



THE STATE  
of **ALASKA**  
GOVERNOR BILL WALKER

# **DIVISION OF INSURANCE**

## **PUBLIC SCOPING HEARING POTENTIAL CHANGES TO “80<sup>TH</sup> PERCENTILE RULE” REGULATION PUBLIC COMMENTS**

**Director Lori Wing-Heier**

**January 6, 2017**

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Terry Allard

The Wilson Agency LLC

January 6, 2017

80% Rule Percentile Rule For Insurers



## Napoleon, Christopher L (CED)

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**From:** Wagoner, Chip (CED)  
**Sent:** Thursday, January 05, 2017 1:08 PM  
**To:** Napoleon, Christopher L (CED)  
**Subject:** FW: 80th Percentile Rule

Chip Wagoner, SPIR  
Regulations Specialist II  
Alaska Division of Insurance

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**From:** Terry Allard [mailto:terrya@thewilsonagency.com]  
**Sent:** Friday, December 23, 2016 9:49 AM  
**To:** Wagoner, Chip (CED)  
**Subject:** 80th Percentile Rule

Chip:

I am writing to support amendment or repeal of the 80<sup>th</sup> percentile rule. I am a member the Alaska Association of Health Underwriters and I have been in the industry since 1985. In that time I have seen negative impacts of the rule. The rule was meant to protect consumers but it is not doing that.

I am in support of using a reference based pricing model to set the floor for insurance carrier reimbursement. This would provide a better level of protection for the consumer and at the same time establish a "ceiling" for charges as well as the 80<sup>th</sup> percentile rule has been a driver of increasing healthcare costs as providers increase their changes over time.

### Additional Talking Points:

1. The 80<sup>th</sup> Percentile Rule is not protecting consumers as the original intent of the Regulation because out of network providers bill patients the unpaid charges not reimbursed by the insured health plan.
2. There is not an incentive for providers to contract with a network because they get paid directly from the commercial payers.
3. Due to lack of competition among some provider categories, those providers with 20% or more of the market share set the market allowed charges.
  - a. The Alaska Health Care Commission, in their Findings and Recommendations 2009-2013, felt that the rule "exacerbated" relative health care provider leverage in pricing stating: "Since many providers have over 20% of their market share, this implies that those providers can ensure that their charges are below the 80<sup>th</sup> percentile and therefore, receive payment for their full billed charges."

4. The 80<sup>th</sup> Percentile Rule is arbitrarily increasing the charges of care with no ceiling for price increases.
5. The 80<sup>th</sup> Percentile Rule is confusing and not transparent to the general public.
6. No other State in the United States has a rule similar to the 80<sup>th</sup> Percentile Rule.
7. The 80<sup>th</sup> Percentile Rule leads to “Surprise Bills” after procedures/services by providers did not disclose the amount of the charge and the insurance companies UCR.
8. Dr. Stanley Watkins, President of the Alaska Heart & Vascular Institute in Anchorage acknowledges prices are high for specialty care in Alaska. Furthermore he states, the dramatic price for specialty services can’t continue. Watkins acknowledges the 80<sup>th</sup> percentile rule is probably contributing to the higher prices in Alaska.
9. The State of Alaska health plan pays out of network providers at the 90<sup>th</sup> percentile. This policy contributes to the ever increasing charges of care in Alaska.
10. A report by the Council for Community and Economic Research in 2014 named four cities in Alaska as having the highest healthcare costs in the Nation.
11. The Alaska Health Care Commission determined that Alaska has the highest average annual costs for employee health benefits in the Nation. The underlying issue of health care charges is a driving factor for the high cost of employee health benefits and can be partially attributed to the 80<sup>th</sup> percentile rule.

Thanks for the opportunity to provide input.

Terry



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Dr. Randy L. Van Antwerp  
Alaska Pathology Association  
January 6, 2017

80% Rule Percentile Rule For Insurers

**Statement of**  
**Randy L. Van Antwerp, MD, FCAP**  
**President, Alaska Pathology Association**

On behalf of the Alaska Pathology Association, which represents pathologists practicing in our state, I am submitting this statement in strong opposition to any proposed change to the current Alaska methodology for calculating payment of usual and customary charges for out of network physician services. We support Alaska's current use of the 80<sup>th</sup> percentile of market charges for determining "usual and customary" rates.

The use of the 80<sup>th</sup> percentile rule in Alaska should not be altered to accommodate the business interests of health insurance payors. The rule is a common sense consumer protection measure that ensures that health plans cannot shift out-of-networks cost to their enrollees. The rule also ensures that it is in the financial interest of health plans to have a robust provider network that will minimize the occurrence of out of network costs for their enrollees and the plans as well.

The use of market based charge formula, like FAIR Health Inc., makes sense for reasons elucidated in a report made to the federal Health and Human Services Department (HHS) in 2014 by the University of Chicago (NORC). The report found:

"The mission of FAIR Health is to provide transparency to the health care and health insurance marketplaces. FAIR Health grew out of a lawsuit with United Healthcare and Aetna where plaintiffs claimed the insurers were misrepresenting usual and customary charges for services...Sixty insurers and employers donate medical claims to FAIR Health. FAIR Health has medical claims for approximately 150 million covered lives, 16 billion medical procedures and these figures are growing....For the immediate future, FAIR Health is the database best suited to help address CMS' concerns about establishing comprehensive and transparent out of network payment benchmarks."

The Alaska Pathology Association supports the current market based system used in Alaska which is also used in New York State. The payment provisions in New York State law that regulates all out-of-network physician payment at in-network facilities is also set at the 80<sup>th</sup> percentile of a market based charge database (i.e. FAIR Health). A similar provision exists in Connecticut for emergency services also designated by that state at the 80<sup>th</sup> percentile of FAIR Health Inc. as payment for these services.

It should also be noted that the 80th percentile of FAIR Health Inc. methodology is used by one of the largest health insurance payers in the United States - United Health Inc.- for their plans in multiple states. The "usual and customary rate" used to determine out of network payment should reflect the market value of physician services which is embedded in the FAIR Health methodology, which was developed pursuant to a legal settlement between the payors and state attorneys generals.

If payors believe that the UCR (when calculated at the 80<sup>th</sup> percentile of FAIR Health Inc.) is in excess of what they want to pay for the service, there will be a strong market incentive for them to negotiate in-network contracts with physician groups. The problem of balance billing of patients emerges in scenarios wherein patients cannot access in-network providers at in-network hospital and facilities. In these situations, out-of-network physicians are under ethical and sometimes legal obligations to provide medical services for their out-of-network patients. These obligations are applicable to emergency medicine, radiology, pathology, and anesthesiology.

For these reasons, the Alaska Pathology Association also urges the Department to include network adequacy language that effectuates American Medical Association policy (AMA) (H-285.908.11) as follows: "Our AMA advocates that health plans should be required to document to regulators that they have met requisite standards of network adequacy including hospital-based physician specialties, (i.e. radiology, pathology, emergency medicine, anesthesiologists and hospitalists) at in-network facilities, and ensure in-network adequacy is both timely and geographically accessible." Thank you for consideration of our comments.

Mr. James R. Blakeman  
Emergency Groups Office  
January 6, 2017

80% Rule Percentile Rule For Insurers



emergency  
groups'  
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January 6, 2017

Ms. Lori Wing-Heier, Director  
Division of Insurance  
Department of Commerce, Community  
and Economic Development  
P.O. Box 110805  
Juneau, AK 99811-0805

Via email: [chip.wagoner@alaska.gov](mailto:chip.wagoner@alaska.gov)

Dear Director Wing-Heier:

I am a billing consultant for emergency physicians in Alaska and 15 other states, providing practice management and billing services for emergency physicians who staff more than 110 emergency departments. My clients in Alaska treat more than half of all the emergency patients seen in the state.

I am involved with matters of fair payment and balance billing in several states, in addition to Alaska. I am writing to advocate for retaining the 80<sup>th</sup> percentile rule and to suggest that a ban on balance billing, in conjunction with the current fair payment regulations, would address many of the concerns related to excessive increases in charges.

From the outside, it appears that the 80<sup>th</sup> percentile rule has performed very well to assure that Alaska's patients are provided with quality healthcare by allowing physicians to obtain the reimbursement necessary to recruit and retain capable specialists to practice and live in Alaska. The state enjoys strong healthcare quality and accessibility that would not exist if insurance companies were allowed to price services based on something other than a published, predictable, enforceable and transparently derived payment standard.

Public health is the concern of Alaska emergency physicians because, it can be said, that many emergency department visits are result of the failure of the healthcare delivery system to provide access to quality patient care. Patients often come to the emergency department because they have been unable to access care.

I have a number of concerns about tying any Fair Payment to a Medicare standard.

1. Using Medicare payments as a fair payment standard is completely unrelated to market conditions, the cost of care, specialty and training disparities, and any of the other normal market considerations related to a reasonable control on costs. Legislatures typically shy away from such price controls. There are very few states where fair payment regulations are based on a Medicare payment amount.



2. Medicare payment amounts are driven by congressional budget considerations entirely unrelated to Alaska, or any state's, economic drivers for the purchase of healthcare. I propose that the Division of Insurance not rely on the general "fairness" of the RVU valuation process or Medicare payment determination process. It is unreliable and full of political maneuvering to shift RVUs from one specialty to another.
  - a. The conversion factor update is legislatively fixed at 0.5% in each of the next 5 years, then moves down to 0.25% thereafter, with a 9.0% up or down adjustment based on quality performance. That might not represent a reasonable rate of increase for Alaska and does make unclear what, exactly, is the "Medicare approved amount" going forward. We might fix that definition now, but it might change with each new presidential administration.
  - b. RVU revaluations occur in a budget neutral environment which can affect emergency medicine's reimbursement dramatically in years when surgical services have received large RVU increases.
  - c. Emergency Evaluation and Management (E&M) codes have not been revalued in many years and are due for a revaluation. RVU calculation has historically been a very political process. The Relative Value Update Committee has historically had absolutely no interest in protecting primary care or emergency care RVU values. During the last revaluation in the early 2000s the RUC sold out emergency physicians and proposed to reduce our rates, and nobody else's, by an average of about 16%, in order to increase other RVUs. Medicare stepped in at the last minute and protected the ED codes. We have no assurance that will happen again when the RUC decides to work against our interests.
  - d. We are considered "specialists" and therefore will lose whenever there is a push to increase RVU values for primary care by reducing them for specialists. When that happens, our emergency physician codes go down because we are not classified as primary care providers.
3. Medicare saw that the ability to recruit and retain physicians was threatened in Alaska by low Medicare payment rates and established a 150% floor to the Geographic Practice Cost Index for all of Alaska. It is unclear what will happen when the new Administration finds new ways to drive down Medicare costs, potentially eliminating that cost floor. A fair payment rate tied to Medicare amounts would be disastrous if Medicare goes back to using market based, geographic practice cost data to determine payments for Alaska.
4. The 80<sup>th</sup> percentile rule is only theoretically harmful and not demonstrably harmful to cost-effective medicine in AK. Yes, some providers have and will continue to push the envelope on charges. We are aware of a few high profile cases of outrageous physician fees (\$77,000 charge for a surgery that Medicare pays about \$1,000 for) but we need more than anecdotes to prove that the 80p rule has outlived its usefulness.
5. I recommend that the DOI consider the development of a plan to rein in outlier charges by capping charges at the rate that is two standard deviations from the Fair Health database for each service in each geographic area. Such a cap would eliminate the most egregious examples of healthcare price gouging.
6. The "99285" E&M service, billed for the most complex cases in emergency care, has a charge at the 80th percentile in Anchorage of \$1,021 while in Seattle that same service

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has a \$1,120 charge rate. In Dallas TX that service runs at \$1,488 while in Miami this same service has a charge of \$1,793, and in New Orleans it is \$1,924.

7. Two other states, where historical reimbursement was much lower than in AK, have moved to an 80p rule, because they've seen that the other price control mechanisms have only benefited insurers and have not sufficiently reduced costs as to preclude a charge-based fair payment standard.

Finally, in the event that the Division of Insurance determines that it is in the best interests of consumers and businesses in the state to eliminate or reduce the 80<sup>th</sup> percentile rule, I suggest that the DOI consider retaining that standard for EMTALA-obligated providers and specialists, with a balance billing ban. Emergency care providers have demonstrated by their behavior and the publicly available data, that they have restrained the increase in emergency physician costs. Only a charge-based, fair payment rule, along with a balance billing rule, makes the best policy for providers, patients and business who must have available to them quality healthcare to recruit employees to work in Alaska.

Sincerely,



James R. Blakeman  
Senior Vice President

cc: Andrea Brault, MD, MMM, FACEP, FAAEM, President, EGO

Verne Boerner  
Alaska Native Health Board  
January 6, 2017

80% Rule Percentile Rule For Insurers



# Alaska Native Health Board

THE VOICE OF ALASKA TRIBAL HEALTH SINCE 1968

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January 6, 2017

Lori Wing-Heier  
Division of Insurance, Director  
Robert B. Atwood Building  
550 W. 7th Ave., Ste 1560  
Anchorage, AK 99501-3597

Re: Alaska Division of Insurance Notice of Public Scoping regarding public input on  
3 AAC 26.110

Director Wing-Heier:

On behalf of the Alaska Native Health Board (ANHB), I write to provide feedback on the Alaska Division of Insurance's ("Division") Notice of Public Scoping regarding public input on 3 AAC 26.110 ("80th percentile rule"). ANHB was established in 1968 with the purpose of promoting the spiritual, physical, mental, social, and cultural well-being and pride of Alaska Native people. ANHB is the statewide voice on Alaska Native health issues and is the advocacy organization for the Alaska Tribal Health System, which is comprised of tribal health programs that serve all of the 229 tribes and over 158,000 Alaska Natives and American Indians throughout the state.

ANHB concurs with the written comments submitted by the Alaska Native Tribal Health Consortium and recommends the Division engage with all healthcare stakeholders to fully evaluate the 80th percentile rule and function it serves in healthcare delivery here in Alaska. Please do not hesitate to contact me with any questions or if additional information can be provided.

Sincerely,

Verné Boerner, President/CEO  
Alaska Native Health Board

ALASKA NATIVE TRIBAL  
HEALTH CONSORTIUM

ALEUTIAN PRIBILOF  
ISLANDS ASSOCIATION

ARCTIC SLOPE  
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METLAKATLA INDIAN  
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MT. SANFORD  
TRIBAL CONSORTIUM

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OF EKLUTNA

NATIVE VILLAGE  
OF EYAK

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# Alaska Native Health Board

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January 6, 2017

Lori Wing-Heier  
Division of Insurance, Director  
Robert B. Atwood Building  
550 W. 7th Ave., Ste 1560  
Anchorage, AK 99501-3597

Re: Alaska Division of Insurance Notice of Public Scoping regarding public input on  
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ANHB concurs with the written comments submitted by the Alaska Native Tribal Health Consortium and recommends the Division engage with all healthcare stakeholders to fully evaluate the 80th percentile rule and function it serves in healthcare delivery here in Alaska. Please do not hesitate to contact me with any questions or if additional information can be provided.

