## FCEP Fair Payment Discussion

### Our Mandate:

- We are the federally mandated safety net (EMTALA) to provide care for everyone – regardless of their ability to pay

### Our Contribution:

- We're there 24/7/365 - whenever you need us
- People come to us for rapid evaluation and diagnosis and expect comprehensive service
- We care for patients when no one else will – when your own doctor can't see you as well as when you have no place else to go
- We provide primary care for a great percentage of the medically underinsured
- In most ED's unfunded or underfunded patients constitute more than 50% of the people we see
- Each emergency physician provides, on average, more than $160,000 in free care per year – far more than any other specialty
- $2.4 trillion is spent on healthcare every year – but less than 2% on emergency care

### Our Challenges:

- Our physicians must be capable of spanning all specialties for initial care – we need highly trained personnel to respond to the variety of challenges we face everyday
- Many medical training/residency graduates in Florida leave because of the high malpractice risks and comparatively lower reimbursement in our state
- In order to provide timely, satisfying care we must maintain adequate staffing levels
- Insurance companies arbitrarily pay unfairly low fees for your care and choose to pass the costs of care on to you, via high deductible and high co-pay insurance plans
- The Fair Health database was developed to compare prices and reimbursement around the country but many insurers ignore Fair Health numbers and pay us whatever they wish – often far below what we need to provide the care we offer 24/7/365
- Current Medicare and Medicaid rates are below the cost for us to see patients

### Our Hope:

- Staffing levels of our ER's must be maintained in order to respond to our current patients as well as disasters and epidemics
- We want to be there when our services are needed - fair payment is critical for the safety net to survive

## American College of Emergency Physicians' Suggestions on Fair Payment

### Main Points

- Health plans should pay for emergency services based on reasonable charges (usual and customary), rather than arbitrarily setting rates that are unfair.

- Some physicians drop out of health plan networks when plan reimbursements do not cover the costs of providing services. This means that some patients have larger "out-of-network" bills.

- State and Federal policymakers need to ensure that health plans provide fair payment for emergency services or emergency physicians will continue to leave health plan networks. States that seek to ban this practice will create huge benefits for health insurance companies while endangering the medical safety net.

- When health plans do not pay fairly, physicians are forced to bill patients for the unpaid "balances" (similar to how a dentist bills). The answer is to require fair payment from health plans.

## Q. What are the issues surrounding fair payment and balance billing?

The EMTALA mandate requires hospital emergency departments to see everyone, regardless of insurance status or ability to pay. Some insurance companies have taken advantage of this law by consistently reducing payments to emergency physicians who have no choice about which patients to treat. This trend on the part of certain insurers has accelerated under the Affordable Care Act (or "Obamacare").

Decreasing reimbursements for emergency care and growing levels of uncompensated care related to caring for millions of uninsured patients have contributed to the closure of hundreds of emergency departments across the country and a lack of emergency resources, which threatens everyone's access to lifesaving emergency care.

In January 2009, the California Supreme Court ruled that emergency physicians who are outside certain health insurance networks could not bill patients in those networks for the balances of their bills. Lawsuits now are being filed by people who are using the court's ruling to make physicians pay the money back. ACEP regards the ruling as unfair because it allows insurance companies to arbitrarily set very low reimbursement rates for "out-of-network" emergency visits.

In California, without the guarantee of fair reimbursement, there will be an estimated annual net transfer of tens of millions of dollars from the emergency department safety net to highly profitable health plans.

Most health plans, including Medicaid and private payer, are not paying fairly for services:

- Payments for emergency visits declined over an 8-year period (1996 to 2004). The sharpest declines were in Medicaid reimbursements.

- Less than 50 percent of all emergency department charges are reimbursed.

- Emergency physicians provide more uncompensated care than any other physicians.

- Low reimbursements and uncompensated emergency care have contributed to the closure of hundreds of emergency departments, threatening people's access to emergency care.

Some Medicaid state offices have threatened not to pay for certain visits to the emergency department if the diagnosis is not deemed serious enough to warrant emergency care. This is dangerous for patients, since the fear of being "balance billed" may discourage them from getting medical care they need. This is unfair to emergency physicians who have no choice but to treat anyone who comes to the emergency department for care.

Following Medicaid's lead, commercial insurance plans are now developing diagnosis lists and other retrospective review tools to deny or reduce payments for emergency services. This violates federal and state prudent layperson standards. The patient's final diagnosis should not be the basis for payment and patients should never self-diagnose their medical condition. It applies unsafe and unfair 20-20 hindsight.

### Q. What role do health insurance companies play in the fair payment debate?

Health plans have faced criminal charges for illegal paying practices.

- The New York attorney general's office launched an investigation into the payment practices of United Healthcare, finding its payment rates to be 10 to 28 percent less than actual charges. The probe involved at least 16 large insurers, but United Healthcare was at the center because it operates Ingenix, the database used to calculate out-of-network payments.

