

DIVISION OF INSURANCE

80th Percentile Rule:

Public Comments
Summary



STATE OF ALASKA

**Department of Commerce, Community,
and Economic Development**

**Division of Insurance
(907) 465-2515
Insurance.Alaska.Gov**

80th Percentile - Comments Received

			Date of Comment	Insurer	Broker	Medical Provider	Consumer
1	Name of Responder	Aetna	6/29/2018	X			
		Shannon Butler					
	Support						
	Against	X					
	Recommendations						
2	Name of Responder	Alaska Association	6/26/2018		X		
		of Health Underwriters - Kate Gootee					
	Support						
	Against	X					
	Recommendations	<p>Replacing the 80th percentile rule with a reimbursement based on a multiple of Medicare or other 'reference based' pricing would help control costs and ensure that providers are paid a fair fee. AAHU recommends beginning with a reimbursement payment up to 250% of Medicare. A reference based option will need to be adopted in a way so that it does not regulate over payments for charges that are now lower than whatever percentile of Medicare is selected. We suggest wording that includes 'payment up to' language rather than 'an amount that is at least'. As noted in the Oliver Wyman report, there were some Provider Specialty's reimbursement levels lower than 250% of Medicare.</p>					
		<p>It has been said by supporters of the 80th percentile, that other states have similar language. AAHU disagrees. Our research indicates that presently, New York requires carriers in the small market space (under 50) to offer some plans (products) that have the 80th percentile used as the floor for non-network reimbursement. However, carriers in New York are NOT required to use the 80th percentile for all of their plans; the same carriers can (and do) offer other products that reimburse non-network with a different reference (Medicare as an example). Another point to be aware of is that in New York the 80th percent regulation only applies to small group (under 50) and most plans in New York, both large and small, are currently indexed off Medicare. AAHU could support this approach as a solution.</p>					
		<p>Finally, we respectfully ask that the DOI minimally move toward a once a year adjustment for whatever is used as a reference for reimbursing non-network claims. This, coupled with balance billing legislation, would protect our Alaskan consumers.</p>					