Sincerely,

Verné Boerner, President/CEO  
Alaska Native Health Board

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HEALTH CORPORATION

VALDEZ NATIVE TRIBE

**Dr. Jeanne R. Bonar**

**Alaska**

**January 6, 2017**

**80% Rule Percentile Rule For Insurers**

## **Napoleon, Christopher L (CED)**

---

**From:** Wagoner, Chip (CED)  
**Sent:** Thursday, January 05, 2017 1:09 PM  
**To:** Napoleon, Christopher L (CED)  
**Subject:** FW: 80th Percentile

Chip Wagoner, SPIR  
Regulations Specialist II  
Alaska Division of Insurance

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-----Original Message-----

From: Jeanne Bonar [mailto:jrbonar@icloud.com]  
Sent: Thursday, December 29, 2016 4:00 PM  
To: Wagoner, Chip (CED)  
Subject: 80th Percentile

Don't some insurances go above 80%. For PPO. I THINK YHE BLUES DO 20% is a fortune when patient goes to ER with chest pain. Gets a 25,000\$ work-up because they have insurance. I will try to attend. Jeanne R Bonar MD

Sent from my iPad



Mr. David Burlingame

Alaska

January 6, 2017

80% Rule Percentile Rule For Insurers

## Marine-Alley, Lynn M (CED)

---

**From:** Wagoner, Chip (CED)  
**Sent:** Friday, January 06, 2017 2:15 PM  
**To:** Wing-Heier, Lori K (CED); Latham, Anna M (CED); Bailey, Sarah S (CED); Marine-Alley, Lynn M (CED)  
**Subject:** FW: 80th Percentile Rule

FYI

**From:** David Burlingame [<mailto:dburlingame@epsinc.com>]  
**Sent:** Friday, January 06, 2017 10:10 AM  
**To:** Wagoner, Chip (CED)  
**Cc:** Melanie Coar; Looney, Tom E.  
**Subject:** 80th Percentile Rule

We are an engineering company with our headquarters in Anchorage, Alaska and offices in Juneau and Palmer, Alaska. We also have offices in Washington and Idaho. We currently employ over 120 people, with about 80% of them located in Alaska.

Company provided healthcare costs are our second largest annual expense, behind only employ payroll. In some individual months, our health care costs exceeded our payroll costs. Due to the rising cost of health insurance, several years ago, in an effort to help reduce our healthcare costs, we became self-insured.

In the last 5 years, our healthcare costs have risen over 140%. This annual increase in health care costs is simply unsustainable for any business located in Alaska that has to compete with similar firms located outside Alaska. As a company that has employees located both inside and outside the State of Alaska, we see a direct comparison oh health care costs in Alaska compared to the Lower 48. All of our employees located in Alaska are long-term Alaskans with a desire to remain in Alaska. However, our company cannot afford to maintain employees in Alaska if the current rate of health care increases continue at their current rate. We simply cannot compete against Lower 48 companies' payroll and health care costs.

The increases in health care costs in Alaska are over 3-4 times the increases for the same services in the Lower 48. While we understand the costs of living and doing business in Alaska is higher than the Lower 48, health care costs are reversing the trend of other living costs in the Railbelt and larger cities. As the cost of living differential between Anchorage and other cities in the Lower 48 has decreased, the cost differential for health care has diverged dramatically, with many services now 3-5 times more expensive than cities in the Pacific Northwest.

The diverging cost of health care between Anchorage and the Lower 48 is simply not justified based on market conditions, cost of living or scarcity of resources in Alaska.

The 80 percentile rule is a major contributing factor to the unsustainable rise in health care costs in Alaska. Unless this rule is modified to prevent annual ratcheting of health care costs in Alaska, many employers like us, will have to start relocating employees outside in order to remain competitive with other companies providing services in Alaska. The 80% rule has a direct impact on all health care costs in Alaska, and is the major cost driver in the escalating health care costs in Alaska.

David Burlingame, P.E.

**Dr. Mike Burton**

**Golden Heart Emergency Physicians**

**January 6, 2017**

**80% Rule Percentile Rule For Insurers**

# **Golden Heart Emergency Physicians**

3875 Geist Road, Ste. E 381  
Fairbanks, Alaska 99709  
(907) 458-6943

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Michael R. Burton, MD	President
Arthur J. Strauss, MD	Secretary, Medical Director
Terry A. Conklin, MD	Director
Kenneth D. Glaeser, MD	Director
Maria E. Mandich, MD	Director

---

Mark O. Simon, MD	Director
Stanly W. Robinson, MD	Director
Brian A. Tansky, MD	Director
Caroline E. Timmerman, MD	Director
William D. McIntyre, MD	Director

---

January 5, 2017

Ms. Lori Wing-Heier, Director  
Division of Insurance  
Department of Commerce, Community  
and Economic Development  
P.O. Box 110805  
Juneau, AK 99811-0805

Via email: [chip.wagoner@alaska.gov](mailto:chip.wagoner@alaska.gov)

Dear Director Wing-Heier:

I am submitting this letter in strong support of retaining 3 AAC 26.110(a) commonly known as the "80<sup>th</sup> percentile" rule for determining "usual and customary" charges for healthcare services provided to Alaskan consumers.

I am a Board Certified Emergency Medicine Physician practicing in Fairbanks, Alaska. I began practicing in the Emergency Department at Fairbanks Memorial Hospital in 2001. I enjoy the many opportunities that living in Alaska provides and continue to be pleased with the decision to make this my home. With that in mind I am aware of the many challenges that those who choose to live here face on a regular basis.

The Emergency Department at FMH sees a large variety of patients from all areas throughout the state as the closest hospital north of Anchorage. With such a great variance in patient population it is important to have as many resources available as possible so our patients are able access the care they require.

The Fairbanks medical community has worked tirelessly to build up a reliable medical staff available to serve the medical needs of our patients, and it continues to be a challenge to maintain this standard that our patients deserve.

Convincing a provider to move their practice to Alaska can be difficult at best. The cost of living is noticeably higher, the ever changing weather takes adjustment, and for many relocating as far north as Fairbanks is a significant distance from family and friends. These are just some of many factors that come in to play when trying to recruit a new

provider. The potential reimbursement provided by the "80<sup>th</sup> percentile" rule has been a helpful incentive in recruiting providers in a wide variety of specialties.

We are limited not only by a lack of providers able to admit patients to the hospital for care, but also by the lack of specialist that we can refer to on an outpatient basis. With a very limited number of providers able to treat these patients the wait times to schedule an appointment are growing. Patients are being faced with the risk of waiting too long to receive treatment or enduring the high cost of travel to seek treatment out of town. To potentially lower the number of available providers by limiting reimbursement would be detrimental to our patient's health and would increase their costs significantly.

I do not feel this is the time to be making such impactful changes to an already delicate system. I ask that you retain the regulation as is to ensure stability for our patients and providers.

Sincerely,

A handwritten signature in black ink, appearing to be "Mike Burton", written in a cursive style.

Mike Burton, MD

Shannon Bulter

Aetna

January 6, 2017

80% Rule Percentile Rule For Insurers



December 19, 2016

Director Lori Wing Heier  
Alaska Division of Insurance  
550 West 7<sup>th</sup> Avenue, Suite 1560  
Anchorage, Alaska 99501-2567

RE: Federal Funding for Alaska 1332 State Innovation Waiver Application

Dear Director Wing Heier,

We support the federal funding requested in the 1332 State Innovation Waiver that would allow Alaska to receive much needed pass-through funds from the federal government to ensure the long-term stabilization and viability of Alaska's individual health insurance market.

We look forward to continued dialogue with the Division on this matter. In the interim, please do not hesitate to contact me with any questions or to discuss.

Sincerely,

A handwritten signature in black ink, appearing to read "S Butler", with a long horizontal line extending to the right.

Shannon Butler  
Sr. Director of Government Affairs

Transmitted electronically to Lori Wing Heier





January 6, 2017

Mr. Chip Wagoner  
Alaska Division of Insurance  
P.O. Box 110805  
Juneau, Alaska 99811-0805

Re: "80<sup>th</sup> percentile rule" amending the provision under 3 AAC 26.110

Dear Mr. Wagoner,

Aetna is commenting in regards to the Notice of Public Scoping for Possible Changes to the Regulation that Requires Health Care Insurers to Pay Out-Of-Network Health Care Providers for Covered Services or Supply at No Less than the 80<sup>th</sup> Percentile of Charges in the Geographical Area.

Aetna understands that the Director intends to evaluate the existing 80<sup>th</sup> percentile rule to determine if any changes could be made to address the current methodology for calculating reimbursement for out-of-network provider claims both for professional providers and facilities. The Alaska Division of Insurance updated the governing regulation in 2004 and added the minimum 80<sup>th</sup> percentile rule as the standard for claims reimbursement at the time. The regulation was originally adopted to protect consumers from excessive bills.

Increasingly, a small number of providers control a majority of the market share for medical specialties. This means that specialty care providers are often able to command up to 100% of their full billed charges since the methodology is focused on billed charges in the geographical area where services are performed. By its very nature, the 80<sup>th</sup> percentile rule means that the 80% of all providers (ranked in percentile 1-80) will receive 100% of billed charges.

Unfortunately, the 80<sup>th</sup> percentile rule is driving up overall health care costs because health care providers know that incremental increases to their billed charges to just above the 80<sup>th</sup> percentile raises the overall charge profile. Overtime, the cost of health care services has dramatically increased far beyond the amount allowed by CMS and what we experience in other states.

There are many examples of claims for non-participating providers (non-par) where the charges, and thus, the 80<sup>th</sup> percentile allowable are in excess of 400% of CMS and in some cases, above 2000% of CMS allowable amounts. Granted the examples of seeing charges in excess of 2,000% of CMS are rare, but the customer and the purchasers of health care are not protected from unnecessarily high health care costs. In addition to higher non-par allowable amounts, the rule has also impacted the cost of care for contracting providers. If a provider knows that they can earn 400% of the CMS allowable amount if they are non-participating



provider then the incentive for entering into a health plan contract is greatly diminished. Thus, the contracting rates for services with many specialties result in a small discount of the providers' charges.

Some Alaska based self-insured plans have started paying a percentage of Medicare for out-of-network services; with this new shift and acceptance of more reasonable payments, more providers are willing to join networks. Many states allow claims reimbursement for out-of-network services to be based on a percentage of Medicare. Eliminating or amending the 80<sup>th</sup> percentile rule would allow health plans to negotiate stronger networks that benefit Alaskans.

Aetna would appreciate the opportunity to participate in a robust discussion on restructuring the current payment structure with either a percentage of Medicare or other viable solutions.

We look forward to continued dialogue with the Division on this matter. In the interim, please do not hesitate to contact me with any questions or to discuss.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Butler", with a horizontal line extending to the right.

Shannon Butler  
Sr. Director of Government Affairs

Transmitted electronically to [chip.wagoner@alaska.gov](mailto:chip.wagoner@alaska.gov)

Shannon Bulter

Aetna

January 6, 2017

80% Rule Percentile Rule For Insurers



January 6, 2017

Mr. Chip Wagoner  
Alaska Division of Insurance  
P.O. Box 110805  
Juneau, Alaska 99811-0805

Re: "80<sup>th</sup> percentile rule" amending the provision under 3 AAC 26.110

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provider then the incentive for entering into a health plan contract is greatly diminished. Thus, the contracting rates for services with many specialties result in a small discount of the providers' charges.

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Aetna would appreciate the opportunity to participate in a robust discussion on restructuring the current payment structure with either a percentage of Medicare or other viable solutions.

We look forward to continued dialogue with the Division on this matter. In the interim, please do not hesitate to contact me with any questions or to discuss.

Sincerely,

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Shannon Butler  
Sr. Director of Government Affairs

Transmitted electronically to [chip.wagoner@alaska.gov](mailto:chip.wagoner@alaska.gov)

Dr. Christopher Calvert

January 6, 2017

80% Rule Percentile Rule For Insurers

January 3, 2017

Ms. Lori Wing-Heier, Director  
Division of Insurance  
Department of Commerce, Community  
and Economic Development  
P.O. Box 110805  
Juneau, AK 99811-0805

Dear Director Wing-Heier,

I am writing this letter to emphasize my strong support for the retention of the "80<sup>th</sup> Percentile Rule" [3 AAC 26.110(a)], used for determining charges for healthcare services provided to the Alaskan community.

I am an emergency physician who has worked here in Anchorage since 2010. I have fallen in love with all the amazing natural beauty, and the diverse cultures and people of this vast state. I have decided to spend the rest of my career here, and I see the need for emergency physicians such as myself to serve this community, which clearly has so much need. As an emergency physician, I see whomever presents themselves, regardless of their ability to pay. In fact, I evaluate and treat them even before they are asked for registration information. However, as this issue presents itself, I am concerned for my continued ability to provide this needed care.

Often for their continued care after their emergency department stabilization, patients require inpatient or outpatient follow up by internists and other specialists. The availability of these critical resources will be severely compromised if insurers are not held to the "80<sup>th</sup> Percent Rule", as they will have no public standard for payment to which they will be held accountable. Insurers do not hold the interest of the patient population first, as physicians have sworn an oath to do. The reimbursement for, and thus ultimately the availability of desperately needed care will be compromised. This will ultimately lead to worsened outcomes for patients who are unable to access care, and greater costs for everyone as more transfers must be conducted to reach the appropriate specialist. This will still result in the inability of patients to get needed follow-up once their immediate medical needs have been met due to the distances involved.

As the state of health care is currently in flux, it would be unwise to repeal 3 AAC 26.110(a) before the ramifications of these changes are better understood. If Alaskan administrators and legislators begin to value the advice of insurers over that of physicians and others who actually provide care for the community, it will create a negative spiral effect that will make this amazing state no longer one in which it is feasible to maintain a practice.

I oppose the repeal of 3 AAC 26.110(a), and I humbly request that the Division do the same, in order to continue to protect critically needed access to care for patients.

Very Respectfully,

Christopher Calvert, MD  
6471 Village Pkwy  
Anchorage AK 99504

RECEIVED

JAN 06 2017

SOA-DCCED  
DIVISION OF INSURANCE  
INFORMATION



Grace Campbell

America's Health Insurance Plans

January 6, 2017

80% Rule Percentile Rule For Insurers

**America's Health  
Insurance Plans**

601 Pennsylvania Avenue, NW  
South Building  
Suite Five Hundred  
Washington, DC 20004

202.778.3200  
www.ahip.org



January 6, 2017

Chip Wagoner  
Alaska Division of Insurance  
P.O. Box 110805  
Juneau, AK 99811-0805;

**Re: Reimbursement of Out-Of-Network Health Care Providers**

Dear Mr. Wagoner:

I write today on behalf of America's Health Insurance Plans (AHIP) to provide comments on the Division's notice of possible changes to the reimbursement requirement for health insurers when paying out-of-network health care providers for covered services or supplies. AHIP appreciates the opportunity to submit comments on protections from balance bills for consumers.

America's Health Insurance Plans (AHIP) is the national association representing health insurance plans. Our members provide health and supplemental benefits to the American people through employer-sponsored coverage, the individual insurance market, and public programs such as Medicare and Medicaid. AHIP advocates for public policies that expand access to affordable health care coverage to all Americans through a competitive marketplace that fosters choice, quality, and innovation.

As you know, health plans develop provider networks to offer consumers and employers access to affordable, high-quality care. Health plan networks have been demonstrated as an effective means of containing costs and limiting patient out-of-pocket costs. When providers contract with carriers, patients benefit. Enrollees who receive services from a facility participating in their plan's network have a reasonable expectation that their providers at that facility will also be in-network. Unfortunately, patients may still be seen by an out-of-network provider because some interactions that patients have in a facility could be with ancillary service providers (e.g., anesthesia, radiology, and pathology) who do not have a contract with the health plan to provide covered services at in-network rates. Sometimes these providers, especially emergency room providers, refuse to contract with the facilities or insurers.

