



# Maine Medical Association

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TO: Senator Sanborn, Co-chair  
Representative Tepler, Co-chair  
Members of the Joint Committee on Health Coverage, Insurance and Financial Services

FROM: Jay Mullen, M.D., MMA Legislative Committee Co-Chair

DATE: February 25, 2020

RE: **SUPPORT**—LD 2105, An Act To Protect Consumers from Surprise Emergency Medical Bills

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Good afternoon Senator Sanborn, Representative Tepler, and Members of the Joint Standing Committee on Health Coverage, Insurance & Financial Services.

My name is Jay Mullen, M.D., M.B.A., F.A.C.E.P. I am an emergency physician and the Immediate Past President of the Maine Chapter of the American College of Emergency Physicians (Maine Chapter, A.C.E.P.). I also am a Co-Chair of the Maine Medical Association Legislative Committee. Finally, I am the C.E.O. of BlueWater Emergency Partners, a private physician owned practice providing emergency medicine services in three hospitals across Maine. We care for more than 70,000 patients in several communities including Houlton, Machias and Brunswick.

I am pleased to be here today to speak in support of L.D. 2105, on behalf of both the Maine Chapter of A.C.E.P. and the Maine Medical Association. I want to thank Speaker Gideon and her staff, as well as all of the co-sponsors of this important patient protection legislation, for their commitment to protecting Maine patients from inappropriate financial burdens at a time when they are most vulnerable – in the emergency room.

The MMA is a professional organization of more than 4,300 physicians, residents, and medical students in Maine whose mission is to support Maine physicians, advance the quality of medicine in Maine, and promote the health of all Maine citizens.

We can all agree that healthcare is too expensive in America. It is frustrating and complicated. This becomes clear when a patient needs medical care, often in an emergency, and is unknowingly treated by a doctor outside of their insurance network. Rather than covering the life-saving care for their customers, insurers pass along the financial obligation to the patient.

For thousands of Maine citizens timely emergency care is simply not accessible. Hospitals like Lincoln's Penobscot Valley Hospital and Calais Regional Hospital have been forced to close their OB units and file for bankruptcy. Rural hospitals have trouble finding qualified physicians. This leads to a crisis in access to healthcare in our rural areas.

New York state was the first state in the nation to comprehensively address this issue and has been widely acclaimed for the delicate balance it struck among health insurers, physicians and hospitals to protect patients from surprise medical bills. One year after going into effect, out-of-network emergency

department care dropped from 20% to 6%. In the first 3 years, the law saved consumers over \$400 million.<sup>1</sup> In-network emergency physician payments decreased by 9%.

L.D. 2105 is based on the successful state of New York law and improves upon Maine's Public Law 2017, Chapter 218 from the 128<sup>th</sup> Legislative Session. The Maine Medical Association and Maine ACEP supports it for several reasons:

1. Most importantly, patients are protected. They are taken out from the middle of out-of-network surprise billing disputes between insurance companies and physicians, hospitals, and provider groups. It is our position that any surprise billing policy approach should hold patients harmless from billing disputes from surprise billing.
2. When a Carrier and physician can't agree on payment, a low cost, simplified Independent Dispute Resolution system, figuratively called "baseball arbitration," is utilized. Carriers and physicians can reach a fair and independent rate for out-of-network care. Neither side is given an unfair advantage and the least reasonable party pays the costs of the arbitration process.<sup>2</sup> New York's arbitration system has been in place since 2015 and according to their data; insurers and providers have each been successful approximately half of the time, showcasing fairness in the system. In their 2019 report, The New York Department of Financial Services "report[ed] a 'dramatic' decline in consumer complaints about balance billing."
3. Uninsured patients and those under self-insured plans will also be afforded access to the independent dispute resolution system for contested bills of \$750 or more. In uninsured cases only, the provider is completely responsible for the cost of the dispute resolution process regardless of outcome.
4. LD 2105's independent dispute resolution process bases final payment amounts on clear factors that promote fairness, including, but not limited to:
  - a. Comparisons to the fees paid to providers for the same services by other Carriers,
  - b. The complexity of the case, individual patient characteristics, the experience of the physician, the location of the care and
  - c. The rate charged for that service in that geographic area.
5. Adding emergency services to the 2017 law. Patients presenting for emergency clinical services are not in any position to fully inquire or understand disclosures concerning costs of services or be fully knowledgeable of provider network status.

The MMA also supports the following from the bill:

- §4303-C (3) of the bill, which provides that, An independent dispute resolution entity shall use Maine licensed physicians in active practice in the same or similar specialty as the physician providing the service that is subject to the dispute resolution process, and

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<sup>1</sup> Report on the Independent Dispute Resolution Process, New York State Department of Financial Services, September 2019. [https://www.dfs.ny.gov/system/files/documents/2019/09/dfs\\_oon\\_idr.pdf](https://www.dfs.ny.gov/system/files/documents/2019/09/dfs_oon_idr.pdf)

<sup>2</sup> When Major League Baseball players unionized in the 1970s, a major collective bargaining win for the players was 'binding arbitration.' The idea was that if a player and owner could not agree on a salary, impartial arbitrators would pick between the player's asking salary and the owner's offered salary based arguments on each side from a combination of player performance and comparable salaries for other players that played the same position on the field throughout the league.

- Surprise bills *do not* include instances when patients knowingly choose to receive services from a non-participating provider instead of from an available network participating provider. However, we would ask for clarification about the means to confirm when a patient knowingly chooses an out-of-network provider.

LD 2105 seeks to protect patients when they are the most vulnerable while encouraging Carriers and physicians to be reasonable and fair with each other. If we are to maintain access to emergency care in rural areas, legislation such as this is crucial.

Thank you. We welcome any questions or request for supporting information.

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Frank O. Stred Building · 30 Association Drive · PO Box 190 · Manchester, Maine 04351  
TEL: 207-622-3374 | FAX: 207-622-3332 | [www.mainemed.com](http://www.mainemed.com)