

September 1, 2020

Clerk of the Commission
State Corporation Commission
c/o Document Control Center
P.O. Box 2118
Richmond, Virginia, 23218

RE: Case No. INS-2020-00136

On behalf of The ERISA Industry Committee, thank you for the opportunity to submit comments on the State Corporation Commission's *Ex Parte: In the matter of Adopting New Rules Governing Balance Billing for Out-of-Network Health Care Services* (CASE NO. INS-2020-00136) surprise medical billing regulations in Virginia. The ERISA Industry Committee, or ERIC, is the only national association that advocates exclusively for large employers on health, retirement, and compensation public policies at the federal, state, and local levels. ERIC member companies are leaders in every sector of the economy, with employees in every state, and we represent them in their capacity as sponsors of employee benefit plans for their own workforce.

Virginians are likely to engage with an ERIC member company when they drive a car or fill it with gas, use a cell phone or a computer, visit a bank or hotel, fly on an airplane, watch TV, benefit from our national defense, go shopping, receive or send a package, wear makeup, or enjoy a beverage. ERIC member companies have a significant beneficiary population in Virginia, including employees, their families, and often retirees, to whom they offer comprehensive health benefits.

On average, large employers pay around 85 percent of health care costs on behalf of their beneficiaries. Most of these employer plans are self-insured, meaning the company pays for the vast majority of the employees' care. Prior to the COVID-19 pandemic, More than half of Americans receive employer sponsored coverage in the United States. These health benefits are primarily governed on the federal level, under the Employee Retirement Income Security Act of 1974 (ERISA). In addition, large employers may also offer fully-insured health benefit options (sold by health insurers and regulated on the state level) to specific employee populations, such as where high quality HMOs are available.

Employers offer these great health benefits to attract and retain employees, to be competitive for human capital, and to improve health and provide peace of mind to employees and their families. Large employers, like ERIC member companies, roll up their sleeves to improve how health care is delivered in communities across the country. They do this by developing value-driven and coordinated care programs, implementing employee wellness programs, providing transparency tools, and offering a myriad of other innovations that improve quality and value to drive down costs. These efforts often use networks to guide employees and their family members to providers of higher quality and lower cost. Surprise billing undermines all of this and fundamentally frustrates the goals of providing quality, affordable employer-sponsored health benefits. For this reason, ERIC supports efforts on both the federal and state level to eliminate surprise medical billing, and to do so in ways that do not increase health care costs for patients.

The Virginia legislature has taken great strides on surprise medical billing in the state, while at the same time respecting that self-funded group health plans are governed exclusively by federal law. Additionally, ERIC would also like to acknowledge the proposed rule's inclusion of median, in-network reimbursement rates.

National Uniformity for ERISA Plans

ERIC appreciates the state's action in clarifying between fully-insured health plans which are regulated on the state level, and those that are self-insured and thus governed exclusively by the federal ERISA law. Self-insured plans are not governed by state law, however, allowing these plans to voluntarily opt-in to the rule's provisions allows large, multi-state, self-insured employers to choose whether they are willing to accept the administratively challenging option to attempt to protect plan beneficiaries in Virginia by setting up a separate internal process focused exclusively on this state. ERIC member companies want to be a part of the surprise billing solution across the country, and will continue advocating for a federal solution that will apply to all Americans on self-insured plans. In the meantime, state inclusion of "opt-in" provisions is an appropriate step that may provide relief to some patients.

Paying Providers Fairly

ERIC believes reimbursement rates for health care services should be based on real market value – meaning the median, negotiated in-network price, in a given geography, for a given procedure. Our only recommendation is that the median in-network rate be carrier specific since the All-Payer Claims Databases (APCD) data set will include the median in-network rates for all carriers through all paid claims. This will cause any carrier that has a favorable provider discount to be impacted.

Employers have uniformly and vocally opposed proposals that require health insurance plans to reimburse providers at rates based on the average of all paid claims, including out-of-network charges, as well as other proposals that would represent windfall profits to private-equity funds and the provider groups they own, such as inclusion of “billed charges” in mandatory reimbursement calculations. Such rates are not “fair” or market-driven rates, because they mandate highly inflationary reimbursement, burdening plan beneficiaries with skyrocketing premiums, co-pays, co-insurance, and deductibles as a result. By *not* including inflated out-of-network bills in the calculation, the proposed rule in Virginia encourages less gaming of the system, less surprise billing, and ultimately lower costs for patients. ERIC and our large employer member companies support this approach.

Employers offering health plans for their workforce want high quality providers to be available to care for employees and their families, and recognize that providers should be compensated fairly. Market economics ensure that a benchmark based on fair, in-network negotiated rates will fairly compensate providers, and will not lead to provider or access shortages.

Conclusion

Thank you for allowing us to provide our thoughts on the proposed rule. We look forward to the final rule and to ending the surprise billing crisis in Virginia. If you have questions concerning our comments, or if we can be of further assistance, please contact us at (202) 789-1400 or jgelfand@eric.org.

Sincerely,

A handwritten signature in blue ink that reads "James P. Gelfand". The signature is written in a cursive style with a large, stylized 'G'.