We agree with the Alaska Health Care Commission that the Division's current reimbursement mechanism based on out-of-network providers' billed charges is increasing costs and we cannot underscore enough that it may also result in difficulties for carriers to contract with providers and develop robust networks. The rate of payment to out-of-network providers should be set at a level that does not destabilize provider contracts in the state and instead continues to encourage health plans and providers to enter into mutually beneficial contracts. Reimbursement to out-of-network providers should not be based on a methodology that uses billed charges, but rather we

January 6, 2017

Page 2

highly encourage using mechanisms the market is already paying for those services (i.e. accepted rates, contracted rates, or government payment fee schedules).

Billed charges are generally higher than the amount paid to providers under negotiated health plan contracts, or Medicare or Medicaid payment rates. A study using Alaska-specific FAIR Health data has shown average billed charges for 22 procedures at 129.6% to 1617.4% of Medicare reimbursement rates.<sup>1</sup> The Alaska data shows a general trend of much higher out-of-network charges than the national average. We believe that this data confirms the findings of the Alaska Health Care Commission<sup>2</sup> that providers with high market share are pricing their services to ensure that they are below the 80<sup>th</sup> percentile and receive payment for their full billed charges, but artificially inflating costs for consumers across the entire health care system.

Requiring carriers to pay nonparticipating providers' billed charges provides no incentive for providers to join health plans' networks, restricts the ability of carriers to manage costs through contracting with providers, and encourages already-contracting providers to remove themselves from networks. Using billed charges as a reimbursement rate would also create greater challenges for hospitals working to find and contract with providers of hospital-based services who will agree to participate in the same health insurance plans' networks as the hospital. Finally, requiring reimbursement at the billed charges amount would leave consumers open to higher cost sharing and charges that they should not have to incur.

To avoid higher costs and destabilized networks, we reiterate our recommendation to adopt a reimbursement methodology based on what the market is already paying (i.e. accepted rates, contracted rates, or government payment fee schedules) to represent a usual, customary, and reasonable payment for services provided by a nonparticipating provider.

We appreciate the opportunity to provide comments and look forward to continued discussions with you on this important issue. If you have any questions, please do not hesitate to contact me at [gcampbell@ahip.org](mailto:gcampbell@ahip.org) or (202-679-6522).

Sincerely,



Grace Campbell  
Regional Director

---

<sup>1</sup> *Charges Billed by Out-of-Network Providers: Implications for Affordability* at 13. America's Health Insurance Plans. September 2015. Available at [https://www.ahip.org/wp-content/uploads/2015/09/OON\\_Report\\_11.3.16.pdf](https://www.ahip.org/wp-content/uploads/2015/09/OON_Report_11.3.16.pdf).

<sup>2</sup> *Findings and Recommendations 2009-2013*. Alaska Health Care Commission. Available at <http://dhss.alaska.gov/ahcc/Documents/AHCC-Findings-Recommendations2009-2013.pdf>.

Dr. Jonathan P. Coyle  
Alaska Radiology Associates  
January 6, 2017

80% Rule Percentile Rule For Insurers



January 3, 2017

Ms. Lori Wing-Heier, Director  
Division of Insurance  
Department of Commerce, Community and Economic Development  
P.O. Box 110805  
Juneau, AK 99811-0805

Via email: [chip.wagoner@alaska.gov](mailto:chip.wagoner@alaska.gov)

Dear Director Wing-Heier:

As the President of Alaska Radiology Associates, I am submitting this letter in strong support of **retaining** 3 AAC 26.110(a) commonly known as the "80<sup>th</sup> percentile" rule for determining "usual and customary" charges for healthcare services provided to Alaskan consumers.

Having grown up in locally I have seen huge changes in both Anchorage and Alaska over the years. As the son of a physician I have also seen a spectacular evolution in local medical care. Back in the 60's, Alaskan physicians were bold and talented pioneers. They were doctors who dared to operate without a safety net and do the best with what they had. Fast forward to today and you'll find we have a statewide medical system that is largely integrated and staffed by quality practitioners who use state of the art best practices to treat our neighbors and family.

Historically, Alaska has not been the easiest place to attract national quality healthcare providers. We are a state that is often far from families and support structures. We have challenging climates and a high cost of living. For those of us who trained at top-notch institutions, Alaska is about as far as you can get from academic support structures you are familiar with.

As a result, it's important to recognize that Alaska has unique challenges to recruiting and maintaining quality health care compared to other states. Having participated in physician, midlevel and staff recruitment, I can tell you that it is essential for our offer to beat all lower 48 packages. While we who live here love Alaska and imagine others would want to move here just for the lifestyle, I can assuredly tell you that candidates need more.

Although the 80% percentile rule for determining "usual and customary" charges for healthcare services in Alaska was designed as a consumer safety mechanism, the rule also protects consumers by encouraging the kind of physician recruitment Alaskans need to

receive lifesaving diagnostic and treatment services right here at home. For example, in the past 4 years, Alaska Radiology Associates has managed to recruit enough subspecialists to offer fully subspecialized radiology services of the highest national quality. Additionally, we have been able to round out our vascular & interventional radiology work with the addition of two vascular surgeons who have joined our ranks (a process that has taken years).

While I know much of the medical subspecialty terminology/structure is confusing, I want to step back and focus on a concept we should consider a common goal: We want Alaskans to receive top quality health care in Alaska.

None of us want a situation where citizens get misdiagnosed/mistreated compared with a New Yorker. Similarly, none of us want to see Alaskans having to travel to Texas or Chicago and be away from their family/support while getting treated. In fact, this is the very reason Conoco Phillips, British Petroleum, Providence Hospital, and many others invested millions of dollars to build a state of the art Cancer Center right here in Anchorage. They understand the importance of providing quality local care - as well as the hardships patients and families suffer if they have to travel to receive it.

Putting it personally, two years ago a close family friend and fellow physician came down with pancreatic cancer. I can't tell you how good it felt to inform him that our local oncologic surgeons, radiation therapists, medical oncologists, radiologists, support staff and facilities were as good or better than any he could find elsewhere in the United States. I could tell him that his family would not need to take their kids out of school for months to be with him in a strange city. I could say his wife would not need to live in an apartment away from her friends and family. I was able to tell him that he could stay near his friends/support structures and not worry about his dogs or house.

While there are groups who oppose the 80<sup>th</sup> percentile rule, I don't believe they are looking at the whole picture. Practices like Alaska Radiology Associates work hard to see the whole picture and act both ethically and sustainably. We stay in-network with every major insurer and government network in Alaska. Moreover, we work hard not to pass costs on to patients. Although we incur higher overhead than the vast majority of lower 48 practices, we still demand the highest quality from our providers. I am proud to say that the amount and quality of training of our radiologists is the highest of any group in the Providence system.

Additionally, we employ nearly 70 local Alaskans and directly impact many more (e.g. hospital staff, etc). We provide our employees with healthcare benefits and are not immune to the rising cost of healthcare insurance premiums. (Please note that I say insurance premiums rather than simply healthcare costs - since insurance charges have risen in multiples to what my group charges to provide healthcare).

Obviously we locals believe protecting Alaskans is a good thing. The 80<sup>th</sup> percentile rule has accomplished this by helping to avoid excess charges to patients as well as creating an environment favorable to higher quality healthcare. If the rule were to be revoked, then the local oligopoly of insurance companies would no longer have to negotiate locally acceptable in-network rates and would essentially have carte blanche to equate rates with those in Seattle or Portland. This would negate our most powerful recruitment tool and quickly skeletonize Alaska's provider base back to the basic care level.

In the end, I ask that you retain 3 AAC 26.110(a) (the "80<sup>th</sup> percentile" rule for determining "usual and customary" charges for healthcare services provided to Alaskan consumers). I ask that you do this for our families, friends and fellow Alaskans. Help our state stay strong and keep Alaskans in Alaska.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jonathan P. Coyle MD", is written over a series of horizontal lines.

Jonathan P. Coyle MD  
President  
Alaska Radiology Associates

Mr. Robert Craig

Alaska Heart & Vascular Institute

January 6, 2017

80% Rule Percentile Rule For Insurers





Phone: (907) 561-3211  
www.alaskaheart.com

Ankle M. Amos, MD, FACC  
Richard A. Anschuetz, MD, FACC  
Krzysztof W. Balaban, MD, FACC  
Mario Binder, MD, FACC  
David E. Chambers, MD, Ph.D.  
Steven J. Compton, MD, FACC, FACP, FHRS  
Matthew W. Corbett, MD  
Christopher K. Dyke, MD  
Scott A. Ebenhoeh, DO, FACC  
John C. Finley, MD, FACC, FASE  
Lisa N. Gray, DO  
Linda A. Ireland, DO  
Thomas K. Kramer, MD, FACC

Seth L. Krauss, MD, FACC, FSCAI  
Peter D. Marbarger, MD  
Adam C. Mason, MD, FACC  
William P. Mayer, MD, FACC, FACP  
Jonathan R. McDonagh, MD, FACP  
Paul A. Peterson, MD, FACC  
Brian T. Scully, MD, FACC  
Mark A. Selland, MD, FACC  
Alan E. Skolnick, MD, FACC  
David W. Sonnebom, MD, FACC  
Christopher D. Thomas, MD  
Stanley P. Watkins, MD, MHS, FACC  
Mark E. Willcox, MD  
Yiming Wu, MD, Ph.D.

January 05, 2017

Ms. Lori Wing-Heier, Director  
Division of Insurance  
Department of Commerce, Community  
and Economic Development  
P.O. Box 110805  
Juneau, AK 99811-0805

Via email: chip.wagoner@alaska.gov

Dear Director Wing-Heier:

On behalf of Alaska Heart & Vascular Institute, we are submitting this letter in strong support of retaining 3 AAC 26.110(a) commonly known as the "80<sup>th</sup> percentile" rule for determining "usual and customary" charges for healthcare services provided to Alaskan consumers.

Alaska Heart & Vascular Institute is one of the few practices that is currently in-network with each of the three major payers as well as accepting new Medicare, Medicaid and self-pay patients. Repealing this rule will provide insurance companies undue leverage during our planned negotiations this year. The enhanced negotiating power afforded to insurers will likely force providers to go out of network which would ultimately drive costs up for our patients.

As is commonly known, the personnel costs associated with the recruitment and retention of qualified physicians and staff is significantly higher in Alaska. We are proud to offer a stable of highly qualified care givers in the state and have every desire to continue that tradition. However, if a repeal of the "80<sup>th</sup> percentile rule" is a consideration, it will become much more difficult to attract and retain such talent which would have a negative impact on the ability of Alaskans to have the best in cardiology available in-state.

There has never been a more challenging time to deliver health care in Alaska. With the aging population, the changes in Alaska's economy and the uncertainty of the future of the Affordable Care Act, we find it very difficult to plan for the future. Adding this regulatory change to an already acutely unstable environment could be catastrophic for our organization.

We strongly state our opposition to repealing the rule and request the Division to retain the regulation as-is for the protection of patients and providers.

Anchorage - Main Office  
3841 Piper Street  
Suite T-100  
Anchorage, Alaska 99508

Alaska Regional Office  
2751 DeBarr Road  
Suite B-200  
Anchorage, Alaska 99508

Mat-Su  
2490 S. Woodworth Loop  
Suite 250  
Palmer, Alaska 99645

Cath Lab  
Alaska Heart Institute,  
3220 Providence Dr.  
Suite E3-063  
Anchorage, Alaska 99508

AHVI Soldotna  
240 Hospital Place, Suite 20  
Soldotna, AK 99669

Dr. Jennifer Dow  
Alaska Regional Hospital  
Emergency Department  
January 6, 2017

80% Rule Percentile Rule For Insurers

Ms. Lori Wing-Heier  
Director, Division of Insurance  
Department of Commerce, Community and Economic Development  
PO Box 110805  
Juneau, AK 998211-0805

Via email: [chip.wagoner@alaska.gov](mailto:chip.wagoner@alaska.gov)

Dear Director Wing-Heier

I am writing in strong support of retaining 3 ACC 26.110(a), commonly known as the “80<sup>th</sup> percentile rule” for determining usual and customary charges for healthcare services.

I am a Board Certified Emergency Physician and have been practicing in Alaska for over 19 years. I have been with Denali Emergency Medicine Associates, based at Alaska Regional Hospital for this time. I currently serve as the Medical Director of my group, but have also served as the President of the Alaska Chapter of the American College of Emergency Physicians and as President of the Medical Staff of Alaska Regional Hospital. I arrived in Alaska in 1997, attached to the military. I am active within the state, serving as a volunteer Medical Director for the National Park Service, and as the Medical Advisor or Director for multiple EMS agencies. These roles permit me to interact with providers and patients from all over the state, as well as visitors and seasonal workers.

As an Emergency Physician, I am very conscious of the costs of healthcare. As a specialty, emergency physicians have partnered with the State of Alaska in efforts to improve care coordination and access to primary care – primarily through SB 74 – the Emergency Department Coordination Project. I can think of no other specialty that would attempt to reduce its potential income by facilitating patient care in another environment. That being said – as emergency physicians, we are obligated under the federal Emergency Medical Treatment and Labor Act (EMTALA) to see all patients who present to the emergency department, regardless of ability to pay. Some of these patients have no other options – they have been banned from clinics or may have no other avenue to receive care. Some could be seen in a primary care setting – thus our efforts with SB 74; and many need our services, regardless of their insurance status.

I chose to be an Emergency Physician for the variety of patients, opportunities to treat all types of illnesses and injury, and to hopefully have a positive impact on the lives of my patients. As an Emergency Physician, I depend on the experience and knowledge of my physician colleagues in other specialties. I can diagnose a myocardial infarction, but I cannot perform the catheterization and angioplasty to open the vessel; I cannot perform the surgery on the injured child, but can stabilize them and coordinate the care. We must be compensated for our training, expertise and accessibility – 24 hours a day, 7 days a week. Similarly, our colleagues who provide the definitive care must be fairly compensated for their work. If the 80% rule were to disappear, I fear that patients would have little to no access to definitive care. I fear

that costs would only increase as patients would have to be transported to Seattle, via expensive MedEvac flights – further adding to the costs. Patients would now be faced with extraordinary balances, likely bankrupting them, further impacting our economy. I fear that providers will simply “dis-enroll” from insurance companies, making the patient pay even more. As the insurance market in Alaska is already a near monopoly – allowing the insurance agencies to set the price of healthcare will likely further disrupt our economy – driving physicians away and patients into bankruptcy.

The 80% rule has ensured that Alaskan providers are compensated fairly for their expertise, dedication to the Alaskan community by taking federally mandated EMTALA patients, and continuing to accept Medicare, Medicaid and Veterans Administration patients. Cost-shifting is an unfortunate reality of healthcare in the United States.

Finally – I ask you to consider this... No other professional, be it an attorney, educator, or electrician perform a service and then be forced to accept payment that is less than their charges. The 80% rule allows for good-faith negotiation, while still allowing providers to see those covered by public plans and the uninsured. We, as a community and society, cannot afford the loss of this safety-net.

Once again – I implore you to not repeal the 80% rule. This will only serve to reduce the payments made by insurance companies, this will not protect the patient or the overarching Alaskan economy.

Thank you for your consideration.

Jennifer Dow MD, FACEP, FAWM

Medical Director: Alaska Regional Hospital, Emergency Department

Past-President: Alaska Chapter of the American College of Emergency Physicians

Dr. Ilona Farr

Alaska Family Medical Care

January 6, 2017

80% Rule Percentile Rule For Insurers

Alaska Family Medical Care  
Ilona Farr MD  
4045 Lake Otis 201  
Anchorage Alaska 99508  
907 562 4045

January 6, 2017

To Commissioner Division of Insurance:

I am writing in regard to the 80<sup>th</sup> percent rule 3 AAC 26.110 (a).