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			Date of Comment	Insurer	Broker	Medical Provider	Consumer
3	Name of Responder	Terry Allard	6/29/2018		X		
		Alaska Association of Health Underwriters					
	Support						
	Against	X					
	Recommendations	<p>Replacing the 80th percentile rule with a reimbursement based on a multiple of Medicare or other 'reference based' pricing would help control costs and ensure that providers are paid a fair fee. AAHU recommends beginning with a reimbursement payment up to 250% of Medicare. A reference based option will need to be adopted in a way so that it does not regulate over payments for charges that are now lower than whatever percentile of Medicare is selected. We suggest wording that includes 'payment up to' language rather than 'an amount that is at least'. As noted in the Oliver Wyman report, there were some Provider Specialty's reimbursement levels lower than 250% of Medicare.</p>					
		<p>It has been said by supporters of the 80th percentile, that other states have similar language. AAHU disagrees. Our research indicates that presently, New York requires carriers in the small market space (under 50) to offer some plans (products) that have the 80th percentile used as the floor for non-network reimbursement. However, carriers in New York are NOT required to use the 80th percentile for all of their plans; the same carriers can (and do) offer other products that reimburse non-network with a different reference (Medicare as an example). Another point to be aware of is that in New York the 80th percent regulation only applies to small group (under 50) and most plans in New York, both large and small, are currently indexed off Medicare. AAHU could support this approach as a solution.</p>					
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4	Name of Responder	Teena Applegate	6/29/2018		X		
		Alaska Association of Health Underwriters					
	Support						
	Against	X					
	Recommendations	<p>Replacing the 80th percentile rule with a reimbursement based on a multiple of Medicare or other 'reference based' pricing would help control costs and ensure that providers are paid a fair fee. AAHU recommends beginning with a reimbursement payment up to 250% of Medicare. A reference based option will need to be adopted in a way so that it does not regulate over payments for charges that are now lower than whatever percentile of Medicare is selected. We suggest wording that includes 'payment up to' language rather than 'an amount that is at least'. As noted in the Oliver Wyman report, there were some Provider Specialty's reimbursement levels lower than 250% of Medicare.</p>					
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5	Name of Responder	Gina Bosnakis	6/28/2018		X		
		Alaska Association of Health Underwriters					
	Support						
	Against	X					
	Recommendations	<p>Replacing the 80th percentile rule with a reimbursement based on a multiple of Medicare or other 'reference based' pricing would help control costs and ensure that providers are paid a fair fee. AAHU recommends beginning with a reimbursement payment up to 250% of Medicare. A reference based option will need to be adopted in a way so that it does not regulate over payments for charges that are now lower than whatever percentile of Medicare is selected. We suggest wording that includes 'payment up to' language rather than 'an amount that is at least'. As noted in the Oliver Wyman report, there were some Provider Specialty's reimbursement levels lower than 250% of Medicare.</p>					
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6	Name of Responder	Jolene Bryant	6/28/2018		X		
		Alaska Association of Health Underwriters					
	Support						
	Against	X					
	Recommendations	<p>Replacing the 80th percentile rule with a reimbursement based on a multiple of Medicare or other 'reference based' pricing would help control costs and ensure that providers are paid a fair fee. AAHU recommends beginning with a reimbursement payment up to 250% of Medicare. A reference based option will need to be adopted in a way so that it does not regulate over payments for charges that are now lower than whatever percentile of Medicare is selected. We suggest wording that includes 'payment up to' language rather than 'an amount that is at least'. As noted in the Oliver Wyman report, there were some Provider Specialty's reimbursement levels lower than 250% of Medicare.</p>					
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7	Name of Responder	Terri Good	6/28/2018		X		
		Alaska Association of Health Underwriters					
	Support						
	Against	X					
	Recommendations	<p>Replacing the 80th percentile rule with a reimbursement based on a multiple of Medicare or other 'reference based' pricing would help control costs and ensure that providers are paid a fair fee. AAHU recommends beginning with a reimbursement payment up to 250% of Medicare. A reference based option will need to be adopted in a way so that it does not regulate over payments for charges that are now lower than whatever percentile of Medicare is selected. We suggest wording that includes 'payment up to' language rather than 'an amount that is at least'. As noted in the Oliver Wyman report, there were some Provider Specialty's reimbursement levels lower than 250% of Medicare.</p>					
		<p>It has been said by supporters of the 80th percentile, that other states have similar language. AAHU disagrees. Our research indicates that presently, New York requires carriers in the small market space (under 50) to offer some plans (products) that have the 80th percentile used as the floor for non-network reimbursement. However, carriers in New York are NOT required to use the 80th percentile for all of their plans; the same carriers can (and do) offer other products that reimburse non-network with a different reference (Medicare as an example). Another point to be aware of is that in New York the 80th percent regulation only applies to small group (under 50) and most plans in New York, both large and small, are currently indexed off Medicare. AAHU could support this approach as a solution.</p>					
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8	Name of Responder	Melonie Goodhue	6/28/2018		X		
		Alaska Association of Health Underwriters					
	Support						
	Against	X					
	Recommendations	<p>Replacing the 80th percentile rule with a reimbursement based on a multiple of Medicare or other 'reference based' pricing would help control costs and ensure that providers are paid a fair fee. AAHU recommends beginning with a reimbursement payment up to 250% of Medicare. A reference based option will need to be adopted in a way so that it does not regulate over payments for charges that are now lower than whatever percentile of Medicare is selected. We suggest wording that includes 'payment up to' language rather than 'an amount that is at least'. As noted in the Oliver Wyman report, there were some Provider Specialty's reimbursement levels lower than 250% of Medicare.</p>					
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9	Name of Responder	Jennifer Meyhoff	6/28/2018		X		
		Alaska Association of Health Underwriters					
	Support						
	Against	X					
	Recommendations	<p>Replacing the 80th percentile rule with a reimbursement based on a multiple of Medicare or other 'reference based' pricing would help control costs and ensure that providers are paid a fair fee. AAHU recommends beginning with a reimbursement payment up to 250% of Medicare. A reference based option will need to be adopted in a way so that it does not regulate over payments for charges that are now lower than whatever percentile of Medicare is selected. We suggest wording that includes 'payment up to' language rather than 'an amount that is at least'. As noted in the Oliver Wyman report, there were some Provider Specialty's reimbursement levels lower than 250% of Medicare.</p>					
		<p>It has been said by supporters of the 80th percentile, that other states have similar language. AAHU disagrees. Our research indicates that presently, New York requires carriers in the small market space (under 50) to offer some plans (products) that have the 80th percentile used as the floor for non-network reimbursement. However, carriers in New York are NOT required to use the 80th percentile for all of their plans; the same carriers can (and do) offer other products that reimburse non-network with a different reference (Medicare as an example). Another point to be aware of is that in New York the 80th percent regulation only applies to small group (under 50) and most plans in New York, both large and small, are currently indexed off Medicare. AAHU could support this approach as a solution.</p>					
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10	Name of Responder	Stephanie Rossland	6/28/2018		X		
		Alaska Association of Health Underwriters					
	Support						
	Against	X					
	Recommendations	<p>Replacing the 80th percentile rule with a reimbursement based on a multiple of Medicare or other 'reference based' pricing would help control costs and ensure that providers are paid a fair fee. AAHU recommends beginning with a reimbursement payment up to 250% of Medicare. A reference based option will need to be adopted in a way so that it does not regulate over payments for charges that are now lower than whatever percentile of Medicare is selected. We suggest wording that includes 'payment up to' language rather than 'an amount that is at least'. As noted in the Oliver Wyman report, there were some Provider Specialty's reimbursement levels lower than 250% of Medicare.</p>					
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11	Name of Responder	Dusty Silva	6/28/2018		X		
		Alaska Association of Health Underwriters					
	Support						
	Against	X					
	Recommendations	<p>Replacing the 80th percentile rule with a reimbursement based on a multiple of Medicare or other 'reference based' pricing would help control costs and ensure that providers are paid a fair fee. AAHU recommends beginning with a reimbursement payment up to 250% of Medicare. A reference based option will need to be adopted in a way so that it does not regulate over payments for charges that are now lower than whatever percentile of Medicare is selected. We suggest wording that includes 'payment up to' language rather than 'an amount that is at least'. As noted in the Oliver Wyman report, there were some Provider Specialty's reimbursement levels lower than 250% of Medicare.</p>					
		<p>It has been said by supporters of the 80th percentile, that other states have similar language. AAHU disagrees. Our research indicates that presently, New York requires carriers in the small market space (under 50) to offer some plans (products) that have the 80th percentile used as the floor for non-network reimbursement. However, carriers in New York are NOT required to use the 80th percentile for all of their plans; the same carriers can (and do) offer other products that reimburse non-network with a different reference (Medicare as an example). Another point to be aware of is that in New York the 80th percent regulation only applies to small group (under 50) and most plans in New York, both large and small, are currently indexed off Medicare. AAHU could support this approach as a solution.</p>					
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12	Name of Responder	Nancy Tietje	6/28/2018		X		
		Alaska Association of Health Underwriters					
	Support						
	Against	X					
	Recommendations	<p>Replacing the 80th percentile rule with a reimbursement based on a multiple of Medicare or other 'reference based' pricing would help control costs and ensure that providers are paid a fair fee. AAHU recommends beginning with a reimbursement payment up to 250% of Medicare. A reference based option will need to be adopted in a way so that it does not regulate over payments for charges that are now lower than whatever percentile of Medicare is selected. We suggest wording that includes 'payment up to' language rather than 'an amount that is at least'. As noted in the Oliver Wyman report, there were some Provider Specialty's reimbursement levels lower than 250% of Medicare.</p>					
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13	Name of Responder	Joshua Weinstein	6/28/2018		X		
		Alaska Association of Health Underwriters					
	Support						
	Against	X					
	Recommendations	<p>Replacing the 80th percentile rule with a reimbursement based on a multiple of Medicare or other 'reference based' pricing would help control costs and ensure that providers are paid a fair fee. AAHU recommends beginning with a reimbursement payment up to 250% of Medicare. A reference based option will need to be adopted in a way so that it does not regulate over payments for charges that are now lower than whatever percentile of Medicare is selected. We suggest wording that includes 'payment up to' language rather than 'an amount that is at least'. As noted in the Oliver Wyman report, there were some Provider Specialty's reimbursement levels lower than 250% of Medicare.</p>					
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14	Name of Responder	Lon Wilson	6/28/2018		X		
		Alaska Association of Health Underwriters					
	Support						
	Against	X					
	Recommendations	<p>Replacing the 80th percentile rule with a reimbursement based on a multiple of Medicare or other 'reference based' pricing would help control costs and ensure that providers are paid a fair fee. AAHU recommends beginning with a reimbursement payment up to 250% of Medicare. A reference based option will need to be adopted in a way so that it does not regulate over payments for charges that are now lower than whatever percentile of Medicare is selected. We suggest wording that includes 'payment up to' language rather than 'an amount that is at least'. As noted in the Oliver Wyman report, there were some Provider Specialty's reimbursement levels lower than 250% of Medicare.</p>					
		<p>It has been said by supporters of the 80th percentile, that other states have similar language. AAHU disagrees. Our research indicates that presently, New York requires carriers in the small market space (under 50) to offer some plans (products) that have the 80th percentile used as the floor for non-network reimbursement. However, carriers in New York are NOT required to use the 80th percentile for all of their plans; the same carriers can (and do) offer other products that reimburse non-network with a different reference (Medicare as an example). Another point to be aware of is that in New York the 80th percent regulation only applies to small group (under 50) and most plans in New York, both large and small, are currently indexed off Medicare. AAHU could support this approach as a solution.</p>					
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15	Name of Responder	Alaska Emergency Medical Assoc	6/25/2018			X	
		Sami Ali, MD					
	Support	X					
	Against						
	Recommendations	<p>One solution to control the fees is to select a year and lock physicians into their fee schedule as their starting point. Then, allow annual fee adjustments that are governed by the medical services index of the Consumer Price Index (CPI), such as a 3% increase yearly. For fees that are more than 10% above or below the current FairHealth levels, these could be adjusted to start the new base fee levels. You could also mandate that regardless of fees, insurance will pay the lesser of the physician fees or 80th percentile.</p>					
		<p>Regarding solutions to balance billing, there have been solutions proposed and implemented in multiple other states so there is already some framework for controlling balanced billing. For instance, to control balance billing it would be reasonable to limit patient out of pocket expenses to \$600 or another reasonable number. If a balance bill is greater than \$600 then you could implement an arbitration system, such as done in Texas.</p>					
		<p>If you want to eliminate balance billing in emergencies, as this is what seems to cause the most disputes, then you must hold the insurance companies accountable for a payment that is fair and reasonable. For example, at my practice an emergency room patient had a complex visit including a cardiac evaluation, IV sedation and cardioversion (shocking the patient's heart back into a regular rhythm). This is a medically complex and life saving visit as the procedure requires extensive physician expertise including qualifications for performing a sedation as well as training and expertise in resuscitation capabilities. The patient charge was \$1219. Their insurance paid \$386 which is not fair reimbursement for the complexity of evaluation, sedation, cardiac cardioversion, and recovery of the patient. The patient was balance billed \$832.42. If their insurance had paid the 80th percentile -\$1213 - then the patient would not have been balance billed. Balance billing would naturally be eliminated. It's examples like this when an insurance company chooses not to adhere to the 80th percentile during a patient's emergency that creates high surprise bills for patients. Insurance companies should be held to 80th percentile rule in emergencies, and likely this will need to be done through legislation.</p>					
		<p>A combined solution would be a three-part plan: set provider fees based on a selected year with a governor on fee increases, then pass legislation that would reimburse at the lesser of the 80th percentile or physician charges, then end ban balance billing in emergencies.</p>					