- The settlement required United Healthcare to pay $50 million to a non-profit organization — Fair Health — to create a database that calculates local physician charges and allows payers to create out-of-network payments, based on median rates. The health plan also agreed to pay $350 million to settle the class action lawsuits brought by the AMA.

- The AMA and others are filing separate class-action lawsuits against Aetna Health, Inc. and CIGNA Corporation for "rigging" data to dramatically under-reimburse physicians. The two lawsuits, filed in New Jersey federal court, contended that for more than a decade the two health insurance companies used a corrupt system to underpay physicians for out-of-network medical services and forced patients to pay an excessive portion of the costs.

## ACEP Focus Groups

ACEP conducted two focus groups for two hours each in Washington, DC, to test messages and get feedback from key target audiences. Participants included Congressional staff, lobbyists from other medical and health care organizations and federal government staff, including the HHS Obamacare Enrollment.

Participants in both groups said that reducing health care costs was the big issue in health care. Many expressed concern about cost transparency, especially by hospitals (some discussion of the hospital "chargemaster"). Both raised significant concerns about "overuse" of emergency departments, especially pertaining to Medicaid and uninsured patients. Participants in both groups indicated that patients need education on not using the emergency room.

Participants of both groups said health plans were limiting options and trying to make profits, given the medical loss ratios. They said that health plans were narrowing networks.

Relevant General Comments:

- "The exchanges especially are working to squeeze our profits."
- "We are hearing from our constituents"
  —"We've lost our health insurance."

—"There are not enough options on the Exchanges."
—"My physician is no longer a preferred provider."

## Out-of-Network/Balance Billing

Participants in both groups expressed shock that emergency physicians could be out-of-network and that patients could be balance billed. Some expressed shock that emergency physicians are contractors, not hospital employees.

When asked if emergency physicians were justified for leaving networks, the first group nearly unanimously said "Yes."

Relevant Comments:

- "Hospitals have leverage, insurance companies need doctors. Emergency doctors don't have this leverage — I'm more sympathetic to doctors."
- "Who is right? Health insurance companies or docs? I don't know."
- "Patients may need to start wearing signs that say 'Don't touch me unless you take my health insurance."
- "They need to say we need to be able to do EVERYTHING — so compensate us fairly for that."
- "They need to say we're [emergency physicians] the first line of defense and we should be compensated."
- "There is an expectation that ER docs should care for us and maybe we should pay for that."
- "Do not like the phrase 'usual and customary' — change it to 'reasonable.'"

Fair Payment:

- 15 out of 18 agreed: Health plans should pay for emergency services based on usual and customary charges, rather than arbitrarily setting rates that are unfair.
- 7 out of 18 agreed: Everyone's access to emergency care is threatened when emergency care is not compensated fairly — uncompensated care is directly linked to emergency department closures.
- 12 out of 18 agreed: States need to ensure that health plans provide fair payment for emergency services or patients will suffer.
- 1 of 18 agreed: Bans on balance billing create huge benefits for health insurance companies while endangering the medical safety net.

**During a discussion, most indicated the reason they didn't agree with the "balance billing" message was because they didn't understand what balance billing was.**

Relevant Comments:

- "Just say insurance companies are robbing you blind. And they are robbing doctors blind."
- "You need to say that doctors will leave networks and this will screw "you" the patients."
- "I don't want my doctor to be unfairly treated."
- "I'm concerned about all the messages, because health plans could flip the statements around and say the exact same things. Emergency physicians need to promise not to overcharge."
- "The message needs to be that emergency rooms need to be prepared to deal with anything. Everyone was scared with Ebola— now we're into flu season We have the expectation that emergency physicians will care for us. We should pay for that."

- "I hate all the messages."
- "Yes, I'm concerned. My emergency room just closed."
- "EPs should say how outlandishly screwed they are by insurance companies. Have a stat that says, for example, they are getting paid 80 percent less than what they used to."
- "I still think the solution is to educate patients not to use the ER"
- "Focus on ER services shutting down, and here's why."
- Second Group: "Tell people that emergency physicians need to be ready to handle anything We have an expansive skill set. We should be valued by insurance companies."
- Second Group: "Health care is the most highly regulated industry in America."
- Second Group: "Docs can leave networks. They can do what they want."
- Second Group: "Docs should still care for patients — they should move if they want to go out of network."
- Second Group: "I don't like the phrase 'patients will suffer.' What does that mean?"
- Second Group: "How is uncompensated care related to closures? Don't believe EDs are closing"
- Second Group: "Yes, rates should be consistent"
- Second Group: "There is an assumption that hospitals are charging true costs. That may not be true."
- Second Group: "Educate patients not to use the ER" Can't Medicaid patients use "docs in a box?"
- Second Group: "Increased funding won't solve the problem."
- "I'm open providing more funding for emergency departments but they have to have a plan."