"The intent of the rule is to reduce the balance billing that a consumer receives from an out-of-network health care provider by requiring health care insurers to pay claims for health care services and supplies based on an amount that is equal to or greater than the 80<sup>th</sup> percentile of charges in a geographical area. Balance billing occurs when out-of-network providers bill a patient for the difference between the amount they charge and the amount that the consumer's insurer pays under the consumer's policy."

The problem with getting rid of this rule is that many insurance companies will set rates low (to make more profit for themselves), which will drive many providers especially primary care or rare specialists out of business. This will result in patients being forced to go to more costly ERs, fly out of state to receive services, and have to pay outrageous copays. A family now has to pay over \$48,000/year with deductibles and copays before insurance pays a penny. For each staff member my business health insurance rates went up 36% this year so we now pay \$18,848 for each staff member including premiums and deductibles before insurance pays a penny. Patients pay even more than this if they go out of network.

Getting rid of this rule will drive prices way up not down and will result in many primary care MDs, especially those that still lose money seeing Medicare and Tricare patients, out of business. It will lead to more financial burden on patients with much higher copays. Why should those of us who own small businesses pay for health insurance on our employees? It is ridiculous to be forced to spend that much on health insurance, which will become of no benefit to our employees, as the insurance companies will no longer have any responsibility to pay for services, but by federal law we have to pay the health insurance companies premiums.

Please keep this law that helps protect consumers from health insurance companies in place. The consequences of repealing this will be much higher costs for consumers and result in fewer medical providers with less access to care for most Alaskans.

Sincerely yours,



Ilona Farr MD

**Ann Flister**  
**PND Engineers, INC.**  
**January 6, 2017**

**80% Rule Percentile Rule For Insurers**



ENGINEERS, INC.

January 6, 2017

Alaska Division of Insurance  
Attn: Chip Wagoner  
P.O. Box 110805  
Juneau, AK 99811

Re: 80<sup>th</sup> Percentile Rule, 3 AAC 26.110 Comments

Below is a summary of the oral comments I provided at the Alaska Division of Insurance hearing this morning on the above subject.

- PND Engineers is an Alaska-based civil engineering consulting firm formed in Anchorage more than 36 years ago, with branch offices in Juneau, Alaska; Seattle, Washington; and Houston, Texas. We have just over 100 employees.
- Over a 5-year period from 2010 to 2015, PND's cost to provide healthcare to our employees more than doubled, from under \$500,000 to well over \$1 million.
- Over the years, we have had to share these additional costs with our employees in the form of increased premiums, deductibles, and co-pays.
- These excessive overhead expenses make it increasingly difficult for our firm to compete with out-of-state companies that are able to provide employee benefits at a much lower cost.
- We are concerned that the disproportionate price of Alaska healthcare and its rate of inflation are unsustainable and endanger our long-term viability.
- We urge repeal of the 80<sup>th</sup> Percentile regulation, which we believe is a contributing factor to the escalating healthcare costs in our state.

Thank you for the opportunity provide input on this important matter.

Sincerely,

Ann Flister, SPHR  
Human Resources Manager

cc: Jim Campbell, President, PND Engineers, Inc.



Mr. Jason Gootee

MODA

January 6, 2017

80% Rule Percentile Rule For Insurers

January 5, 2017

Mr. Chip Wagoner  
Regulations Specialist II  
Alaska Division of Insurance  
P.O. Box 110805  
Juneau, AK 99811-0805  
E-mail: chip.wagoner@alaska.gov

RE: Comments regarding the "80<sup>th</sup> Percentile Rule" (3 AAC 26.110(a))

Dear Mr. Wagoner,

Thank you for the opportunity to comment regarding the 80<sup>th</sup> Percentile Rule found at 3 AAC 26.110(a). Moda Health offers employer group medical plans and individual and group dental plans as Delta Dental of Alaska. We appreciate the attention to this rule and welcome the opportunity to discuss options for lowering health care costs for Alaska consumers.

The Alaska Health Care Commission *Findings and Recommendations 2009-2013* report provides a good starting point for a review of this rule. We agree that the rule has increased health care provider leverage in Alaska and that this leverage in turn leads to higher costs. As described in the report, in many Alaska communities there are a limited number of providers or provider groups, particularly in medical specialties. The 80<sup>th</sup> percentile rule, while intended to protect consumers, contributes to higher costs being billed for health care services because it limits an insurer's ability to work with providers to lower costs. Consumers in turn pay a for these higher health service costs as they are reflected in the premium they pay for a health plan.

One of an insurer's most powerful tools for limiting the cost of health services is the creation of a network of providers. Insurers use networks to negotiate lower rates with providers in exchange for better access to health plan enrollees. Enrollees typically enjoy lower out of pocket costs as an incentive to use network providers rather than providers who do not participate in the insurer's network. Enrollees often prefer to use network providers for this reason. An insurer typically also requires a provider to accept the agreed-upon contracted rate for a service and prohibits providers from billing the enrollee any additional cost for the service (a practice known as balance billing). Providers can also be further encouraged to join a network if the offered



[modahealth.com](http://modahealth.com)

510 L Street Suite 270 Anchorage, Alaska 99501 | 800-852-5195

contract rate is more favorable or comparable to the amount an insurer would pay for a service outside the network.

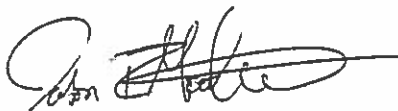
With the 80<sup>th</sup> percentile rule in place, a provider has less incentive to join an insurer's network as the rule maintains out of network reimbursement at an artificially high level. As described in the Commission report, providers who have larger market share, as is typical in Alaska communities, can ensure that their desired rates are within the 80<sup>th</sup> percentile, thereby affording them the ability to receive the full amount they bill for a service. For a provider who remains out of network, there is no limitation against balance billing and so the provider may charge a rate higher than the 80<sup>th</sup> percentile with no protection for the consumer.

Eliminating the rule would restore more equal leverage between providers and insurers and allow the parties to work on equal terms to develop reasonable contracted rates. This would help to lower overall costs for health care services in Alaska and also provide greater protection to consumers as insurers would expand networks that afford lower out of pocket costs and protection against balance billing.

Thank you again for the opportunity to comment regarding the 80<sup>th</sup> percentile rule. Should you have any questions, please let me know.

Sincerely,

Jason Gootee

A handwritten signature in black ink, appearing to read "Jason Gootee", with a long horizontal flourish extending to the right.

Director, Alaska Sales & Service

Dr. Steven Gordon

January 6, 2017

80% Rule Percentile Rule For Insurers

## **Napoleon, Christopher L (CED)**

---

**From:** yoyodoc@aol.com  
**Sent:** Sunday, January 01, 2017 4:49 PM  
**To:** Wagoner, Chip (CED)  
**Subject:** 80%

January 1, 2017

Ms. Lori Wing-Heier, Director  
Division of Insurance  
Department of Commerce, Community  
and Economic Development  
P.O. Box 110805  
Juneau, AK 99811-0805

Via email: [chip.wagoner@alaska.gov](mailto:chip.wagoner@alaska.gov)

Dear Director Wing-Heier:

I'm a family physician working locum tenens for various entities in Alaska, including Native Corporations, Providence, and the VA. In the last 6 years I've found myself spending more and more of my professional time in Alaska. As an employed physician, it's important to remember that I do not personally benefit from the 80% rule. But my employers rely on insurance reimbursement to hire me.

I work in remote areas (and, by the way, have a really good time) where cost of living is very high and my services are out of network when it comes to Premara. These areas have to compete with the rest of the US in terms of physician recruitment. And while I prefer heat to cold, and my wife prefers Barrow to the Bahamas, you can't say the same of a lot of doctors and their families. To put it another way, a physician doesn't want to take a cut in pay to live in towns where there is 1 grocery store and no movie theater, and total financial commitment (plane fare, lodging, and time loss in transit) for a family visit to aging parents or new grandchildren can push past 5 figures.

And if the 80% rule is bargained down to the 70% rule, make no doubt that money flow from the insurance company to cover their contractual obligations will slow even further. In the rest of the industrialized world, health insurers are expected to pay out no less than 95% of what they take in, but in the US they rarely pay out more than 80%. They have become extremely adept at manipulating the public, the government, their own statistics, and the law to line their overstuff pockets.

As it is, Alaska insurance purchasers face a virtual monopoly. And that monopoly increasingly has leverage to put independent practitioners into their network. That large leverage would grow by shrinking the 80% rule by even 1%.

My experience with insurers while in private practice was bad, and the larger the insurer, the worse they treated us. They routinely disallowed 10% of the claims for no good reason, and the passive-aggressive behavior didn't stop there. The float on that money, calculated over the state, was enormous. Once in network, the pressure to stay in, no matter how bad the treatment, was enormous.

We cannot ignore the geographic imperative in Alaska. Consider those who live in "the bush." To access specialty care requires time from work/subsistence activities, plane fare, and lodging. Follow up appointments can run into the thousands. In the face of large collateral costs and 4 and 5 figure deductibles, asking them to shoulder a larger percentage of medical costs out of pocket would be a significant barrier to getting necessary care.

If you have not done so already, please read Steven Brill's book, **America's Bitter Pill**. It details the perfidy of the insurance industry (as amplified by the ACA) and the consequences of power-grabs in the monopolization of this vital resource. The Pittsburgh experience is most instructive, and we don't want such ugliness to besmirch Alaska.

I'm writing right now from Metlakatla. The island's grocery store has a monopoly, but is well-stocked, well-lit, reasonably priced, with friendly staff only because of personal integrity and a strong cultural tradition of being generous in commerce. You cannot trust an insurance company to take as benign a stance given the power of monopoly.

Sincerely,

Steven Gordon, MD

Dr. Alan Gross

January 6, 2017

80% Rule Percentile Rule For Insurers

## Napoleon, Christopher L (CED)

---

**From:** Wagoner, Chip (CED)  
**Sent:** Thursday, January 05, 2017 1:07 PM  
**To:** Napoleon, Christopher L (CED)  
**Subject:** FW: 80th percent rule

Chip Wagoner, SPIR  
Regulations Specialist II  
Alaska Division of Insurance

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**From:** Alan Gross [mailto:al13gross@gmail.com]  
**Sent:** Monday, December 12, 2016 12:27 PM  
**To:** Wagoner, Chip (CED)  
**Subject:** 80th percent rule

Dear Mr. Wagoner,

I am submitting my formal comments regarding the State's evaluation as to whether to amend or repeal the 80th percent rule in Alaska (division regulation 3 AAC 26.110).

I urge the State of Alaska to **fully repeal this regulation**. It is only serving to inflate medical pricing in Alaska. As you know, I am an Orthopedic Surgeon in Alaska and have worked in Alaska for over 20 years. I have a lot of experience with understanding insurance company reimbursements and the arguments as to why the "rule" should stay in effect. I strongly disagree with the assertion that reimbursements must be kept high in order to attract doctors to Alaska. I also strongly disagree with the argument that the "rule" keeps patients from being balance billed. It is instead allowing primary care physicians in rural communities, and specialists in nearly all communities to charge almost whatever they like and be reimbursed at extraordinary levels (often more than 500% more than physicians in the lower 48), ultimately costing the consumer in the form of elevated insurance rates. The only solution to get Alaska on the same playing field as the lower 48 is to fully repeal this rule and let the free market work properly to adjust pricing.

Thank you for your consideration

Best regards,

Alan Gross, MD MPH



Dr. Douglas Haghighi  
Internal Medicine Associates LLC  
January 6, 2017

80% Rule Percentile Rule For Insurers



# Internal Medicine Associates, LLC

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## PULMONARY

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Gregory D.  
GERBOTH, M.D.,  
FACP, FACP

Mark A.  
MARTYNOWICZ,  
M.D., FACP

## ENDOCRINOLOGY

Janice A.  
KOVAL, M.D.

January 05, 2017

Ms. Lori Wing-Heier, Director  
Division of Insurance  
Department of Commerce, Community  
and Economic Development  
P.O. Box 110805  
Juneau, AK 99811-0805

Via email: [chip.wagoner@alaska.gov](mailto:chip.wagoner@alaska.gov)

Dear Director Wing-Heier:

On behalf of Internal Medicine Associates, I am submitting this letter in strong support of retaining 3 AAC 26.110(a) commonly known as the "80<sup>th</sup> percentile" rule for determining "usual and customary" charges for healthcare services provided to Alaskan consumers.

Internal Medicine Associates works toward the common goal of providing the best quality of care to our patients through convenient and affordable healthcare services. Our practice consists of eleven providers with varying specialties, all of whom are devoted to caring and compassionate medical care for Alaskans. Many of our providers have been in Alaska for decades, and we are very involved in the community. Our comments herein reflect our position as both providers and community members.

I believe strongly that there needs to be a fair payment regulation in place in Alaska, especially now that we essentially have only two insurers in the market. By allowing insurance companies to reimburse for services at less than the 80<sup>th</sup> percentile, Alaskan's out-of-pocket patient costs may actually increase. Given that Premiera now has a monopoly in the individual market, the State



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MARTYNOWICZ,  
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## ENDOCRINOLOGY

Janice A.  
KOVAL, M.D.

should increase its regulatory oversight and not make any significant changes to regulations until the current market is adequately assessed. We request the State study the impacts of a single market participant on insured patients before making a proposal for changes.

This is especially important considering the uncertainty of the Affordable Care Act's continuation under President-elect Trump and a more conservative legislative branch. We strongly encourage the State of Alaska to wait and see what changes will be coming from federal legislation before making any major changes to our payment structure, which I believe has not only helped physicians but, most importantly, patients. The 80<sup>th</sup> percentile regulation protects patients by providing transparency and consistency in reimbursement and out-of-pocket expenses. Implementing change in the current political climate may have unintended consequences and will likely cause concern for our patients.

Again, I am in strong support of retaining 3 AAC 26.110(a) commonly known as the "80<sup>th</sup> percentile" rule for determining "usual and customary" charges for healthcare services provided to Alaskan consumers, as it is for the protection of patients and medical providers.

Sincerely,

  
Douglas Haghighi, MD  
Internal Medicine Associates

Dr. Robert Hall

January 6, 2017

80% Rule Percentile Rule For Insurers

## Napoleon, Christopher L (CED)

---

**From:** Wagoner, Chip (CED)  
**Sent:** Thursday, January 05, 2017 1:23 PM  
**To:** Wing-Heier, Lori K (CED); Latham, Anna M (CED); Bailey, Sarah S (CED); Napoleon, Christopher L (CED)  
**Subject:** FW: 80th Percentile

FYI

Chip Wagoner, SPIR  
Regulations Specialist II  
Alaska Division of Insurance

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**From:** Robert Hall M.D. [mailto:rhall@opaak.com]  
**Sent:** Thursday, January 05, 2017 12:46 PM  
**To:** Wagoner, Chip (CED)  
**Subject:** 80th Percentile

January 5, 2017

Ms. Lori Wing-Heier, Director  
Division of Insurance  
Department of Commerce, Community  
and Economic Development  
P.O. Box 110805  
Juneau, AK 99811-0805

Via email: [chip.wagoner@alaska.gov](mailto:chip.wagoner@alaska.gov)

Dear Director Wing-Heier:

I am submitting this letter in strong support of retaining 3 AAC 26.110(a) commonly known as the "80th percentile" rule for determining "usual and customary" charges for healthcare services provided to Alaskan consumers.