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16	Name of Responder	Alaska Heart and Vascular Inst. Gene Quinn, MD	6/27/2018			X	
	Support	X					
	Against						
	Recommendations	Comments on need for 80th percentile, no recommendation within email.					
17	Name of Responder	Alaska State Medical Association Peter Lawrason, MD	6/27/2018			X	
	Support	X					
	Against						
	Recommendations	<p>This past May ASMA adopted a framework to propose changes to the current regulation. While ASMA adopted this framework, we continue to be willing to engage constructively on other proposals that protect patients and ensure fair reimbursements. It is important to note that while some insurance companies admittedly are only concerned with their insured, ASMA's concern is with access to quality care of all patients regardless of whether they are Medicare, Medicaid, privately insured or self-insured. The impacts of one group can and often do impact access of others. Impacts of cost shifting must be included in any discussion around reimbursements especially if we want to preserve access to patients on plans such as Medicaid and Medicare that pay well below market rates. ASMA proposes two changes:</p> <p>1) The State should adopt regulations that ensure it has accurate and timely data. Basing significant policy decisions on old and inaccurate data increases the risks that those decisions will have unintentional consequences that impact patient access. As an example, we know generally that the vast majority of specialists in Alaska are now in-network and yet we continue to see policy discussions based on stale data that does not incorporate this importation. Accurate and timely data is critical to building the foundation of good policy. ASMA supports a State run all-claims-database or contracting with an independent entity such as Fair Health to access such data.</p> <p>2) The concern most often expressed over 3AAC 26.110 is that a physician or group with a market share of 20% could theoretically "set the rate" of reimbursement. While we have seen no evidence to support this has occurred we recognize the math would allow it and clearly the 80th percentile was meant to exclude the top 20th percentile outliers while still representing a market rate. We believe the protections of the regulation can be preserved while addressing this issue by creating a tiered system that expands the geographic area to ensure competition which removes the theoretic ability for a single office to "set the rate." This system is similar to one employed by insurance companies working in Alaska. In concept:</p>					

