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Resolving fight over insurance networks

Trenton pledging action to target 'very significant cost driver' in health care

The Legislature is considering regulation of out-of-network health care costs, in an attempt to resolve the high-stakes battle between insurers and medical providers over the expensive bills insurers can be forced to pay when their members seek care outside the network.

While some medical providers said they shun networks because insurers don't pay them enough, insurance companies accuse providers of charging exorbitant fees that lead to the double-digit health insurance premium spikes now facing employers.



Assemblyman **Gary S. Schaer** (D-Passaic), chair of the Financial Institutions and Insurance Committee, said he plans to introduce legislation by September, and has made it clear he isn't about to propose government price controls on health care.

Larry Trenk, president of the New Jersey Ambulatory Surgery Center Association and CEO of Surgem, says providers choose to be out of network because the rates offered to insurers are 'insufficient.' He is pictured in the recovery room at SurgiCare, in Oradell. [Christina Mazza]

But Schaer called out-of-network

spending "a very significant cost driver," in the health care system. "By attacking this issue, we can have a significant effect on the cost of health insurance."

When insurers pay medical bills, “these costs are borne by someone,” Schaer said. “Insurance companies are not bottomless pits of capital. They’re owned by their shareholders, they are looking to make a profit and there is nothing wrong with anyone making a profit in America. Government’s responsibility is to create a fair and balanced environment where there is a level playing field.”

Often cited for fueling out-of-network spending are some of the state’s more than 200 ambulatory surgery and health care centers, which perform medical procedures that years ago might only have been done in a hospital. A few hospitals are entirely out of network, and certain specialties — such as neurosurgery, dermatology, orthopedic surgery and anesthesiology — have a significant number of out-of-network physicians, industry experts said.

“Providers choose to be out of network because the rates they are offered by insurers are insufficient,” said **Larry Trenk**, president of the New Jersey Ambulatory Surgery Center Association. “In a free enterprise system, physicians have the option to be out of network; otherwise the balance of power shifts to the insurers.”

Trenk said a large number of ASCs are being forced into networks as insurers redesign plans to limit out-of-network benefits by capping such payments. Trenk is chief executive of **Surgem**, which operates seven ASCs, six of them out of network. “We are weighing the option right now to going into a network,” Trenk said, adding “a lot of ASCs” also are considering this move.

James Albano, vice president of health care services at **Horizon Blue Cross Blue Shield of New Jersey**, the state’s largest health insurer with 3.6 million members, said, “Out-of-network is a huge driver of health care costs in the state.” He said that in the small-group market for employers with less than 50 workers, insurers are required to offer out-of-network benefits.

“These small employers are probably the most stressed by the cost of health care than any contingent in the state, we have to offer them an out-of-network benefit, and this is a license to drive up costs,” Albano said.

Out-of-network care becomes an option when insurers sell policies with an out-of-network benefit: in exchange for higher premiums, the customer can see an out-of-network provider and may be responsible for a share of the bill, perhaps 20 percent or 30 percent. Insurers contend out-of-network providers set high prices, then waive the patient’s share of the bill, giving patients no financial incentive to choose a cheaper in-network provider.

Dante Implicito, an out-of-network spine surgeon at **Hackensack University Medical Center**, said, “My patient base is sufficient, and I have no reason to join a network.” He said he once charged \$8,000 for a disk surgery, while an insurer offered \$1,100, “which is unacceptably low,” and after negotiations he settled for about \$3,000. He said his malpractice premiums are \$80,000 a year; if he joined a network, he could triple his patient volume, but face even higher malpractice premiums. He is partnering with other surgeons to start an ASC that he hopes will offer both in- and out-of-network surgery.

Betsy Ryan, CEO of the New Jersey Hospital Association, said at a hearing held by Schaer the out-of-

network issue reflects “a broken reimbursement system that has underfunded hospitals for charity care, Medicaid and Medicare” to the point that 35 percent of the state’s hospitals now lose money. She said “poor in-network rates” reflect the weakness of providers when negotiating rates with the state’s highly concentrated health insurance industry, where six companies control the vast majority of the market.

“Without the leverage of receiving fair rates for out-of-network services, health care providers will be forced to accept even lower in-network reimbursement rates by insurance carriers” and be forced to “cut vital services or ultimately close their doors for good,” she said.

Attorneys **John Fanburg** and **Mark Manigan**, of **Brach Eichler** in Roseland, represent hundred of medical practices, including ASCs. “Your typical medical practice does not have the leverage to negotiate a deal with an insurance carrier, so their only option is to say, ‘look, I’m not going to accept your deal; I’m going out of network,’” Manigan said. “We want to make sure the government doesn’t interfere in this free market.”

Bridgewater attorney **Steven Kern**, whose firm **Kern Augustine Conroy & Schoppmann** represents physicians, said the marketplace would work better if insurers simply paid in-network rates to the out-of-network providers, and let the patients pay the difference. “I’m afraid the Legislature is going to further limit any ability to differentiate yourself as a physician.”

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