I have been practicing orthopedic surgery in Alaska since 1995 and plan to continue practicing here until I retire. Our group has recently become in network with one of the largest private insurers doing business in the state so this rule has less impact on myself than others in the medical community but I still feel strongly enough about this issue to provide comment.

The stated reason to repeal this rule is to help reduce costs for healthcare consumers in Alaska and I do not believe repeal will have any significant effect for the majority of Alaskans for the following reasons. The 80% rule does not apply to self insured health plans. According to discussions we have had recently with 2 major insurers about 60% or more of their business in Alaska consists of administering self insured plans for large employers. Group policies for smaller employers and individual policies for whom the 80th percentile rule applies are the minority in the market.

The rule also does not apply to contracted or in network providers. According to a 2015 physician workforce study from the American Association of Medical Colleges there are approximately 1800 actively practicing physicians in the state of Alaska. Premera Alaska's website states that they have 1700 providers in their network. The majority of the physicians and providers in Alaska are already signed up as in network. As they have expanded their networks the private insurers have become much more aggressive lately at steering patients to in network providers by increasing financial penalties paid by patients. The only time the 80% rule comes into play is when a patient with a group or individual policy sees an out of network provider. That is a rare enough occurrence that changing the rule will not have any significant impact on healthcare costs.

Repealing the rule, however, would give more leverage to the insurers to entice the remaining out of network physicians to sign on as an in network provider. It also makes it easier for the insurers to retain the providers currently signed up as leaving would become much less attractive. Physicians negotiating with large companies with revenues of several billion dollars annually are already at a very severe disadvantage.

In summary, I do not believe efforts to repeal this rule are about healthcare costs but are about control of the Alaska healthcare market. Alaskans have traditionally been in favor of retaining control of their affairs locally rather than allowing outside entities to have control. Retaining this rule provides some small amount of protection for Alaskans and their physicians.

Sincerely,

Robert Hall MD  
Anchorage, Alaska

Dr. John B. Halligan  
Peninsula Radiation Oncology Center  
January 6, 2017

80% Rule Percentile Rule For Insurers



240 Hospital Place  
Soldotna, AK 99669  
907.262.7762

[www.PeninsulaRadiation.com](http://www.PeninsulaRadiation.com)

January 4, 2017

Ms. Lori Wing-Heier, Director  
Division of Insurance  
Department of Commerce, Community  
and Economic Development  
P.O. Box 110805  
Juneau, AK 99811-0805

Via email: [chip.wagoner@alaska.gov](mailto:chip.wagoner@alaska.gov)

Dear Director Wing-Heier:

On behalf of Peninsula Radiation Oncology Center (PROC), I am submitting this letter in strong support of retaining 3 AAC 26.110(a) commonly known as the "80<sup>th</sup> percentile" rule for determining "usual and customary" charges for healthcare services provided to Alaskan consumers.

Our mission is to provide access to quality cancer care as close to home as possible. In radiation therapy, a patient receives treatment every day for up to eight weeks. Prior to the opening of Peninsula Radiation Oncology Center in Soldotna, AK in July of 2013, cancer patients who live on the Kenai Peninsula had no choice but to drive roughly three hours (each way) to Anchorage, or to fly out of state to receive radiation therapy. Traveling long distances for care for the length of these treatments created an emotional, physical, and financial burden for patients and their caregivers.

Radiation therapy is a costly technology anywhere; the "extreme" conditions of living and doing business in Alaska requires additional resources and investment. Our company has invested over \$10 million in order to build and operate our cancer center, and to ensure that the quality of radiation care delivered to Alaska residents is on par with that of healthcare available in the lower 48 states. The costs of providing this state of the art care are substantial. In addition to the millions of dollars of technology and the specialized building construction, the highly skilled personnel (full time physicist, dosimetrist, 2 radiation therapy technologists, nursing and front desk staff) make these clinics very expensive to operate. We have treated 334 patients since our opening, allowing 334 families to remain closer to home during what is unquestionably one of the most difficult times in life.

For the three and a half years since PROC has been providing service to patients in Soldotna, the total amount paid to PROC by patients for services is \$188,896. This equates to only \$565.56 per patient for the 334 patients who have received a full course of



radiation therapy. This is consistent with the amount for which a patient in the lower 48 would be responsible.

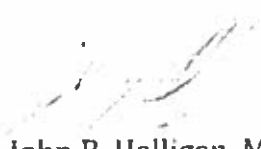
During the same period, the 80% Rule has allowed us to write off nearly \$100,000 in out-of-network adjustments that would normally have been billed to patients.

We oppose repealing the 80<sup>th</sup> percentile rule as it will have not only an impact on patient access to quality care, but it will also have an economic impact on the areas we serve for several reasons:

- Regardless of the initial cost factor, the overall well-being and health of the patient are improved by treating close to home. Better health means less healthcare costs subsequent to cancer. Hospitalizations are dramatically reduced when cancer patients are treated close to home.
- When a patient receives cancer treatment locally, all of the direct living costs, sales tax, transportation costs, etc. remain within the community. The economic impact of a patient's two-month stint out of state is estimated at 5-8 times their wages for the same period. Lost local wages spent outside of Alaska represent a huge multiplying effect of diminished revenue within the state – including less taxes from everyday living spending on items such as gas, food, and other services.
- When a patient is out of state for eight weeks of treatment, they are likely unable to work. Most of our patients are able to continue working while they receive radiation treatments locally. Whether the patient is a school system employee or a retail employee, it is always better for the employer to keep productivity up without replacement or temporary costs to fill a position. This allows the revenue generator of the local economy to keep functioning as needed. Just as the local Chamber of Commerce can calculate the overall economic value of every job added to the area, the same calculations apply when a worker is temporarily removed from their job. The transfer of healthcare costs to perceived lower costs in other places does not include the significantly higher loss of revenue to communities and to the state by the patient leaving Alaska.
- The economic impact of losing healthcare providers and their teams would be significant. Healthcare professionals are significant contributors to local and state revenue streams via philanthropy, scholarship programs, large purchases, housing, attraction of other industries, etc.
- With the aforementioned cost of doing business in Alaska, and the inherent cost of the technology used in our specialty in particular, it is safe to say that *no radiation oncology practice could be financially viable in Alaska outside the Anchorage city limits on the rates paid in the lower 48*. Physicians would relocate their practices to places with higher patient volumes. Not only would patients be negatively affected, but a very large economic piece of Alaska would be impacted.

In conclusion, the repeal of the 80<sup>th</sup> percentile rule would create an economic hardship on patients and their families, as well as on the surrounding communities. We respectfully request the Division retain the regulation for the protection of Alaska's medical providers, for the economic health and well-being of our local communities, and most importantly, to protect access to quality healthcare for the patients that we serve.

Sincerely,



John B. Halligan, MD  
COL (ret) USA  
Medical Director,  
Peninsula Radiation Oncology

Mr. Curt Hebert  
Marsh & McLennan Agency  
January 6, 2017

80% Rule Percentile Rule For Insurers

## Marine-Alley, Lynn M (CED)

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**From:** Wagoner, Chip (CED)  
**Sent:** Friday, January 06, 2017 3:46 PM  
**To:** Wing-Heier, Lori K (CED); Latham, Anna M (CED); Bailey, Sarah S (CED); Marine-Alley, Lynn M (CED)  
**Subject:** FW: Hearing on the 80th Percentile Rule

FYI

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**From:** Hebert, Curtis [<mailto:curtis.hebert@marshmc.com>]  
**Sent:** Friday, January 06, 2017 3:16 PM  
**To:** Wagoner, Chip (CED)  
**Subject:** Hearing on the 80th Percentile Rule

Dear Mr. Wagoner:

I would like to thank the Alaska Division of Insurance for allowing open testimony today on the AAC 26.110, commonly known as the "80<sup>th</sup> percentile rule." I believe DOI should amend or repeal the provision.

My simple take away from this morning's testimony from the health care provider community was not about protecting the consumer but more about financial protection for themselves.

Here are a few points I would like to make:

- The 80<sup>th</sup> Percentile Rule is not protecting consumers as the original intent of the Regulation because out of network providers bill patients the unpaid charges not reimbursed by the insured health plan.
- Due to lack of competition among some provider categories, those providers with 20% or more of the market share set the market allowed charges.

The Alaska Health Care Commission, in their Findings and Recommendations 2009-2013, felt that the rule "exacerbated" relative health care provider leverage in pricing stating: "Since many providers have over 20% of their market share, this implies that those providers can ensure that their charges are below the 80<sup>th</sup> percentile and therefore, receive payment for their full billed charges."

- The 80<sup>th</sup> Percentile Rule leads to "Surprise Bills" after procedures/services by providers.
- The Alaska Health Care Commission determined that Alaska has the highest average annual costs for employee health benefits in the Nation. The underlying issue of health care charges is a driving factor for the high cost of employee health benefits and can be partially attributed to the 80<sup>th</sup> percentile rule.

I believe it is imperative that all stakeholders come together to work towards another solution to help make health care more affordable and sustainable in the State of Alaska.

Curt Hebert | Vice President  
Marsh & McLennan Agency

Mr. Ward Hinger  
Alaska Radiology Associates  
January 6, 2017

80% Rule Percentile Rule For Insurers



January 3, 2017

Ward Hinger  
CAO Alaska Radiology Associates  
3650 Piper St Suite A  
Anchorage AK 99508

Ms. Lori Wing-Heier, Director  
Division of Insurance  
Department of Commerce, Community  
and Economic Development  
P.O. Box 110805  
Juneau, AK 99811-0805

Director Wing-Heier,

As the Chief Administrative Officer (CAO) for Alaska Radiology Associates Inc. (ARA), I am providing written comment on the 80<sup>th</sup> percentile rule and its effect on consumers and healthcare costs. I respectfully request your assistance to retain 3 AAC 26.110(a) commonly known as the “80<sup>th</sup> percentile” rule for determining “usual and customary” charges for healthcare services provided to Alaskan consumers.

I currently serve in two positions - CAO for ARA and as the CEO for Imaging Associates LLC. It is a pleasure to serve the largest radiology group in the state of Alaska who is multidisciplinary in their approach with specialists in diagnostic, interventional, and vascular. An independent group of physicians who are entrepreneurial in nature and often take the risk of being the first and only to introduce state-of-the-art services serving Alaskans from Nome to Unalaska and from the North Slope to Anchorage.<sup>i</sup>

As a healthcare administrator with over 20 years of experience, I have seen positive changes to Alaska’s healthcare landscape; increasingly so since 2001. One of the changes is the significant maturation of Alaska’s specialty care over the years which I directly attribute to the 80<sup>th</sup> percentile rule. I understand that the reason the 80<sup>th</sup> percentile regulation was put into effect was to provide more transparency and greater consumer protections – which it has! With that said, I don’t believe enough credit has been given to the same regulation for the impact it has had since 2004 in maturing Alaska’s specialty network. A network which now offers extremely high quality subspecialty care in a very timely and cost effective manner. By requiring insurance companies to use the 80<sup>th</sup> percentile as the UCR, the State of Alaska has in effect covered the premium it takes to offer subspecialty care to Alaskans. As with many goods and services sold in Alaska, there is a premium required above and beyond what one would expect to pay in the *lower 48*. This is true for purchasing membership to fitness centers, buying groceries, clothes, construction etc. The same premium is true when it comes to healthcare, particularly when recruiting and retaining specialists such as radiologists and vascular surgeons.

My perspective is derived from first-hand experience. During my tenure in the USAF Medical Service, I was fortunate to serve in a DOD Joint Service position (Director of TRICARE) from 2001 through 2005. My primary responsibility was working closely with the AK Military Hospital Commanders representing the Army, Air Force, and Navy as well as the Coast Guard and AK VA to ensure that there was timely access to specialty care for active duty, retirees, veterans and their family members throughout the State of Alaska. Prior to the implementation of this regulation, all government entities found it extremely difficult to obtain timely access to specialty care often requiring their beneficiaries to travel outside the State of Alaska resulting in significant cost associated with travel, per diem, lodging etc to the government entity administering the benefit. Various models were used in the past (particularly by TRICARE and AK VA) to determine network adequacy i.e. the number of physicians in various specialties required by a population of people. One such model, referenced to as the Graduate Medical Education Advisory Committee, illustrated **grave** deficiencies across-the-board. The deficiencies illustrated by the model were felt in a very material way by plan administrators and the patients. Plan administrators were faced with the daunting costs associated with travel to the lower 48 busting budgets for DoD, Coast Guard and Indian Health Services. Patients experienced significant delays in accessing care and once they returned, often experienced life-threatening issues when they needed acute follow up but no one local was available to see them. My analysis and presentation to DOD healthcare leadership was backed up by other sources such as the Report of the AK Physician Supply Task Force.<sup>ii</sup> Today, access to specialty care is much different due to the positive impact of the 80<sup>th</sup> percentile regulation. Deficiencies (aforementioned) have, for the most part, been fully resolved *eliminating* a significant cost to the government entities. Indeed TRICARE, AK VA, Alaska Native Tribal Health Consortium, Medicare and Medicaid beneficiaries all have reaped tremendous benefits from the 80<sup>th</sup> percentile regulation, reducing cost of accessing care while enhancing the quality of life for the beneficiary and arguably providing better quality of care. Patients are simply better served when treated in their own communities!


In addition to seeing firsthand how the premium (covered by the 80<sup>th</sup> percentile regulation) has matured Alaska's access to quality specialty care, I have also experienced the vast difference in the compensation it takes to recruit and retain specialists in Southcentral Alaska vs Seattle. A few years back I had the pleasure of serving a large physician group based in Everett WA who provide specialty services in fourteen WA-associated healthcare facilities. As their CAO, I had significant exposure to the recruiting and retention activities and can assure you that it is much easier to recruit a specialist in Seattle and even rural WA than it is in Anchorage / Mat-Su Valley. Ironically, ARA who was recently successful in recruiting the first vascular surgeon to serve residents of the Mat-Su Valley! This new addition to the ARA team will be one of only four vascular surgeons in the entire State of Alaska! Accomplishing significant feats such as this often requires paying specialists more in Anchorage than Seattle as we ask specialists to leave families and sever ties to communities which they have grown to love to move to the Last Frontier. Given my experience with Alaska healthcare (now over 15 years), I can confidently say that if the premium to recruit and retain specialists in Alaska is removed, that within a few years, Alaskans would see a rapid implosion of their specialty network requiring private users and government entities to once again seek specialty care in the lower 48.

There has been a significant amount of public discourse recently about the ever increasing cost of healthcare for Alaskans. Unfortunately, much of the discourse has been inappropriately pinning the exponential increase in the cost of commercial insurance on physicians. As a provider of specialty services, I can assure you that our charges **are not** increasing more than the cost of inflation and both ARA and IA are contracted with payors. What I can share with you however is the vast majority of the complaints I have heard come from patients who are covered by private insurance. These patients have seen their annual deductibles over the last six years jump from \$500 to \$10,000 or even \$15,000 with corresponding double digit annual percentage increases in their premiums. The primary cause of those exponential increases is the Affordable Care Act (ACA) as Insurance companies struggle to offer broad ACA compliant plans to those who have pre-existing illnesses, expanded benefits, etc.<sup>iii</sup> As the State of Alaska is quickly realizing (\$55M insurance bailout via HB 374), the exponential increase in ACA-related costs are simply unsustainable. I believe the vast majority of specialist Southcentral Alaska are similar in nature to my practices and therefore again reiterate that the surge in the cost of private insurance is not due to a sudden change or increase in physician's rates in Alaska. Instead, they are directly related to the unrealistic and unsustainable ACA which political leadership from even the Democratic Party now admits. Therefore, it is highly likely that in 2017 the ACA will be either repealed or materially altered. Given the high probability of that happening, it would seem irresponsible to significantly alter or repeal the Alaska consumer protections offered by the 80<sup>th</sup> percentile rule before the state knows what the new healthcare marketplace will look like and how that will affect the cost of health insurance for Alaskans.

