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(Via email Rep.MitchGreenlick@state.or.us)

February 10, 2017

Honorable Mitch Greenlick
Chair, House Health Care Committee
900 Court Street, NE, H-493
Salem, Oregon 97301

Re: Support for House Bill 2339 (Out of Network Physician Payment & Balance Billing Prohibition) – Oppose Amendments

Dear Chairman Greenlick:

I am writing in support of House Bill 2339 which will ensure that out-of-network physician payment is based upon a "reasonable and customary rate" that includes consideration of "**the prevailing fees charged by providers in the geographic area in which the services are provided and other relevant aspects of the economics of the provider's practice**." **Both OPA and CAP oppose any amendments to HB 2339 that would link the payment formula to Medicare.** We understand the Department is contemplating amending the bill to provide a formula linked to Medicare and any such change should be opposed as serving only the financial interest of health insurance carriers.

The Oregon Pathologist Association (OPA) is a state wide medical society that represents many practicing pathologists in the state. The College of American Pathologists (CAP) is a national medical specialty society representing over 17,000 physicians who practice anatomic and/or clinical pathology. CAP members practice their specialty in clinical laboratories, academic medical centers, research laboratories, community hospitals, and federal and state health facilities.

Both OPA and CAP support efforts to ensure that hospital-based providers are paid "usual and customary rates" for their services. These requirements will provide financial incentives to health insurance carriers to contract with hospital based physicians so that our services can be in-network for patients. Absent appropriate payment and network adequacy requirements applicable to hospital-based physicians, health insurance carriers have engaged in a deliberate and systematic process to narrow their insurance networks, and thereby shift out-of-network costs to their enrollees. We think that insurance carriers should be responsible to their enrollees for the provision of in-network services across the continuum of care that their enrollees may need and receive at a hospital. Absent being able to avail in-network physicians, enrollees should be financially held harmless and their health insurance plans should be responsible for payment to physicians based upon "usual and customary rates" as is provided for under House Bill 2339.

The Department has also proposed to key physician payment to the Medicare program. This alternative is opposed as inequitable and unworkable as Medicare rates are usually less than the in-network rate. Moreover, Medicare does not uniformly cover some physician services which are currently covered by health plans. In some instances Medicare rates, which are driven by federal budgetary requirements and not by the cost of providing care, are so low that they do not even cover the cost of the treatment provided. Thus, there is no incentive for health insurance plans to contract with physicians for their services.

Where legislation or regulation on this issue has been enacted, regardless of partisan composition or ideological inclination, states and policy makers have recognized the need to maintain marketplace equilibrium between insurance payors and physician providers. In December 2015, the non-partisan National Association of Insurance Commissioners (NAIC) in their annotations on this issue (MDL 74-22) noted that States should consider a payment formula such as: "a) some percentage of a public, independent database of charges for the same or similar services in the same geographic area, or b) some percentage of usual, customary and reasonable (UCR) charges in the state, if defined in state law or regulation." Importantly, the NAIC notes the imperative need for states to recognize the need for payment equilibrium in the market:

> "In setting a benchmark or benchmarks state should carefully consider the impact on the market. Setting a rate too high or too low may negatively impact the ability of facility based providers and heath carriers to agree on a contract."

For these reasons, even states as politically divergent as New York and Florida have keyed physician payment for out-of-network services to a market based charge formula that historically has been the basis for the "usual and customary" physician charge and health insurance plan payment. **We support use of the 80th percentile of FAIR Health Inc. database for determining "usual and customary" rates**. **For these reasons OPA and CAP support House Bill 2339 in its current form and oppose any amendments that link payment to Medicare**. Thank you for consideration of our position.

Sincerely,

Mohiedean Ghofrani, MD, MBA, FCAP
President, Oregon Pathologists Association

cc: Barry R. Ziman, Director, Legislation & Political Action, College of American Pathologists
Courtni Dresser, Director Government Relations, Oregon Medical Association