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		a.	CPT codes with five or more claims within each geographical area of the state would be reimbursed at the 80 th percentile of billed charges in the region or the providers billed charges, whichever is lower.				
		b.	If a CPT code has fewer than five claims within the geographical area of the state would be reimbursed at the 80 th percentile of billed charges in the state or the providers' billed charges, whichever is lower.				
		c.	If a CPT code has fewer than five claims within the State the CPT code would be reimbursed at the 80 th percentile of billed charges within the state or the providers billed charges, whichever is lower. However, the recognition of such a CPT code would trigger an investigation on the CPT code to analyze whether the reimbursement level is artificial or necessary for ensuring access to the service. We recognize this third tier may be cumbersome however we believe these codes would be few and we would welcome exploring other ideas.				

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18	Name of Responder	Alaskans for Sustainable Healthcare Costs	6/27/2018				X
		Rhonda Prowell-Kitter (PEHT), Dale Fosselman (Denali Federal Credit Union), Joe Wahl (GCI), Ann Flister (PND Engineers)					
	Support						
	Against	X					
	Recommendations	<p>The Alaskans for Sustainable Healthcare Costs Coalition is before you again, asking you to eliminate the 80th percentile rule. At the very least, please consider removing the egregious increases that occur <u>twice</u> per year under the rule.</p> <p>Conversations over the last couple of years have considered two different methods, either using a sample of UCR values from the Pacific Northwest, or a reference based on the Alaska Medicare rates.</p> <p>Reimbursement based on a multiple of Medicare or other "reference based" pricing would help control costs and ensure that providers are paid a fair fee. We support the recommendation being put forward by the Alaska Association of Health Underwriters (AAHU), which recommends beginning with a reimbursement payment up to 250% of Medicare. A reference-based option will need to be adopted in a way so that it does not require over payments for charges that are now lower than whatever percentile of Medicare is selected. We suggest wording that includes "payment up to" language rather than "an amount that is at least." As noted in the Oliver Wyman report, there were some provider specialty reimbursement levels lower than 250% of Medicare.</p> <p>Lastly, we would like to reiterate that Alaska is the only state with this type of regulation. We understand that members of AAHU have done some research and confirmed that the state of New York has put in place a completely different version of the 80th percentile regulation. In fact, we at the Coalition would be supportive of the methodology adopted by New York. This version states that carriers for small group (under 50) only need to have a few plans in their state that use the 80th percentile as a reimbursement measure. It should also be noted that in New York, plans for groups over 50 lives are not subject to 80th percentile regulation in any way. Today, most plans in New York that are regulated by the DOI are using Medicare as a reimbursement reference.</p> <p>Additionally, New York passed several consumer protection measures over the past few years (as did New Jersey) to protect consumers from surprise bills. On March 31, 2015, a law was passed that protects consumers from surprise bills for out-of-network claims. That same law also protects all consumers from bills for emergency services . This was followed up recently by legislation signed this year to further restrict surprise billing . It is suggested that , in fact, the reason New York's health insurance premiums have been held to low trends is due to this legislation and nothing to do with the 80th percentile. The Coalition would be very supportive of the State of Alaska considering legislation or regulation that mirrors the State of New York (and New Jersey).</p>					