In closing, I convey strong opposition to any action aimed at repealing or amending 3 AAC 26.110(a) commonly known as the "80th percentile" rule for determining "usual and customary" charges for healthcare services provided to Alaskan consumers. I thank you in advance for considering this request and have reserved optimism that Alaska's Gubernatorial and Legislative Branches will concur with my recommendation.

I can be reached at (907) 562-1282 or via email – [ward.hinger@imagingak.com](mailto:ward.hinger@imagingak.com) if you have any questions or concerns.

Sincerely,



Ward Hinger

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<sup>i</sup> <https://www.alaskarad.com/our-diagnostic-achievements/>

<sup>ii</sup> <https://www.alaska.edu/health/downloads/PSTFweb.pdf>

<sup>iii</sup> <http://www.forbes.com/sites/theapothecary/2016/07/28/overwhelming-evidence-that-obamacare-caused-premiums-to-increase-substantially/#5787544d46e3>



Dr. Sandra W. Horning  
Providence Alaska Medical Center  
January 6, 2017

80% Rule Percentile Rule For Insurers

January 4, 2017  
Ms. Lori Wing-Heier, Director  
Division of Insurance  
Department of Commerce, Community,  
and Economic Development  
P.O. Box 110805  
Juneau, AK 99811-0805

Dear Director Wing-Heier:

I am submitting this letter in strong opposition of repealing or amending 3 AAC 26.110(a) commonly known as the "80<sup>th</sup> percentile" rule for determining "usual and customary" charges for healthcare services provided to Alaskan consumers.

I have been practicing pediatric emergency medicine in Alaska for the past five years. I came to Alaska as the only pediatric emergency physician in the state of Alaska to date to develop a pediatric emergency program to care for the children of the state of Alaska. This is a critically important subspecialty for our children for many reasons, but one of the main reasons is the distance of our state to the next tertiary pediatric care facility and the need for local pediatric emergency expertise.

I oppose repealing or amending 3 AAC 26.110(a) because it will cause limitations in the timely access of specialty care. Because of our geographic isolation to tertiary levels of care it is imperative that we maintain a strong group of subspecialists in Alaska. Many of our excellent subspecialists will be unable to continue practicing in Alaska because they will not be able to afford to do so because of the major decrease in their compensation. Without these subspecialists, there will be increased mortality and morbidity for children and adults in Alaska.

Without this rule in Alaska there will not be the ability of subspecialists to negotiate with insurance companies and payors because the companies and payors will have relative monopolies, and they will have no incentive to negotiate. Studies have also shown that lack of access to timely specialty care increases costs as the health status of the population declines.

As a physician, wife, and mother I am concerned about the access to subspecialty care in Alaska for my patients, my spouse, and my children. Because of the potential for the increase in morbidity and mortality in emergent situations many primary care providers and emergency medicine physicians will decide to leave our state as well for the welfare of their families as well as their concern for the outcomes for their patients.

I oppose repealing this rule. I hope that the Division will retain the regulation as is to protect our patients, our providers, and to allow us to continue to develop and retain excellent subspecialty care in our great state of Alaska.

Sincerely,

Sandra W. Horning, MD, FACEP, FAAP  
Providence Alaska Medical Center  
Anchorage, Alaska

Mr. Eugene Huang  
Southeast Radiation Oncology Center  
January 6, 2017

80% Rule Percentile Rule For Insurers

## **Marine-Alley, Lynn M (CED)**

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**From:** Napoleon, Christopher L (CED)  
**Sent:** Monday, January 09, 2017 2:40 PM  
**To:** Marine-Alley, Lynn M (CED)  
**Subject:** FW: Comment on "3 AAC 26.110" 80th Percentile Rule, for the upcoming Notice of Public Scoping  
**Attachments:** Comment on 3 AAC 26.110.pdf

Christopher Napoleon

Alaska State Division of Insurance

Admin Assistant II

907-269-7892

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**From:** Wagoner, Chip (CED)  
**Sent:** Thursday, January 05, 2017 1:11 PM  
**To:** Napoleon, Christopher L (CED) <chris.napoleon@alaska.gov>  
**Subject:** FW: Comment on "3 AAC 26.110" 80th Percentile Rule, for the upcoming Notice of Public Scoping

Chip Wagoner, SPIR  
Regulations Specialist II  
Alaska Division of Insurance

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**From:** Eugene Huang, MD [<mailto:EugeneHuangMD@southeastradiation.com>]  
**Sent:** Wednesday, January 04, 2017 9:20 AM

**To:** Wagoner, Chip (CED)

**Subject:** Comment on "3 AAC 26.110" 80th Percentile Rule, for the upcoming Notice of Public Scoping

January 4, 2017

Ms. Lori Wing-Heier, Director  
Division of Insurance  
Department of Commerce, Community  
and Economic Development  
P.O. Box 110805  
Juneau, AK 99811-0805

Via email: [chip.wagoner@alaska.gov](mailto:chip.wagoner@alaska.gov)

Dear Director Wing-Heier:

On behalf of Southeast Radiation Oncology Center (SROC), I am submitting this letter in strong support of retaining 3 AAC 26.110(a) commonly known as the "80<sup>th</sup> percentile" rule for determining "usual and customary" charges for healthcare services provided to Alaskan consumers.

Our mission is to provide access to quality cancer care as close to home as possible. In radiation therapy, a patient receives treatment every day for up to eight weeks. Prior to the opening of Southeast Radiation Oncology Center in Juneau, AK in December of 2013, cancer patients who live in the southeast region of the state had no choice but to fly to Anchorage or out of state to receive radiation therapy. Traveling long distances for care for the length of these treatments created an emotional, physical, and financial burden for patients and their caregivers.

Radiation therapy is a costly technology anywhere; the "extreme" conditions of living and doing business in Alaska requires additional resources and investment. Our company has invested over \$10 million in order to build and operate our cancer center, and to ensure that the quality of radiation care delivered to Alaska residents is on par with that of healthcare available in the lower 48 states. We have treated 186 patients since our opening, allowing 186 families to remain closer to home during what is unquestionably one of the most difficult times in life.

For the three and a half years since SROC has been providing service to patients in Juneau, the total amount paid to SROC by patients for services is \$478,674. This equates to only \$2,573.52 per patient for the 186 patients who have received a full course of radiation therapy. This is consistent with the amount for which a patient in the lower 48 would be responsible.

During the same period, the 80% Rule has allowed us to write off \$160,000 in out-of-network adjustments that would normally have been billed to patients.

We oppose repealing the 80<sup>th</sup> percentile rule, as a repeal would not only have an impact on patient access to quality care, but it would also have a significant economic impact on the areas we serve for several reasons:

- Regardless of the initial cost factor, the overall well-being and health of the patient are improved by treating close to home. Better health means less healthcare costs subsequent to cancer. Hospitalizations are dramatically reduced when cancer patients are treated close to home.
- When a patient receives cancer treatment locally, all of the direct living costs, sales tax, transportation costs, etc. remain within the community. The economic impact of a patient's two-month stint out of state is estimated at 5-8 times their wages for the same period. Lost local wages spent outside of Alaska represent a huge multiplying effect of diminished revenue within the state – including less taxes from everyday living spending on items such as gas, food, and other services.

- When a patient is out of state for eight weeks of treatment, they are likely unable to work. Most of our patients are able to continue working while they receive radiation treatments locally. Whether the patient is a school system employee or a retail employee, it is always better for the employer to keep productivity up without replacement or temporary costs to fill a position. This allows the revenue generator of the local economy to keep functioning as needed. Just as the local Chamber of Commerce can calculate the overall economic value of every job added to the area, the same calculations apply when a worker is temporarily removed from their job. The transfer of healthcare costs to perceived lower costs in other places does not include the significantly higher loss of revenue to communities and to the state by the patient leaving Alaska.
- The economic impact of losing healthcare providers and their teams would be significant. Healthcare professionals are significant contributors to local and state revenue streams via philanthropy, scholarship programs, large purchases, housing, attraction of other industries, etc.
- With the aforementioned cost of doing business in Alaska, and the inherent cost of the technology used in our specialty in particular, it is safe to say that *no radiation oncologist could live in Alaska on the rates paid in the lower 48.* Physicians would relocate their practices to places with higher patient volumes. Not only would patients be negatively affected, but a very large economic piece of Alaska would be impacted.

In conclusion, the repeal of the 80<sup>th</sup> percentile rule would create an economic hardship on patients and their families, as well as on the surrounding communities. We respectfully request the Division retain the regulation for the protection of Alaska's medical providers, for the economic health and well-being of our local communities, and most importantly, to protect access to quality healthcare for the patients that we serve.

Sincerely,

Dr. Eugene Huang



Eugene Huang, MD  
 Medical Director, Radiation Oncology  
 1701 Salmon Creek Lane  
 Juneau, AK 99801  
 907.586.5762 office  
 713.530.6632 cell  
 907.586.5777 fax  
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January 4, 2017

Ms. Lori Wing-Heier, Director  
Division of Insurance  
Department of Commerce, Community  
and Economic Development  
P.O. Box 110805  
Juneau, AK 99811-0805

Via email: [chip.wagoner@alaska.gov](mailto:chip.wagoner@alaska.gov)

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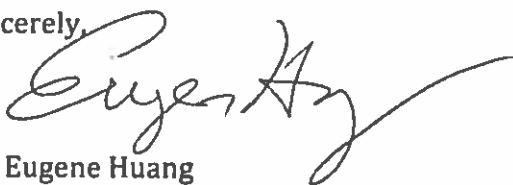
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Sincerely,



Dr. Eugene Huang  
Medical Director  
Southeast Radiation Oncology Center



Mr. Michael Haugen  
Alaska State Medical Association  
January 6, 2017

80% Rule Percentile Rule For Insurers

## Marine-Alley, Lynn M (CED)

---

**From:** Napoleon, Christopher L (CED)  
**Sent:** Monday, January 09, 2017 3:33 PM  
**To:** Marine-Alley, Lynn M (CED)  
**Subject:** FW: ASMA letter of opposition to changing 3 AAC 26.110(a) - the 80th percentile rule Final letter  
**Attachments:** ASMA 80th percentile letter of opposition to change 2017 final.pdf.pdf

Christopher Napoleon

Alaska State Division of Insurance

Admin Assistant II

907-269-7892

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**From:** Wagoner, Chip (CED)  
**Sent:** Thursday, January 05, 2017 4:06 PM  
**To:** Wing-Heier, Lori K (CED) <[lori.wing-heier@alaska.gov](mailto:lori.wing-heier@alaska.gov)>; Latham, Anna M (CED) <[anna.latham@alaska.gov](mailto:anna.latham@alaska.gov)>; Bailey, Sarah S (CED) <[sarah.bailey@alaska.gov](mailto:sarah.bailey@alaska.gov)>; Napoleon, Christopher L (CED) <[chris.napoleon@alaska.gov](mailto:chris.napoleon@alaska.gov)>  
**Subject:** FW: ASMA letter of opposition to changing 3 AAC 26.110(a) - the 80th percentile rule Final letter

FYI Please note the request below.

Chip Wagoner, SPIR  
Regulations Specialist II  
Alaska Division of Insurance

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**From:** Mike Haugen [<mailto:mhaugen@asmadocs.org>]  
**Sent:** Thursday, January 05, 2017 2:37 PM

**To:** Wagoner, Chip (CED)

**Cc:** 'Kevin Jardell ([Kevin@Kjardell.com](mailto:Kevin@Kjardell.com))'; Graham Glass ([gglass@appriver3651011503.onmicrosoft.com](mailto:gglass@appriver3651011503.onmicrosoft.com)); 'Graham Glass ([gglass@peakneurology.com](mailto:gglass@peakneurology.com))'

**Subject:** ASMA letter of opposition to changing 3 AAC 26.110(a) - the 80th percentile rule Final letter

Dear Mr. Wagoner,

Please disregard the prior version of our letter that was sent an hour ago. It was an early draft that was sent by mistake. Please substitute the attached final version for the hearing tomorrow on 3 AAC 26.110(a). Thank you.

Mike Haugen

Executive Director

Alaska State Medical Association

# Alaska State Medical Association

4107 Laurel Street • Anchorage, Alaska 99508 • (907) 562-0304 • (907) 561-2063 (fax)

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January 5<sup>th</sup>, 2017

Ms. Lori Wing-Heier, Director  
Division of Insurance  
Department of Commerce, Community  
and Economic Development  
P.O. Box 110805  
Juneau, AK 99811-0805

Via email: [chip.wagoner@alaska.gov](mailto:chip.wagoner@alaska.gov)

Dear Director Wing-Heier:

On behalf of the Alaska State Medical Association and its over 500 physician members, I am submitting this letter in strong support of retaining 3 AAC 26.110(a) commonly known as the “80<sup>th</sup> percentile” rule for determining “usual and customary” charges for healthcare services provided to Alaskan consumers.

The Alaska State Medical Association represents physicians statewide and is primarily concerned with the health of Alaskans.

ASMA recognizes that healthcare costs in Alaska along with the rest of the nation have escalated at an alarming rate in recent years, and we stand ready to work with the Division to mitigate that cost escalation where it makes sense. Repeal of the rule would not achieve that end. It must be remembered that the rule was originally put in place as a consumer protection to ensure an objective transparent methodology was used by all insurance companies for determining reimbursements. This allowed Alaskans a fair standard for comparing insurance plans and adopted a rule that ensured providers would be afforded a market rate for reimbursements. The rule reflects the national norm of reimbursements being made up to the 80<sup>th</sup> percentile. Even Premera when testifying on the original regulation stated that this would not change current practices for major insurance companies. The impetus of the rule was some insurance companies paying at less than market rates for reimbursements and transferring those costs on to consumers through balance billing. The State recognized a need to do something to protect consumers and 3 AAC 26.110(a) was the result.

The wholesale elimination of the rule would undoubtedly have many unintended consequences such as:

- Diminished ability of physicians to provide care to our military families on Tri-Care and veterans access to necessary care in the community as well as Medicare, Medicaid, and uninsured patients.
- Increased out-of-pocket patient costs for Alaskan consumers.
- Increased difficulty in recruiting and retaining physicians in Alaska.
- Decreased access to care.

Finally it must be noted that the primary backer of the repeal of 3 AAC 26.110(a) is Premera Blue Cross. While it is laudable that Premera claims its effort is solely aimed at keeping healthcare costs from escalating, that is not the whole story. If repealed Premera stands to gain enormous new leverage over physicians to force them "in network," a goal they have sought for decades in Alaska. This leverage will be used to benefit Premera and there is absolutely no guarantee that any cost saving would be passed along to insureds. In fact, just the opposite was occurring before the rule's adoption where insurance company savings through reduced reimbursements were being cost shifted to consumer's pockets. Even if there are savings to insurance companies those savings will come at the expense of other consumers, such as veterans on Tri-Care, Seniors on Medicare and Medicaid recipients and the reduced access to quality care in general and especially in rural and small communities. While Premera and other insurance companies have a singular responsibility to their insured members the State and physicians share a responsibility of providing quality care and access to all Alaskans.

