2017 REPORT OF THE DEPARTMENT OF CONSUMER AND BUSINESS SERVICES REGARDING REIMBURSEMENT OF SERVICES PROVIDED TO ENROLLEES BY OUT-OF-NETWORK PROVIDERS AT IN-NETWORK HEALTH CARE FACILITIES

In Accordance with House Bill 2339 (2017)

EXECUTIVE SUMMARY

On June 22nd, 2017, Governor Kate Brown signed House Bill 2339 into law. This bill, pre-session filed for the Department of Consumer and Business Services, prohibits out-of-network health care providers from balance billing patients covered by health benefit plans or health care services contractors for services provided at an in-network health care facility.

Once consumers were removed as a source of reimbursement for out-of-network bills[1], the crucial component of the legislation focused on what would constitute a reasonable substitute for a negotiated rate of reimbursement, in lieu of a contract between the commercial payer and the provider. As the Legislative Assembly deliberated on the passage of the bill, two methods of determining reimbursement were discussed and ultimately rejected. One method would have codified a percentage of Medicare reimbursement rates (175% of Medicare was the last iteration of this method). The other method would benchmark reimbursement to a percentage of billed charges, as recorded in a database maintained by a not-for-profit entity.

As the Assembly identified challenges in both approaches, the enrolled bill directed DCBS to convene an advisory group that included health care providers, insurers and consumer advocates to develop recommendations for the reimbursement of services provided to enrollees by out-of-network providers at in-network health care facilities. The advisory group was directed to provide its recommendations to the director of DCBS, and the director to report these recommendations to the Legislative Assembly no later than December 31, 2017. This report will update the Legislative Assembly on the advisory group process and the future work ahead.

OUTCOME OF ADVISORY GROUP

The advisory group has made significant progress on this issue. One key question answered was the use of APAC as a source of information. As the starting point of a benchmark was a topic of great concern during the deliberation of the bill, getting to APAC is an achievement. The advisory group did recommend that, regardless of the final methodology, reimbursement for these claims should vary by geographic region. The advisory group recommended that additional precautions be taken so as to not reveal competitive

[1] Under 2339, patients are still generally responsible for deductibles, co-insurance, co-payments and other cost sharing mechanisms.

information. Also, from the voting patterns it is clear that there are many common elements that the workgroup may agree on in principle, but not necessarily in detail. These elements will be useful as the department continues its work to solve the issue.

However, any viable recommendations for legislation should result from a carefully negotiated solution with levels of approval or neutrality from all parties involved. Because we were unable to achieve that negotiated solution in the time allotted, DCBS is not able to provide a clear recommendation for legislative change to the Legislative Assembly at this time.

NEXT STEPS

It needs to be said that the department is concerned about the fact that it could not reach a negotiated solution with all parties involved. The department is particularly concerned of the downstream effects on consumers while providers, facilities and carriers continue complex negotiations regarding reimbursement, of which 3-5% of cases are covered by the provisions of HB 2339. But consumers are protected by what the bill centrally set out to achieve – i.e., to keep consumers generally out of the balance billing process. The division will take a dim view toward potentially narrower networks, which may be addressed through other provisions of law.

As DCBS requested this bill, it is up to the department to continue the good faith discussions between interested parties to find a solution. Fortunately, progress has been made in identifying a data source and identifying elements that could bring the parties to a common understanding. It is the department's commitment to continue to craft reimbursement rates that fairly compensate providers while encouraging robust insurance networks, all the while keeping surprises to the consumer at a minimum.