80th Percentile - Comments Received

			Date of Comment	Insurer	Broker	Medical Provider	Consumer
19	Name of Responder	American College of Emergency Physicians - Alaska Chapter	6/27/2018			X	
	Support	X	Benjamin Shelton, MD- Nathan Peiman, MD- Nicholas Papcostas, MD- David Scordino, MD- Anne Zink, MD- Russ Johanson, MD- Danita Koehler, MD- Megan Lea, MD- Stanley Robinson, MD- Mark				
	Against						
	Recommendations	<p>The 80th percentile rule is a strong patient protection, and we believe it should be improved and strengthened, not removed. We all need to work together to address the cost of healthcare in Alaska — but eliminating consumer protections is not the place to start. We believe current concerns about the 80th percentile rule can be addressed through our recommendations. We strongly discourage eliminating the 80th percentile rule. We outline recommended changes to the rule that address concerns and continue to protect patients and strengthen access to care in Alaska.</p> <p>Our recommendations include:</p> <ol style="list-style-type: none"> Increase transparency and promote better data collection. Ensure appropriate competition for market forces to drive fair rates. Eliminate “balance bills” for patients for unexpected (emergent) out-of-network care if the 80th percentile rule is maintained. <p>Increase transparency and promote better data collection: To address the concerns raised about the lack of available data to inform analysis, the State should contract with a not-for-profit data company to get a clear view of charges, allowed rates and health- care costs. This data can also be used by consumers to understand their care options and associated costs. Current transparency laws in Alaska asks providers to put forward prices, but does not help patients actually understand what their out-of-pocket costs will be based on their insurance plan coverage. Enhanced transparency will allow patients to make decisions based on real and relevant information and will protect them from unexpected charges in a way that current transparency laws do not. We would suggest the following language for the regulation based on other states models:</p> <ol style="list-style-type: none"> For purposes of this regulation, “usual and customary rate” [or “UCR” or “usual, customary and reasonable rate, charge or fee] shall mean the eightieth per- centile of billed charges for the particular healthcare service rendered in the same geographical area within the same time period as reported in a statistically sound benchmarking database maintained by an independent nonprofit organization. The independent nonprofit organization shall not be affiliated with any insurer, provider or other stakeholder in the healthcare industry. The organization shall be specified by the Commissioner of Insurance. 					

80th Percentile - Comments Received

			Date of Comment	Insurer	Broker	Medical Provider	Consumer
		<p>2. Ensure appropriate competition for market forces to drive fair rates. If there is not enough competition in a specialty, artificially add competition by expanding the geographic region. This would essentially eliminate the potential for a group that has over 20% of a local market to drive up total healthcare costs. We can accomplish this by borrowing methodology that insurance companies are already using. We would suggest the following language for the regulation to introduce competition if needed in the market.</p>					
		<p>- CPT codes with <u>five or more claims within each geographical region</u> of the state: reimburse all surgical and non-surgical codes based on the provider’s billed charges or the 80th percentile of billed charges in that region (whichever is lower).</p>					
		<p>- CPT codes with <u>fewer than five claims within each specific region</u>: reimburse all surgical and non-surgical codes based on the provider’s billed charges or the 80th percentile of billed charges statewide (whichever is lower).</p>					
		<p>CPT codes with <u>fewer than five claims within the state</u>: reimburse all surgical and non-surgical codes based on the provider’s billed charges or the 80th percentile of billed charges statewide (whichever is lower). In the event that the 80th percentile charge benchmark for a healthcare service in an area exceeds an amount that is higher than the High Outlier Ceiling, it could be brought to the Insurance commissioner for review. The high outlier ceiling could be defined a series of ways but one example would be as a set percent of the average of the 80th percentile benchmarks for such service comprised all 50 states and the District of Columbia, this percentage could be set by the insurance commissioner fro the needs of Alaska.</p>					
		<p>Eliminate “balance bills” for patients for unexpected (emergent) out-of-network care if the 80th percentile rule is maintained: Reconsideration of the 80th per- centile rule is an opportunity increase patient protections. When fair market compensation is ensured for out-of-network care using the 80th percentile rule, we believe patients should not be subject to any “surprise bills” in the case of unexpected out-of-network care. With the 80th percentile rule in place, these surprise bills are rare, but we support eliminating them entirely. The removal of the 80th percentile regulation only increases balance billing to the patient.</p>					