Physician fee increases are not the driver of recent insurance premium increases. The adoption of the Affordable Care Act (ACA), its mandates and the cost shifting structure of universal coverage are responsible for the spike in premiums. Moda's departure from the Alaska individual insurance market is a great example as it is solely tied to the ACA and not physician fees. With Premera having a virtual monopoly on individual insurance, and Congress and President-elect Trump Administration working on major changes to our national health care policy, now is not the time to remove the consumer protections provided in the 80<sup>th</sup> percentile rule. Furthermore, there are few advocates for Medicaid, Medicare, or our Veterans on Tri-Care. The Division should do a thorough analysis on potential impacts to these government health programs and the unintended consequences to them if the rule is changed prior to making any decisions.

It is our association's strong belief that 3 AAC 26.110(a) should be left in place because its' consumer protection effect has benefited all Alaskans since inception. ASMA strongly urges the Division to leave the rule in place.

Sincerely,

  
Michael Haugen  
Executive Director  
Alaska State Medical Association

Deborah Huber

NES Health

January 6, 2017

80% Rule Percentile Rule For Insurers

## Marine-Alley, Lynn M (CED)

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**From:** Wagoner, Chip (CED)  
**Sent:** Friday, January 06, 2017 2:29 PM  
**To:** Wing-Heier, Lori K (CED); Latham, Anna M (CED); Bailey, Sarah S (CED); Marine-Alley, Lynn M (CED)  
**Subject:** FW: 80th Percentile Rule - RETAIN RULE  
**Attachments:** AK 80th Percentile Regulation^FINAL.doc

FYI

---

**From:** Deborah Huber [mailto:deborah.huber@neshealth-care.com]  
**Sent:** Friday, January 06, 2017 1:35 PM  
**To:** Wagoner, Chip (CED)  
**Cc:** Jennifer Moore; Michele Sexton  
**Subject:** 80th Percentile Rule - RETAIN RULE

Dear Mr. Wagoner – please see the enclosed letter (also copied into the text of this email), regarding retention of the 80<sup>th</sup> percentile rule for determining usual and customer medical charges. Your consideration of our request, and passing this letter onto Ms. Wing-Heier, is greatly appreciated. *Thank you!*

January 4, 2017

Ms. Lori Wing-Heier, Director  
Division of Insurance  
Department of Commerce, Community  
and Economic Development  
P.O. Box 110805  
Juneau, AK 99811-0805

Via email: [chip.wagoner@alaska.gov](mailto:chip.wagoner@alaska.gov)

Dear Director Wing-Heier:

On behalf of the emergency physician providers of NES Health, I am submitting this letter in strong support of retaining 3 AAC 26.110(a) commonly known as the “80<sup>th</sup> percentile” rule for determining “usual and customary” charges for healthcare services provided to Alaskan consumers.

NES Healthcare is a national emergency services management company and has been providing services in Alaska *since January 1999*. Our emergency physicians provide high quality, and expedient care to ALL patients, regardless of patient insurance class, economic status, or whether the patient holds insurance coverage at all. A significant portion of our providers’ services are written off to charity/care and bad debt (15%), and the repeal of the 80<sup>th</sup> percentile rule will greatly increase reductions in reimbursement to our providers, and may certainly require our partner hospitals to unfairly pay greater subsidies for continued emergency provider services while enduring lower reimbursement for their inpatient services.

- EMTALA obligated providers *must* be exempt from any potential balance billing ban if the DOI significantly changes the 80<sup>th</sup> percentile rule.
- The NES Health emergency physicians provide care to Tri-Care, Medicare, Medicaid, and uninsured patients as required by EMTALA, but without any hope of being paid fairly for this public service. All

EMTALA obligated providers protect these vulnerable patient populations by assuring access to emergency care.

- Eliminating or reducing the 80<sup>th</sup> percentile rule will give insurance companies undue leverage in payer negotiations because there will be no public standard for fair payment. Diminishing our NES providers' ability to negotiate will result in more providers remaining out of networks with insurers and ultimately drive costs up.
- As emergency physicians, NES Health providers are in the Emergency Department 24/7 and must be compensated even when patients are not present. Reduction in reimbursement will require that we have to charge our patients *more* for services provided.
- With the current shortage of emergency physicians, reducing compensation for our providers is not an option as they will take jobs elsewhere at higher salaries.
- By allowing insurance companies to reimburse for services at less than the 80<sup>th</sup> percentile, our Alaskan patient's out-of-pocket costs will increase.
- For NES Health, it is extremely expensive for us to recruit and retain physicians in AK. Diminishing reimbursement will further impact successful physician recruitment and could leave Alaska patients without the high quality emergency medicine care they require.

If the 80<sup>th</sup> percentile regulation is repealed or amended to a lower percentile, consumers will pay more out of pocket through balanced billing, and emergency physician reimbursement will be reduced affecting our complete ability to provide effective physician recruitment, retention, and negotiate successfully with our hospital partners for continued services. The 80<sup>th</sup> percentile is the norm in the industry within the US and is recognized as preserving the market rate. This practice must also hold true for the consumers and providers within the state of Alaska. Thank you for your consideration of our request.

Most sincerely,

NES Health

**Deborah Huber, MBA**  
**Regional Vice President**



**4250 Veterans Memorial Hwy | Suite 111E | Holbrook, NY 11743**  
**P 800.394.6376 Ext 212 | C 817.455.5271**  
**[deborah.huber@neshealth-care.com](mailto:deborah.huber@neshealth-care.com) | [www.neshealth-care.com](http://www.neshealth-care.com)**

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January 4, 2017

Ms. Lori Wing-Heier, Director  
Division of Insurance  
Department of Commerce, Community  
and Economic Development  
P.O. Box 110805  
Juneau, AK 99811-0805

Via email: [chip.wagoner@alaska.gov](mailto:chip.wagoner@alaska.gov)

Dear Director Wing-Heier:

On behalf of the emergency physician providers of NES Health, I am submitting this letter in strong support of retaining 3 AAC 26.110(a) commonly known as the "80<sup>th</sup> percentile" rule for determining "usual and customary" charges for healthcare services provided to Alaskan consumers.

NES Healthcare is a national emergency services management company and has been providing services in Alaska *since January 1999*. Our emergency physicians provide high quality, and expedient care to ALL patients, regardless of patient insurance class, economic status, or whether the patient holds insurance coverage at all. A significant portion of our providers' services are written off to charity/care and bad debt (15%), and the repeal of the 80<sup>th</sup> percentile rule will greatly increase reductions in reimbursement to our providers, and may certainly require our partner hospitals to unfairly pay greater subsidies for continued emergency provider services while enduring lower reimbursement for their inpatient services.

- EMTALA obligated providers *must* be exempt from any potential balance billing ban if the DOI significantly changes the 80<sup>th</sup> percentile rule.
- The NES Health emergency physicians provide care to Tri-Care, Medicare, Medicaid, and uninsured patients as required by EMTALA, but without any hope of being paid fairly for this public service. All EMTALA obligated providers protect these vulnerable patient populations by assuring access to emergency care.
- Eliminating or reducing the 80<sup>th</sup> percentile rule will give insurance companies undue leverage in payer negotiations because there will be no public standard for fair payment. Diminishing our NES providers' ability to negotiate will result in more providers remaining out of networks with insurers and ultimately drive costs up.
- As emergency physicians, NES Health providers are in the Emergency Department 24/7 and must be compensated even when patients are not present. Reduction in reimbursement will require that we have to charge our patients *more* for services provided.



- With the current shortage of emergency physicians, reducing compensation for our providers is not an option as they will take jobs elsewhere at higher salaries.
- By allowing insurance companies to reimburse for services at less than the 80<sup>th</sup> percentile, our Alaskan patient's out-of-pocket costs will increase.
- For NES Health, it is extremely expensive for us to recruit and retain physicians in AK. Diminishing reimbursement will further impact successful physician recruitment and could leave Alaska patients without the high quality emergency medicine care they require.

If the 80<sup>th</sup> percentile regulation is repealed or amended to a lower percentile, consumers will pay more out of pocket through balanced billing, and emergency physician reimbursement will be reduced affecting our complete ability to provide effective physician recruitment, retention, and negotiate successfully with our hospital partners for continued services. The 80<sup>th</sup> percentile is the norm in the industry within the US and is recognized as preserving the market rate. This practice must also hold true for the consumers and providers within the state of Alaska. Thank you for your consideration of our request.

Most sincerely,

NES Health

Dr. Steven Craig Humphreys

Kenai Spine

January 6, 2017

80% Rule Percentile Rule For Insurers

# Kenai Spine

240 Hospital Place, Suite 103, Soldotna, AK 99669 Tel.: (907) 260-5455; Fax: (907) 714-3111

[www.kenaispine.com](http://www.kenaispine.com)  
Orthopaedic Spine Surgeon  
Steven C. Humphreys, M.D.

January 5, 2017

Alaska Division of Insurance  
P.O. Box 110805  
Juneau, AK 99811-0805  
Attention: Chip Wagoner

**RE: Response to request for public input concerning possible changes to the 80<sup>th</sup> percentile rule provision under 3 AAC 26.110.**

Dear Mr. Wagoner,

As a spine surgeon practicing in Soldotna Alaska, I am strongly opposed to making any changes to the "80<sup>th</sup> percentile rule" provision under 3 AAC 26.110 as the impact would be detrimental to patients and the overall state of healthcare throughout all geographical regions in the state of Alaska.

Despite efforts to work with commercial insurance carriers to provide quality healthcare at affordable rates, the insurance carriers have shown unwillingness to contract at reasonable rates leaving most practitioners with no other option than to remain as out-of-network providers. This results in much of the financial burden being shifted by the insurance carriers to patient out-of-pocket responsibility. Since the introduction of Patient Protection and Affordable Care Act, insurance carriers have routinely decreased coverage while significantly increasing patient deductibles and premiums. A change to the 80<sup>th</sup> percentile rule would result in the insurance carriers shifting even more of the financial responsibility to the patient consumer leaving them unprotected from increased financial hardship. This will happen in spite of the insurers recording record profits and receipt of millions of dollars of taxpayer subsidies.

Over the past 3-5 years, my practice has experienced drastic decreases in insurance reimbursements as well as extreme overhead increases due to blanket denials and the cost of additional regulations. My staff now routinely spends an inordinate amount of time advocating for the patient who is forced to fight with their insurance carrier for coverage of well-documented and justified healthcare services. Decreased reimbursements coupled with exponentially-increasing costs will result in Alaska's inability to attract and retain high quality health care providers and could create a state wide health care crisis. A change to the 80<sup>th</sup> percentile rule would hurt the state of Alaska by resulting in a shortage of physicians, increased waiting times for appointments, and significant additional costs to patients traveling outside their geographical region for medical care.

I strongly recommend no change to the 80<sup>th</sup> percentile rule and will make myself available to discuss in further detail my strong opposition to this proposal at your convenience.

Sincerely,



Steven Craig Humphreys, M.D.

Rick Johnson

January 6, 2017

80% Rule Percentile Rule For Insurers

## **Napoleon, Christopher L (CED)**

---

**From:** Wagoner, Chip (CED)  
**Sent:** Thursday, January 05, 2017 1:09 PM  
**To:** Napoleon, Christopher L (CED)  
**Subject:** FW: 80th Percentile Rule under # ACC 26.110

Chip Wagoner, SPIR  
Regulations Specialist II  
Alaska Division of Insurance

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---

**From:** Rick Johnson [mailto:rickjibd@alaska.net]  
**Sent:** Thursday, December 29, 2016 12:50 PM  
**To:** Wagoner, Chip (CED)  
**Subject:** 80th Percentile Rule under # ACC 26.110

Mr. Wagoner,

As a small business owner in both the Anchorage and the Matanuska-Susitna Borough, I would like the DOI to consider taking action by amending or eliminating The 80<sup>th</sup> Percentile Rule. The rule initially was intended to protect consumers from harm by reducing balance billing by medical providers, but it has now gotten out control by spiraling medical costs into the stratosphere. A few medical specialists can now establish base rates at any level and drive the overall average costs to levels 3 or 4 times or even higher than "Lower 48" provider pricing. This is not good for the consumer, not competitive, and in part has driven insurance rates to an unaffordable level. We can't continue with this present pricing trend. Medical costs and insurance costs are currently unsustainable. We need to restore sanity by implementing a reference based pricing model, perhaps based on a multiple of Medicare reimbursement, establishing a ceiling on the maximum charges allowable, with NO balance billing to the consumer beyond the established ceiling.

Please act now to get medical costs under control!

Sincerely,

Rick Johnson  
P.O. Box 876389  
Wasilla AK 99687

907-232-8016

Dr. Janice Koval  
Internal Medicine Associates LLC  
January 6, 2017

80% Rule Percentile Rule For Insurers





## Internal Medicine Associates, LLC

2841 DeBarr Road  
Suite 50  
Anchorage, Alaska  
99508

Telephone  
(907) 276-2811  
1-888-936-2811

Fax  
(907) 276-2810

### GASTROENTEROLOGY

Douglas B.  
LAGHIGI, D.M.D., M.D.

Steven B.  
INGLE, M.D.

William H.  
MORAY, JR., M.D.,  
FACP, FADG

David E.  
PEACH, M.D., FACP

Gerry  
SAHAGUN, M.D., FACP

Eric R.  
TOMPKINS, M.D.

Michael R.  
VALANTAS, D.O.

### PULMONARY

Beth A.  
BAKER, M.D.,  
FCCP, FACP

Gregory D.  
GERBOTH, M.D.,  
FCCP, FACP

Marika A.  
MARTYNOWICZ,  
M.D., FCCP

### ENDOCRINOLOGY

Janice A.  
KOVAL, M.D.

January 05, 2017

Ms. Lori Wing-Heier, Director  
Division of Insurance  
Department of Commerce, Community  
and Economic Development  
P.O. Box 110805  
Juneau, AK 99811-0805

Via email: [chip.wagoner@alaska.gov](mailto:chip.wagoner@alaska.gov)

Dear Director Wing-Heier:

On behalf of Internal Medicine Associates, I am submitting this letter in strong support of retaining 3 AAC 26.110(a) commonly known as the "80<sup>th</sup> percentile" rule for determining "usual and customary" charges for healthcare services provided to Alaskan consumers.

Internal Medicine Associates works toward the common goal of providing the best quality of care to our patients through convenient and affordable healthcare services. Our practice consists of eleven providers with varying specialties, all of whom are devoted to caring and compassionate medical care for Alaskans. Many of our providers have been in Alaska for decades, and we are very involved in the community. Our comments herein reflect our position as both providers and community members.

I believe strongly that there needs to be a fair payment regulation in place in Alaska, especially now that we essentially have only two insurers in the market. By allowing insurance companies to reimburse for services at less than the 80<sup>th</sup> percentile, Alaskan's out-of-pocket patient costs may actually increase. Given that Premiera now has a monopoly in the individual market, the State





## Internal Medicine Associates, LLC

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### GASTROENTEROLOGY

Douglas B.  
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Steven B.  
NGLE, M.D.

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FACP, FACP

David E.  
PEACH, M.D., FACP

Gerry  
SAHAGUN, M.D., FACP

Eric R.  
TOMPKINS, M.D.

Michael R.  
VALANTAS, D.O.

### PULMONARY

Beth A.  
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Gregory D.  
GERBOTH, M.D.,  
FCCP, FACP

Marek A.  
MARTYNOWICZ,  
M.D., FCCP

### ENDOCRINOLOGY

Janice A.  
KOVAL, M.D.

should increase its regulatory oversight and not make any significant changes to regulations until the current market is adequately assessed. We request the State study the impacts of a single market participant on insured patients before making a proposal for changes.

