

**New York American College of Emergency Physicians
Statement on Budget Proposals to Regulate Out-of-Network Health Care
Article VII Transportation, Economic Development Budget Bill (S.6357-C; A.8557-C, 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 patients from excessive bills when they unknowingly receives services from a physician who is not part of their health care plan's network of providers. We applaud the Governor and Legislature for taking steps to address this problem.

However, New York ACEP is **strongly opposed to provisions put forth in the 2014-15 Executive Budget and Assembly bill A8557-C to allow commercial health insurance companies to dictate fees for all emergency services in the State. We are also opposed to provisions of the bills to exclude emergency services from out-of-network policies that provide coverage at 70% of the usual and customary rate (UCR).** These provisions relating 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.

Surveys done by the New York State Department of Financial Services have found no complaints against emergency physicians for charging patients excessive fees for out-of-network services. New York ACEP respectfully requests that the Legislature **adopt the provisions contained in S. 6357-C to exempt evaluation, management, critical care, and observation care provided by emergency physicians in a hospital emergency department when the physician charge is under \$1,200 from the requirements that a physician must accept a fee that the insurer determines is a reasonable fee, and to include emergency services in policies that provide coverage at 70% of UCR.**

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 put forth in the Executive Budget and adopted by the Assembly 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. As noted above, New York ACEP supports exclusion for emergency services when the physician charge is under \$1,200 as set forth in S. 6357-C.

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% the UCR (UCR is defined as the 80th percentile of Fair Health). **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 already 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.

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 the Executive and Assembly proposals, 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.

New York ACEP strongly recommends that the final State Budget include the amendments outlined above to ensure that patients have access to emergency services and to protect the emergency health care safety net in this State.