80th Percentile - Comments Received

			Date of Comment	Insurer	Broker	Medical Provider	Consumer
20	Name of Responder	America's Health Insurance Plans	6/25/2018	X			
	Support						
	Against	X					
	Recommendations	<p>Instead of using billed charges, we believe that the reimbursement methodology should be based on what the market is already paying for those services and what providers are accepting as payment for such services. The simplest path is for the state to adopt the Affordable Care Act's reimbursement model for emergency services for both emergency <i>and</i> non-emergency services. This will provide further consistency to the standards used around the country and continue to promote affordability.</p>					
		<p>The federal regulations require insurers to pay out-of-network emergency providers an amount equal to the greatest of:</p>					
		<p>1. The median amount negotiated with in-network providers for the service(s) furnished;</p>					
		<p>2. An amount based on the same methods used by the health insurer to pay for out-of-network services (e.g., usual and customary amounts); or</p>					
		<p>3. The amount Medicare would pay for services provided.</p>					
		<p>We believe that a "greater of three" methodology will avoid higher costs for consumers and will result in payment levels that will not destabilize existing provider contracts in the state, but instead continue to encourage health plans and providers to enter into mutually beneficial contracts. Similar "greater of" methodologies have been adopted by a number of states, including California, Connecticut, and Maryland.</p>					
21	Name of Responder	Emergency Department Practice Management Association and Physicians for Fair Coverage	6/29/2018			X	
	Support	X					
	Against						
	Recommendations	<p>The 80th percentile rule is an important protection for patients and the healthcare safety net and it should be retained especially for emergency medicine. However, there is room for improvement. We believe the rule should be reiterated in statutory language. In addition, the statute and/or regulation should clearly provide that the minimum benefit standard is 80th percentile of charges based on the FAIRHealth benchmarking database. Moreover, if the insurer pays 80th percentile of FAIRHealth charges, we support banning balance billing the patient.</p>					

80th Percentile - Comments Received

			Date of Comment	Insurer	Broker	Medical Provider	Consumer
22	Name of Responder	Lisa Fitzpatrick	6/29/2018				X
	Support	X					
	Against						
	Recommendations	<p>Far bigger problems exist on the consumer side. Among these are the lack of healthcare transparency, the unchecked ability of “hidden providers” to “surprise bill” patients, and the unfettered ability of providers to balance bill patients.</p> <ul style="list-style-type: none"> · With regard to the lack of cost transparency, consumers need to be able to get better information to information price-shopping decisions. This concern may be addressed to some degree if the governor signs SB 105. Anchorage has also undertaken to address this problem at the municipal level. · With regard to the problem of surprise bills by “hidden” out-of-network providers, I would suggest legislation or a regulation that if a patient goes to an in-network provider for services, the patient cannot be balance billed by a hidden provider who provides services incident to those services. · With regard to balance bills by other out-of-network providers, I would suggest legislation or a regulation that insurers must have an adequate number of in-network providers. The number must reflect not just the raw number of providers in the geographic area but also be reflective of the availability to secure timely services. There need to be some quantifiable and qualitative metrics used to determine these numbers. · Another issue goes to the reliability of the data that’s used to set the 80th percentile or whatever percentile is used by the health insurance plan as the allowed amount for purposes of paying claims. Whether the data comes from FairHealth or another source, insurers need to be required to submit claims data to ensure the data is reliable and complete. By its very definition, the UCR or amount that reflects a particular percentile of the charges in the geo-zip ought to be one and the same in a given geo-zip for all insurers. It shouldn’t vary. And it ought to be real time data – not allowed to lag behind because of updating delays by both the data provider and the insurer upon receipt of the updated data. · Finally, experience in other states suggests that when there is a neutral third-party charged with acting as an arbiter of patient/doctor/insurer billing disputes, insurers or providers will often make adjustments to their respective payments or charges. Creating some form of mandatory informal (or more formal) billing dispute resolution process would likely go far in protecting consumers. 					

80th Percentile - Comments Received

			Date of Comment	Insurer	Broker	Medical Provider	Consumer
23	Name of Responder	Golden Heart Emergency Physicians Mike Burton, MD	6/18/2018			X	
	Support	X					
	Against						
	Recommendations	We support the efforts of the State to study the "80th percentile" rule's impact on Alaska's healthcare system but feel there is still significantly more to do before any changes should be made.					
24	Name of Responder	Golden Heart Emergency Physicians Art Strauss, MD	6/18/2018			X	
	Support	X					
	Against						
	Recommendations	I believe this effort to begin looking at the current health care situation is much needed. A discussion of potential solutions with those who will be most impacted is a step in the right direction. However, it is only the first step of many. I do not believe now is the time to be enacting any changes without first fully understanding what they will ultimately do to our healthcare system.					
25	Name of Responder	Dorne Hawxhurst	6/21/2018				X
	Support						
	Against	X					
	Recommendations	Develop regulations that require providers and insurers to timely report actual charge data to a credible data base. And if the state is going to insist on setting a "recognized charge", it should develop regulations preventing providers from balance billing patients any amount					

80th Percentile - Comments Received

			Date of Comment	Insurer	Broker	Medical Provider	Consumer
26	Name of Responder	Imaging Associates Ward Hinger	6/30/2018			X	
	Support	X					
	Against						
	Recommendations	We want to be part of a constructive dialog on whether there are ways to ensure the regulation meets its objective of establishing a market rate for our of network reimbursement. In that regard, we believe the Alaska State Medical Association is on the right path. While we have seen no evidence that any group or practice is controlling the market or solely "setting" the reimbursement rate we recognize that it is theoretically possible. By using a stepped expansion of the geographic area used to determine the 80th percentile the State should be able to eliminate virtually all concerns raised by critics. Furthermore, in the event there are still five or fewer codes statewide, the questions should be about why there is such limited access and what value those services are providing Alaskans. It is imperative that the State do more than a simple benchmark when evaluating specialized services. Any such review needs a subjective element to ensure access to healthcare for Alaskans is preserved.					
27	Name of Responder	Ellen Izer	6/30/2018				X
	Support						
	Against	X					
	Recommendations	As an Alaskan citizen I implore you to eliminate, change, or modify the 80 th Percentile Rule. It is hurting Alaskans.					
28	Name of Responder	National Education Association Tim Parker, President	6/29/2018				X
	Support						
	Against	X					
	Recommendations	I am writing on behalf of the almost 13,000 members of the NEA- Alaska to encourage you to eliminate the language relation to "the 80th percentile of charges."					

