "**a defective and manipulated database to set reimbursement rates for out-of-network medical expenses**" which ultimately results in much higher bills that must be paid by patients. The investigation led to a settlement with insurers totaling nearly \$100 million. This money was used to create FAIR Health, a database that provides patients with accurate, transparent and accessible information about the true cost of high quality, out-of-network services.

Under this proposal, the only recourse that an emergency physician has if he or she is offered an unreasonable rate by an insurer is to file an appeal of the amount of reimbursement to an Independent Dispute Resolution Entity (IDRE). The IDRE process thus far specified in this bill is patently unfair to emergency physicians. The volume of petitions, required time and cost of these disputes will make it daunting, expensive and impractical for emergency physicians. The insurance companies will be at a significant advantage to win a war of attrition. Further, the IDRE arbiter must choose either the physician's charges or the insurer's rate. There is no baseline or "floor" on the rate that the arbiter can choose. The bill provides the Department of Financial with broad authority to define the IDRE process in regulations. The process for the IDRE should be spelled out in the law including the cost and timeframes for resolution of disputes.

The proposal requires insurers who provide out-of-network coverage to make available at least one policy that provides coverage of at least 70% the UCR. The UCR is defined as the 80<sup>th</sup> percentile of Fair Health. **This payment is applicable only to scheduled care and specifically excludes emergency services.** This is unjust to emergency physicians who are on duty every night, every weekend and every holiday, when the rest of the health care system is either scaled down or dormant. Office based and urgent care practitioners refer their patients to the emergency department at all hours because of our high acuity clinical skill set, our generalist breadth, and our diligent physical presence. **Emergency physicians should have access to fair payment for their services. In addition, this proposal should be strengthened to require insurers to offer policies at 70% of the UCR in every geographical region of the State and to provide patients with information on these policies in a transparent and equivalent manner to their other product offerings.**

New York ACEP strongly recommends that this proposal be amended to ensure that patients have access to emergency services and to protect the emergency health care safety net in this State.