Government Relations Update – March 12, 2019

Pennsylvania Issues

Legislation

- **Trauma Centers:** On February 22, 2019, House Majority Leader Bryan Cutler (R-Lancaster) and Representative Mike Schlossberg (D-Allentown) released a co-sponsorship memorandum to Pennsylvania House members outlining proposed amendments to the Pennsylvania EMS Act. The amendments would: (1) require that future applicants for Level I, II or III trauma center accreditation be greater than 25 miles from the nearest Level I, II or III trauma center; (2) establish an annual volume criteria of 600 cases for Level II trauma centers, which is currently required for Level I reaccreditation; and (3) revise the funding formula to allow for reallocation of undistributed Level III trauma center funding to Level IV trauma centers in rural counties, since Level IV trauma centers do not currently receive funding through the EMS Act, and this funding would help provide coverage in underserved areas.

  House Majority Leader Cutler and Representative Schlossberg serve on the Board of Trustees for the Pennsylvania Trauma Systems Foundation (PTSF), which approved the proposed amendment. The Hospital & Healthsystem Association of Pennsylvania (HAP) also supports the legislation. St. Luke's University Health Network has expressed its concerns to the bill sponsors and the PTSF staff, since the language would prevent a Level I, II or III trauma center at several current and planned St. Luke's hospital locations.

- **HB 15:** Telemedicine. On January 23, 2019, Representative Harry Readshaw (D-Allegheny) introduced legislation to establish guidelines for the delivery of telemedicine services within Pennsylvania. The bill would require state licensure boards to promulgate final regulations for telemedicine after considering model policies and clinical guidelines. Most importantly, the bill would also require that health insurers provide coverage for medically necessary telemedicine services delivered by a participating network provider if the insurer would have provided coverage for the same service delivered in person by the same provider. The bill was referred to the House Insurance Committee on March 5, 2019.

- **HB 601:** Restrictive Covenants. On March 1, 2019, Representative Anthony DeLuca (D-Allegheny) introduced legislation to prohibit restrictive covenants in employment agreements of health care practitioners. The legislation would permit reasonable buyout clauses payable by a health care practitioner so long as the employer does not terminate the health care practitioner's employment. This bill was referred to the House Health Committee. HAP is reviewing the legislation.

Federal Issues

Legislation

- **Surprise Balance Billing:** Several pieces of legislation have been introduced recently in the Senate to limit patient exposure to out-of-network hospital bills. These bills attempt to address one or more of the following concerns: (a) treatment for an emergency by a doctor who is not part of the patient's insurance network at a hospital that is also outside that network; (b) treatment by an out-of-network doctor or other provider at a hospital that is in the patient's insurance network; and (c) mandated notification to emergency patients, once they are stabilized, that they are in an out-of-network hospital which may lead to sizable bills.

In September 2018, a bipartisan group led by Senator Bill Cassidy (R-LA) unveiled the "Protecting Patients from Surprise Medical Bills Act" to address all three of these concerns. Specifically, it would prohibit out-of-network providers from balance billing for (1) emergency services provided at an out-of-network facility, and (2) non-emergency services provided at an in-network facility, such as services rendered by out-of-network anesthesiologists. In each scenario, patients would be responsible only for the in-network cost-sharing amount, while health plans would pay the difference between the "provider charges" and the cost-sharing amount. The amount of "provider charges" would be determined by state law or, if no state law applies, then an amount equal to the greater of: (1) the average amount for the service (i.e., the median in-network rate negotiated by plans and issuers for the service provided by a provider in the same or similar specialty and same geographical area); or (2) the usual, customary and reasonable rate for the service (i.e., 125% of the average allowed amount for all private plans and issuers provided by a provider in the same or similar specialty and same geographical area for the service).

On October 12, 2018, Senator Maggie Hassan (D -New Hampshire) introduced the "No More Surprise Medical Bills Act of 2018." The bill is similar to the Protecting Patients from Surprise Medical Bills Act, but it establishes a binding arbitration process to determine payment rates for out-of-network services. Senator Jeanne Shaheen (D-New Hampshire) introduced a companion bill entitled the "Reducing Cost for Out-of-Network Services Act of 2018." This bill would limit the amount that out-of-network providers can charge in any situation to one of the following, as determined by each individual state: (1) 125% of Medicare fee-for-service rates; (2) 80% of the "usual and customary rate" based on a provider's billed charges, or (3) the insurer's in-network contracted rate for the service in question.

HAP supports legislation to limit charges by out-of-network providers for services performed at in-network facilities. The American Hospital Association agrees with this limitation but also supports limits for charges for any out-of-network emergency services. While the Pennsylvania legislature is considering a similar bill, HAP expects that federal legislation will be passed first, given significant bipartisan support for a solution.

Miscellaneous

- **Price Transparency:** On March 4, 2019, the United States Department of Health and Human Services (HHS) published a proposed rule that would require hospitals and other health care providers to publicly disclose the negotiated prices they charge insurance companies for services. The Trump Administration believes that the rule would allow patients to make informed health care purchasing decisions. Failure to provide the information would be addressed through fines for noncompliance. The proposal was included within a 700 page draft regulation focused on improving patient access to electronic health records.

  Regulators believe that the authority for requiring price disclosure stems from the 21st Century Cures Act passed in 2016, which makes blocking of health information illegal with penalties of up to $1 million. Industry officials say the Trump Administration faces many hurdles before implementing the rule, which is likely to be met by legal challenges from hospitals and insurers.

  HHS is accepting public comments on the proposal until May 3, 2019. St. Luke's has reached out to HAP to coordinate a response by the comment deadline.