80th Percentile - Comments Received

			Date of Comment	Insurer	Broker	Medical Provider	Consumer
29	Name of Responder	Nathan Peimann, MD	6/29/2018			X	
		Juneau Emergency Medical Assoc					
	Support	X					
	Against						
	Recommendations	<p>1. We support solutions that maintain the 80th Percentile for emergency or unexpected circumstances and would hope transparency for insurance companies moving forward would be part of that solution. Specifically, regulate that insurance companies report reimbursement to fairhealthconsumer.org or other unbiased, non-affiliated benchmarking database that contracts with the State of Alaska. The State should create its own all claims database to get a clear view of charges, allowed rates and healthcare costs. This data can also be used by consumers to understand their care options and associated costs. Current transparency laws in Alaska asks providers to put</p> <p>Proposed language is:</p> <p>“usual and customary rate” [or “UCR” or “usual, customary and reasonable rate, charge or fee] shall mean the eightieth percentile of billed charges for the particular healthcare service rendered in the same geographical area within the same time period as reported in a statistically sound benchmarking database maintained by an independent nonprofit organization. The independent nonprofit organization shall not be affiliated with any insurer, provider or other stakeholder in the healthcare industry. The organization shall be specified by the Commissioner of Insurance.</p>					
		<p>2. Ensure appropriate competition for market forces to drive fair rates. If there is not enough competition in a specialty, artificially add competition by expanding the geographic region. This would essentially eliminate the potential for a group that has over 20% of a local market to drive up total healthcare costs. We can accomplish this by borrowing methodology that insurance companies are already using. We would suggest the following language for the regulation to introduce competition if needed in the market.</p>					
		<p>- CPT codes with <u>five or more claims within each geographical region</u> of the state: reimburse all surgical and non-surgical codes based on the provider’s billed charges or the 80th percentile of billed charges in that region (whichever is lower).</p>					
		<p>- CPT codes with <u>fewer than five claims within each specific region</u>: reimburse all surgical and non-surgical codes based on the provider’s billed charges or the 80th percentile of billed charges statewide (whichever is lower).</p>					
		<p>CPT codes with <u>fewer than five claims within the state</u>: reimburse all surgical and non-surgical codes based on the provider’s billed charges or the 80th percentile of billed charges statewide (whichever is lower). In the event that the 80th percentile charge benchmark for a healthcare service in an area exceeds an amount that is higher than the High Outlier Ceiling, it could be brought to the Insurance commissioner for review. The high outlier ceiling could be defined a series of ways but one example would be as a set percent of the average of the 80th percentile benchmarks for such service comprised all 50 states and the District of Columbia, this percentage could be set by the insurance commissioner fro the needs of Alaska.</p>					

80th Percentile - Comments Received

			Date of Comment	Insurer	Broker	Medical Provider	Consumer
		<p>Eliminate “balance bills” for patients for unexpected (emergent) out-of-network care if the 80th percentile rule is maintained: Reconsideration of the 80th per- centile rule is an opportunity increase patient protections. When fair market compensation is ensured for out-of-network care using the 80th percentile rule, we believe patients should not be subject to any “surprise bills” in the case of unexpected out-of-network care. With the 80th percentile rule in place, these surprise bills are rare, but we support eliminating them entirely. The removal of the 80th percentile regulation only increases balance billing to the patient.</p>					

