

April 14, 2020

VIA EMAIL

The Honorable Ned Lamont
Office of the Governor
State of Connecticut
210 Capitol Avenue
Hartford, Connecticut 06106
Email: governor.lamont@ct.gov

Re: Request for Immediate Rescission of Part 2a of Executive Order No. 7U

Dear Governor Lamont:

As medical societies representing many hospital-based physicians who are currently on the front lines of providing diagnosis, treatment and care in the current national public health emergency resulting from the COVID-19 pandemic, we are writing to urge your modification of the above referenced Executive Order. We are making this request at a time when the critical patient services of the physicians we represent are not without attendant personal risk under highly adverse conditions, including at times the absence of personal protective equipment. Of great concern to the physician community is the above referenced Part 2a. of the Executive Order that we believe is counter-productive to financially supporting and sustaining our physician efforts and transcends the stated preamble of the Executive Order.

Moreover, we believe that the policy rationale for modifying this section of law is outside the confines of the public health emergency and thus is fundamentally questionable and not needed to serve the public interest. In particular, we note that the modification of this section, unlike the other sections of the Executive Order, are not confined to medical services rendered for COVID-19 emergency treatment. Specifically, of concern the Executive Order provides for the duration of the emergency that Section 38a-477aa(b)(3)(A) of the Connecticut General Statutes is modified to provide: "If emergency services were rendered to an insured by an out-of-network health care provider, such health care provider may bill the health carrier directly and the health carrier shall reimburse such health care provider the amount the insured's health care plan would pay for such services if rendered by an in-network health care provider as payment in full..."

Current law (Section 38a-477aa(b)(3)(A)) in Connecticut provides a well-established, robust financial protection for patients who receive out-of-network emergency services as they are protected from being balance billed for these service. The statutory payment formula for these services, based on the 80th percentile of charges, emulates current law in New York, (NY Fin Serv L § 605 (2014)) and a recently enacted law in Maine (Chapter 668 Public Law 2020). We also note that efforts to change this particular section of the law in Connecticut through the normal legislative process failed to pass the legislature for the last several years. Accordingly, the use of gubernatorial emergency powers to circumvent what has been the deliberate decision-making of the legislative process on this particular section of law is of great concern to the physician community as a whole.

Hospital-based physicians, at the center of providing treatment and care to patients impacted by the COVID-19 crisis, are now working under substantial professional and financial duress, with the solvency of many physician practices currently in doubt. Such a threat in turn endangers patient access to critical care at a time when the duration and extent of viral spread remains uncertain. With emergency department visits down dramatically outside of COVID19's heavily impacted areas, and with elective procedures discontinued during this time, the majority of medical practices are facing severe shortfalls, endangering their financial viability and forcing difficult decisions about furloughs and layoffs of physicians and other health care practitioners. In addition to the reduction in patient volume, we would note that with the unfortunate numbers of people losing their jobs and employer-based insurance coverage, many of the patients we are treating will not be able to pay their bills.

Permitting commercial health plans to reimburse at in-network rates means that payment will be based on an opaque standard that makes it impossible for physicians to know if they have been paid correctly. In fact, the language of the order in itself is vague, as insurers are likely to have numerous in-network rates, and there is no clarity as to whether they are being told to use their highest contractual rate, a median rate, a mean rate, or to cherry pick whichever rate they choose for a given patient. This is particularly true with emergency patients receiving care under EMTALA, which mandates that patients receive diagnostic treatment and stabilizing care without regard to payment.

For these aforementioned reasons we question whether the policy rationale for this modification of the law comports with the imperative of the emergency presented upon which Executive Order is predicated. It should be noted that: "The constitutional question presented in light of an emergency is whether the power possessed embraces the particular exercise of it in response to particular conditions." (*Home Building and Loan Association V. Blaisdell* 290 U.S. 398). In this situation we believe that the modification of Connecticut statute which determines how health insurance plans properly compensate physicians for emergency services rendered does not warrant the action of an Executive Order within the scope of the current public health emergency as it does not further any facet of the public interest during this crisis, nor help to promote the restoration of public health.

Importantly, we believe that the intentional reduction in payment for physician services, by executive fiat, is unquestionably counter to financially and operationally supporting the rendering of critical physician services during the pendency of the emergency and, as such, should be promptly rescinded. Thank you for your courtesies and consideration of this urgent request for modification of Emergency Order No 7U.

Questions regarding the contents of this letter can be forwarded to Harry Monroe at hmonroe@acep.org.

Sincerely,

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