



Pennsylvania Orthopaedic Society

**Testimony of Greg Gallant, MD, MBA
before the Pennsylvania House Insurance Committee
Tuesday, November 29, 2011**

Good morning Chairman Micozzie, Chairman DeLuca and members of the House Insurance Committee. I am Greg Gallant, president of the Pennsylvania Orthopaedic Society (POS). Our Society represents over 900 orthopaedic surgeons throughout the Commonwealth. My practice is in Bucks and Montgomery Counties.

The POS sincerely thanks Representative Nick Miccarelli for introducing HB 1763 PN 2257, legislation that will memorialize in statute the Love Settlement's provisions. We also thank you, Chairman Micozzie, for the opportunity to present testimony today.

Like our colleagues in the medical profession, the POS has been advocating for Fair Contracting legislation for a dozen years. The POS has also successfully fought unfair insurance practices in courts. In the early part of this decade, our Society reached a settlement with Independence Blue Cross on behalf of all Pennsylvania physicians. In that settlement, we won fee disclosure and bundling terms which were very similar to that of the Love settlement.

For far too long, Pennsylvania's Blue Plans have conducted business in a manner which is patently unfair to physicians. Black's Law Dictionary defines a contract as a bargain for exchange between or among equal parties. In practice, Pennsylvania's Blue Plans historically present physicians with take it or leave it provider contracts, and given their market dominance in their respective territories, physicians risk having no patients if they refuse the offered contract. The federal courts recognized this fact in the Love Settlement. HB 1763 merely recites the Love Settlement's provisions – provisions agreed to by Pennsylvania's Blue Plans four short years ago – into state law.

In this testimony, I will describe our collective concerns with the Blue Plans' practices dealing with fee schedule disclosure, fee schedule modifiers, all-products clauses and the bundling of procedures.

Fee Schedule Disclosure

In the context of a provider contract, the fee schedule is simply a recitation of the amount of money a physician will receive in compensation for a given service or procedure. One would believe that any contract for professional services would include the fee schedule for reimbursement, and perhaps even the methodology by which that fee schedule was determined. But in the past, Pennsylvania's Blue Plans routinely did not disclose to physicians the proposed fee schedule and certainly not the methodology by which the schedule was derived. Fortunately, the Love Settlement corrected this gross misconduct.

Can you imagine signing a contract without knowing what your compensation will be? For Pennsylvania's physician community, this practice was the norm. Again, since the Blues control 60% to 80% of the insured lives in various regions, physicians had little choice but to sign and hope that their compensation was adequate to cover their practice expenses and provide some level of profit. To do otherwise would risk losing the vast majority of our patients.

In addition, federal anti-trust laws prohibit physicians from working in tandem to create greater bargaining power against the Blues. This physician handicap aids the Blues by giving them even greater leverage in contract dealings. If physicians were legally able to band

together to negotiate contracts, the Blues could not exercise near total control over the process. This is not the case, however, and physicians are further hamstrung by federal law in their dealings with the Blues.

Clearly, not disclosing the fee schedule to physicians allows the Blues to determine how to allocate compensation among their provider network after it is built. For physicians, however, the certainty of not knowing our compensation can lead to bad business decisions which may adversely affect our patients and our employees.

Fortunately, HB 1763 rectifies this practice by requiring Blue Plans to incorporate the fee schedule within the proposed provider contract. In this way, physicians will know exactly what to expect in compensation and will be able to better judge whether to sign a contract or not.

Fee Schedule Modifiers

Another dubious practice of the Blue Plans is to modify fee schedule codes to lower payment without notice to physicians. Many times, a physician practice will submit claims anticipating a set reimbursement only to find after the fact that a Blue Plan has unilaterally and without notice to the physician practice modified the payment for the service or procedure. Again, can you imagine a contract in which the payor can unilaterally and without notice lower your compensation? But prior to the Love Settlement, this practice was the norm in Pennsylvania.

The ability to unilaterally modify compensation is a great benefit to the Blues to ensure their own revenues. On the other hand, unilateral modifications can destroy physician practices abilities to maintain a certain amount of revenue to support their employees and profitability.

Again, HB 1763 will eliminate the Blue Plans ability to modify fee schedules without cause or notice. It is plainly a commonsense requirement for any contract.

All Products Clauses

Simply put, an all products clause is a contract provision which state that if a physician agrees to participate in one product offered by a Blue Plan, the physician agrees to participate in all the products offered by that Blue Plan. For example, if a physician wants to participate in a Blue Plan's indemnity product, an all products contract clause would require that physician to participate in that Blue Plan's HMO, PPO, Medicare, Medicaid and workers' compensation products. Surprisingly enough, both Highmark and Independence Blue Cross have workers' compensation products. And even though a physician may have valid reasons for wanting to participate in some, but not all products offered by a Blue Plan, but all products clauses remove that option from the physician.

All products clauses obviously assist Blue Plans in building their provider networks, but at the cost of denying physicians the freedom to choose their own patient pool and workload.

Thankfully, HB 1763 would prohibit Blue Plans from imposing all products clauses.

Bundling Multiple Procedures

During the course of a single treatment session, a physician may perform multiple procedures on a patient. Despite the use of a mutually accepted coding system, the Blues in Pennsylvania often compensate physicians as if the procedures performed in addition to the primary procedure were merely incidental to the primary procedure. This practice, known commonly as “bundling”, is frequently applied to surgical procedures. These multiple surgical procedures are separate and distinct “operations” in laymen’s terms. That is, Pennsylvania’s Blues are only paying surgeons for one procedure performed, not the subsequent procedures necessary for the patient’s well-being.

The Blue Plans greatly benefit from bundling and the practice adds to the excess profits they take from the healthcare delivery system. This unfair practice, however, is inconsistent with the medical judgments upon which the coding system is based, is manifestly unfair to physicians, and leads to a lack of access to quality healthcare services for patients.

Fortunately, HB 1763 prohibits the Blues from bundling multiple CPT codes into one code in order to reduce provider payment.

Conclusion

HB 1763 simply memorializes in Pennsylvania statute contract rules and regulations that the Commonwealth’s Blue Plans agreed to four years ago. It is commonsense legislation that will require the Blues to continue to comply with practices they implemented over the past four years. There should be no cost increase to subscribers since the Blues have already put these practices and procedures in place to comply with the Love Settlement. In fact, there will likely be a cost implication if the Blues attempt to “undo” the practices implemented to comply with the Love Settlement. And with enactment of HB 1763, the physician community will have the assurance that Pennsylvania’s dominant healthcare insurers will not return to their past, anti-competitive and unfair practices. Since the Blues agreed to the Love Settlement four years ago, they have no legitimate reason to oppose that Settlement’s provisions being incorporated into Pennsylvania statute now.

The POS strongly urges the House Insurance Committee to report HB 1763 to the full House as quickly as possible. With the addition of several session days in December, you now have the opportunity to deliver HB 1763 to the Senate before the year’s end.

Thank you Chairman Micozzie, Chairman DeLuca and members of the House Insurance Committee.