80th Percentile - Comments Received

			Date of Comment	Insurer	Broker	Medical Provider	Consumer
30	Name of Responder	Premera Blue Cross Blue Shield	6/29/2018	X			
		Sven Peterson					
	Support						
	Against	X					
	Recommendations	<p>As noted above, the ISER study clearly reinforces the need to reevaluate and change the current regulation, as the study documents the significant cost escalation that ensued following adoption of the regulation. We point out again that no other state has such a rule in effect, and further, that the underlying statute does not require setting allowed amounts at a percentile of charges. Therefore, we believe that it is within the authority of the Division to adopt changes that eliminate the detrimental effects of the current rule.</p>					
		<p>We believe that the following elements must be considered within the discussion of possible solutions; we view these elements as components of an overall set of changes to address the issues that currently exist:</p>					
		<ul style="list-style-type: none"> Reduce the frequency of allowed-amount review and adjustments from twice annually. We believe that an annual review is fair and adequate. 					
		<ul style="list-style-type: none"> Limit the applicability of the rule to services received within Alaska. The Division has taken the position that the current rule applies world-wide. Lack of geographic data in other areas results in payment based on actual billed charges. 					
		<ul style="list-style-type: none"> Set the allowed amount for non-contracted providers at a percentage of Medicare; Medicare rates are already adjusted to take into account the unique aspects of the Alaska health care market, and therefore constitute a fair basis. Medicare rates are also updated annually to adjust for changes in medical practice resource needs and costs. We recommend 250% of Medicare as the minimum required, but are open to further discussion. Most lower-48 states allow for the standard use of 15% of Medicare for non-contracted services 					
		<p>We also suggest that the unique variations in provider availability, access to care, and willingness to contract throughout the State of Alaska may necessitate solutions that are more geographically specific. This may include a different approach for the greater Anchorage area than for remote and underserved parts of the state, where the latter calls for greater consumer protections than the former.</p>					
		<ul style="list-style-type: none"> Prohibit balance-billing by non-contracted providers - i.e., the practice of collecting from the patient the difference between the allowed amount set by the carrier and the actual amount billed by the provider. We caution, however, against an attempted solution that addresses only balance-billing, without including the other elements listed above. 					
		<p>We respectfully request that your office consider the above recommendations and comments as a productive starting point for collaborative work on changes to this rule. And of course we make ourselves available for any follow-up questions and discussions. Please contact me at your convenience.</p>					

80th Percentile - Comments Received

			Date of Comment	Insurer	Broker	Medical Provider	Consumer
31	Name of Responder	Tobias Schwoerer	6/25/2018				X
	Support						
	Against	X					
	Recommendations	The rule should be cancelled. Cancelling the rule immediately is a better outcome for consumers that leaving it in place.					
32	Name of Responder	Nancy Tietje	6/29/2018		X		
		Davies-Barry Insurance					
	Support						
	Against	X					
	Recommendations	<p>In regards to the 80th percentile rule, there needs to be a cap or index of some sort to limit the ever increasing costs. The cap can done via a percentage of Medicare, it can be indexing cap that says everyone starts a cap of 1 which is 80% of your current master bill. I remember when the rule went into place. It was immediate that dental bills increased and for about a year, the most common complaint I heard was the over reasonable and customary costs occurring all the time. And it didn't stabilize. Now everyone is more compliant. Our dental costs</p> <p>Managed care concepts I sort of lump together. Balanced billing can be overwhelming in some case. I just read an article about a court case from Kentucky where a surgery of \$75,000 which was deemed to be an appropriate amount had a balance bill of \$150,000. (I'm rounding numbers) The court deemed that inappropriate. We have had clients with balance bills that have cost them thousands of dollars. In Ketchikan that has been primarily around our emergency room situation, but it has caused patients to go bankrupt or very near to it. The other tool for managed care is who the carrier has to pay, the provider or the patient. To help carriers encourage providers to become contracted, the rule that checks only be sent to the provider should be lifted. It seems obvious to me that over the years in Alaska, the cost has become so high and restrictions have been so steep that we are not doing anyone any favors to help control costs.</p> <p>Spreading the risk in Alaska is a very tough thing to do. I will start with the assumption that Alaskans aren't the healthiest, for those with good insurance they are entitled and use health care freely, they have high risk life styles in many ways, and are for lack of other words, abusive to themselves and others. Our pools of insurance are many and it causes an inability to spread the risk. So that means that each little pool causes each other to handle that risk. This is a cost driver that insurers seek to alter. Then the providers try to counter. That is what I see happening. We have Medicare recipients staying in Alaska which drive cost shifting, which drives the insured market to ever higher costs.</p> <p>Of the issues that are drivers, the low hanging fruit is the 80th percentile rule. Either of the ways I have suggested (Medicare base or index based) would be worth a start.</p>					

80th Percentile - Comments Received

			Date of Comment	Insurer	Broker	Medical Provider	Consumer
33	Name of Responder	The Wilson Agency Jennifer Bundy-Cobb	6/25/2018		X		
	Support						
	Against	X					
	Recommendations	<p>Replacing the 80th percentile rule with a reimbursement based on a multiple of Medicare or other 'reference based' pricing would help control costs and ensure that providers are paid a fair fee. AAHU recommends beginning with a reimbursement payment up to 250% of Medicare. A reference based option will need to be adopted in a way so that it does not regulate over payments for charges that are now lower than whatever percentile of Medicare is selected. We suggest wording that includes 'payment up to' language rather than 'an amount that is at least'. As noted in the Oliver Wyman report, there were some Provider Specialty's reimbursement levels lower than 250% of Medicare.</p>					
		<p>It has been said by supporters of the 80th percentile, that other states have similar language. AAHU disagrees. Our research indicates that presently, New York requires carriers in the small market space (under 50) to offer some plans (products) that have the 80th percentile used as the floor for non-network reimbursement. However, carriers in New York are NOT required to use the 80th percentile for all of their plans; the same carriers can (and do) offer other products that reimburse non-network with a different reference (Medicare as an example). Another point to be aware of is that in New York the 80th percent regulation only applies to small group (under 50) and most plans in New York, both large and small, are currently indexed off Medicare. AAHU could support this approach as a solution.</p>					
		<p>Finally, we respectfully ask that the DOI minimally move toward a once a year adjustment for whatever is used as a reference for reimbursing non-network claims. This, coupled with balance billing legislation, would protect our Alaskan consumers.</p>					