This is especially important considering the uncertainty of the Affordable Care Act's continuation under President-elect Trump and a more conservative legislative branch. We strongly encourage the State of Alaska to wait and see what changes will be coming from federal legislation before making any major changes to our payment structure, which I believe has not only helped physicians but, most importantly, patients. The 80<sup>th</sup> percentile regulation protects patients by providing transparency and consistency in reimbursement and out-of-pocket expenses. Implementing change in the current political climate may have unintended consequences and will likely cause concern for our patients.

Again, I am in strong support of retaining 3 AAC 26.110(a) commonly known as the "80<sup>th</sup> percentile" rule for determining "usual and customary" charges for healthcare services provided to Alaskan consumers, as it is for the protection of patients and medical providers.

Sincerely,

Janice Koval, MD  
Internal Medicine Associates

Dr. Henry G. Krull  
Orthopedic Surgeon  
January 6, 2017

80% Rule Percentile Rule For Insurers

January 02, 2017

Ms. Lori Wing-Heier, Director  
Division of Insurance  
Department of Commerce, Community  
and Economic Development  
P.O. Box 110805  
Juneau, AK 99811-0805

Via email: [chip.wagoner@alaska.gov](mailto:chip.wagoner@alaska.gov)

Dear Director Wing-Heier:

I am submitting this letter in strong support of retaining 3 AAC 26.110(a) commonly known as the "80<sup>th</sup> percentile" rule for determining "usual and customary" charges for healthcare services provided to Alaskan consumers.

I am an orthopaedic surgeon in Soldotna, Alaska for the last 18 years. I came to Alaska in 1999 not only for the adventure of living in Alaska, but also to escape the health care and insurance mess that is prevalent in the lower 48. I employ about 12 people in my small group practice, with an additional 12 in my adjacent physical therapy practice. I built my own medical office, physical therapy office, and have built other adjacent medical office space for lease. I invested in a physician-owned ambulatory surgery center and am planning to build a satellite medical office building in Kenai. I have established deep roots here on the Peninsula, and plan to stay until the end. Living and practicing in Alaska is not for everyone, and it takes a special breed to live, succeed, and thrive here. Despite many challenges, many healthcare providers that come here stay, and turnover is quite low, partly due to higher than average reimbursement and the lack of contracting with insurance companies. Without this, I don't think Alaska would be able to attract and maintain a high-quality primary care and specialty provider population. Due to favorable reimbursement, we are able to take care of a large population of uninsured individuals and do so often without any reimbursement. I estimate that 5% of the care I provide is charity care, and an additional 5-10% is written off due to bad debt. I am out of network with most insurances, except Blue Cross, who I was forced to contract with due to our local health care situation and single hospital. The 80% rule helps me to favorably contract with Blue Cross.

I oppose repealing the 80<sup>th</sup> percentile rule because I believe it will have a negative impact on healthcare providers, and more importantly on patient care, quality of care, access to care, and ultimate cost of care. If the 80<sup>th</sup> percentile rule is repealed it will give insurance companies tremendous leverage to decrease reimbursement without necessarily passing the savings on to the consumer. Insurance premiums *never* decrease. This would benefit *only* the insurance company. Lower reimbursement may lead to higher charges, and may lead to greater out-of-pocket expenses for patients. Lower reimbursement may

compromise my desire to remain in Alaska, and may ultimately restrict access to care, both for specialty and primary care. Patients lose, providers lose, and insurance companies have more profits. Sounds like a bad proposition for those of us invested in our communities for the long term.

In summary, I am strongly opposed to changing or repealing 3 AAC 26.110(a), the 80% rule. A change or repeal will only benefit insurance companies, at the expense of local healthcare providers and Alaska residents, and will not decrease the cost of healthcare in this state. It will increase the cost of medical care, and increase the out-of-pocket expense to consumers, and may ultimately drive many quality healthcare providers out of the state.

Sincerely,

Henry G. Krull, MD  
Orthopaedic Surgeon  
Soldotna, AK

Dr. Richard Liles  
New Frontier Anesthesia, LLC  
January 6, 2017

80% Rule Percentile Rule For Insurers

1/3/2017

Richard Liles, M.D.  
New Frontier Anesthesia, LLC  
PO Box 112077  
Anchorage, AK 99516

Chip Wagoner  
PO Box 110805  
Juneau, AK 99811-0805

Greetings Sir,

I am writing to provide comment regarding the "80<sup>th</sup> percentile rule" (3 AAC 26.1110) for your consideration at the upcoming January 16, 2017 public hearing. In Alaska, and throughout the rest of the country, rising health care costs account for a large portion of everyone's household budget. Alaskan health care consumers seek pricing transparency and assurance that they are receiving the full value of the insurance product they purchase. The 80<sup>th</sup> Percentile Rule (established in 2004 by the Alaska Division of Insurance) has accomplished just this. Rather than allowing insurance companies to self-define Usual and Customary (UCR) charges, the 80<sup>th</sup> Percentile Rule requires healthcare insurers to pay claims for services and supplies based on an amount that is equal to or greater than the 80<sup>th</sup> percentile of charges in a geographical area. The health care consumer therefore has a consistent and objective basis for health care costs and not an arbitrary UCR that varies between insurances.

Health Insurance companies obviously act to maximize shareholder return by limiting reimbursements to health care providers. They would prefer to reduce UCR below 80% and therefore decrease their reimbursement responsibility. This would result in cost shifting from insurers to insured as consumers would necessarily pay more out-of-pocket through balanced billing. Therefore, rather than decreasing health care costs to the consumer, a reduction of UCR below 80% would actually increase out of pocket costs for consumers. This is why the 80<sup>th</sup> Percentile Rule is the industry practice within the United States. This regulation provides a transparent, objective and reliable method of establishing UCR that protects consumers while maintaining the availability of healthcare services. It takes into account geographic differences in health care costs and is therefore fair to both the consumer and health care provider.

A criticism of the 80<sup>th</sup> percentile rule is that a specialty with greater than 20% of the marketplace could determine 80% UCR, and therefore their charges would be reimbursed at the full amount. In Alaska, there is no data that demonstrates this is actually the case. In fact, over the last 5 – 10 years, there has been a significant influx of new physicians into Alaska resulting in increased



competition. Moreover, Alaska has very strong anti-trust and consumer protection laws that protect Alaskans without changing the 80<sup>th</sup> Percentile Rule that is currently in place.

In Alaska, and everywhere else in the country, government payers (Medicare, Medicaid, VA and Tricare) reimburse physicians well below market rates. A physician practice based solely on these payers is not a sustainable business model. However, patients with these insurances obviously require medical services. In Alaska, like everywhere else in the country, these patients with government insurance receive medical care by way of cost shifting. In other words, physicians charge private insurances a greater amount to subsidize the care they provide to those with government insurance. Without this standard billing practice, government insured patients would not have access to medical care in Alaska. Insurance companies are only concerned with their book of business and not the big picture of health care access for all. This is understandable. However, a reduction in reimbursement to Physicians by lowering UCR less than 80% would reduce the number of physicians accepting government insured patients. This would be a dis-service to those Alaskans with government insurance who often need health care services the most.

The majority of health care complaints over the last five years are the result of increased insurance costs due to the Affordable Care Act rather than increases in physician billing. Deductibles have increased dramatically with double digit annual percentage increases in premiums. Changing the 80<sup>th</sup> percentile reimbursement regulation will do nothing to correct this problem and instead create additional problems previously addressed. Rather it is the insurance industry that requires tighter controls and regulations. This is especially important in Alaska where Premiera is a monopoly as the only market-place insurance choice.

As an Alaskan healthcare consumer I want access to quality local healthcare. I also want to know that I am receiving the full value of the insurance product that I purchase. Changing the 80<sup>th</sup> percentile regulation would be counterproductive to these goals as out-of-pocket costs would increase and health care providers would be discouraged from practicing in the state of Alaska. Reigning in health care costs in Alaska should be a priority, but changing the 80<sup>th</sup> percentile regulation that already protects consumers is the wrong approach.

Richard Liles, M.D.  
New Frontier Anesthesia, LLC

Mr. Dave Logan  
Alaska Dental Society  
January 6, 2017

80% Rule Percentile Rule For Insurers





# Alaska

DENTAL SOCIETY

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December 5, 2016

State of Alaska  
Division of Insurance

RE: 80<sup>th</sup> Percentile rule

The Alaska Dental Society supports limited modification of the 80<sup>th</sup> Percentile rule.

The Public Scope for possible changes notes the difficulties with this rule when limited providers are present. The Alaska Dental Society acknowledges the validity of this concern but believes it must be balanced against the ability of insurance companies with network plans to financially disincentive subscribers for making choices to go outside of their networks.

The actions of insurance companies have led to passage of several "Bill of Rights" legislation in the Alaska Legislature as the Alaska Legislators have recognized the over reach of this financial barriers to going outside of provider networks.

The Alaska Dental Society believes that retention of the current rule in most cases and modification in the limited cases where small numbers of providers present skew the pool.

Sincerely,

David Logan, DDS  
Executive Director, Alaska Dental Society

Nancy Merriman  
Alaska Primary Care Association  
January 6, 2017

80% Rule Percentile Rule For Insurers



Alaska Primary Care  
ASSOCIATION

January 6, 2017

Lori K. Wing-Heier, Director  
State of Alaska - Alaska Division of Insurance  
PO Box 110805  
Juneau, AK 99811-0805  
[chip.wagoner@alaska.gov](mailto:chip.wagoner@alaska.gov)

RE: 80<sup>th</sup> Percentile Rule Comment

Dear Director Wing-Heier:

The Alaska Primary Care Association, APCA, offers its comments on potential changes to the 80<sup>th</sup> Percentile Rule. We view this initial comment period as the opening of an important conversation on how to control the cost of care in the state, while continuing to raise levels of quality, efficiency, insurance coverage and patient experience. Alaska Community Health Centers have some unique perspectives how the current rule helps and hinders our practices and patients. They include:

1. Commercial insurance is a minor but important source of income for most Federally Qualified Health Centers in Alaska. Anecdotally, Health Centers report that private insurance revenue can be vital in annual sustainability and in attracting and retaining primary care providers, that remain in short supply throughout Alaska.
2. As employers, Health Centers are affected by the constantly increasing cost of employer-sponsored coverage that is exacerbated by the 80<sup>th</sup> Percentile Rule.
3. The mission of Health Centers is to provide comprehensive primary care and to reduce barriers to those seeking care. Statewide, over a third of our patients are "self-pay", meaning that they have no insurance. The 80<sup>th</sup> Percentile Rule can be particularly injurious to this group of patients as many with moderate and higher incomes are responsible for one hundred percent of very high charges. Frequently, these need to be written off as bad debt, hurting both the patient and the Health Center. Additionally, the regulation and corresponding high cost of specialty care can serve as an insurmountable barrier for all types of uninsured patients.

We appreciate the opportunity to comment on this important component of Alaska's health care compensation system. At this time, we do not have a firm opinion on any particular action related to the 80<sup>th</sup> Percentile Rule. We believe that our perspective will continue to develop during the upcoming Legislative session as other factors including the initial report of the Alaska Health Authority is released, and Congress moves to alter the Affordable Care Act. We look forward to continuing to learn more and contributing to this important work.

Sincerely,

Nancy Merriman  
Executive Director

**Dr. David A. Moeller**  
**Alaska Radiology Associates**  
**January 6, 2017**

**80% Rule Percentile Rule For Insurers**



January 3, 2017

Ms. Lori Wing-Heier, Director  
Division of Insurance  
Department of Commerce, Community and  
Economic Development  
P.O. Box 110805  
Juneau, AK 99811-0805

Via email: [chip.wagoner@alaska.gov](mailto:chip.wagoner@alaska.gov)

Dear Director Wing-Heier:

I have been in practice in Alaska for over 35 years. The group of Radiologists (Alaska Radiology Associates) I belong to have always put the patient first, and continue to do so. We provide specialized services over a wide range of all diagnostic imaging as well as performing many life-saving procedures on patients. We do this for all Alaskans, whether in the private sector, Native, Military, and Veterans.

I am writing to offer my support to retain 3 AAC 26.110(a), commonly known as the 80 percentile rule. Removing it would place a greater burden on the health care system of the state. Currently there is a monopoly in this state with regards to private insurance options. Removing the 80 percentile rule will only make the situation worse.

You will receive several letters from my partners in Alaska Radiology Associates as well as many of my colleagues in medicine here in the state in support of retaining 3 AAC 26.110(a). Please do not erode our ability to care for ALL Alaskans, as we do now, and plan on doing so in the future. Do not limit the ability of Alaskans to access specialty care in our beautiful and unique state.

Please put patients first, not the insurance companies.

Respectfully submitted,

David A. Moeller MD

Dr. Daniel Moore  
Southeast Radiation Oncology Center  
January 6, 2017

80% Rule Percentile Rule For Insurers

## Marine-Alley, Lynn M (CED)

---

**From:** Napoleon, Christopher L (CED)  
**Sent:** Thursday, January 05, 2017 2:02 PM  
**To:** Marine-Alley, Lynn M (CED)  
**Subject:** FW: Southeast Radiation Oncology Center support of retaining 3 AAC 26.110(a)  
**Attachments:** SROC Letter.pdf

Christopher Napoleon

Alaska State Division of Insurance

Admin Assistant II

907-269-7892

---

Make a difference.....You will... You must... You can....

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-----Original Message-----

**From:** Wagoner, Chip (CED)  
**Sent:** Thursday, January 05, 2017 1:20 PM  
**To:** Wing-Heier, Lori K (CED) <lori.wing-heier@alaska.gov>; Latham, Anna M (CED) <anna.latham@alaska.gov>; Bailey, Sarah S (CED) <sarah.bailey@alaska.gov>; Napoleon, Christopher L (CED) <chris.napoleon@alaska.gov>  
**Subject:** FW: Southeast Radiation Oncology Center support of retaining 3 AAC 26.110(a)

This came in twice so I am providing it in case they made changes.

Chip Wagoner, SPIR  
Regulations Specialist II  
Alaska Division of Insurance

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-----Original Message-----



From: Dan Moore [mailto:dan@radiationbusiness.com]  
Sent: Thursday, January 05, 2017 11:52 AM  
To: Wagoner, Chip (CED)  
Subject: Southeast Radiation Oncology Center support of retaining 3 AAC 26.110(a)

January 4, 2017

Ms. Lori Wing-Heier, Director  
Division of Insurance  
Department of Commerce, Community  
and Economic Development  
P.O. Box 110805  
Juneau, AK 99811-0805

Via email: chip.wagoner@alaska.gov

Dear Director Wing-Heier:

On behalf of Southeast Radiation Oncology Center (SROC), I am submitting this letter in strong support of retaining 3 AAC 26.110(a) commonly known as the "80th percentile" rule for determining "usual and customary" charges for healthcare services provided to Alaskan consumers.

Our mission is to provide access to quality cancer care as close to home as possible. In radiation therapy, a patient receives treatment every day for up to eight weeks. Prior to the opening of Southeast Radiation Oncology Center in Juneau, AK in December of 2013, cancer patients who live in the southeast region of the state had no choice but to fly to Anchorage or out of state to receive radiation therapy. Traveling long distances for care for the length of these treatments created an emotional, physical, and financial burden for patients and their caregivers.

Radiation therapy is a costly technology anywhere; the "extreme" conditions of living and doing business in Alaska requires additional resources and investment. Our company has invested over \$10 million in order to build and operate our cancer center, and to ensure that the quality of radiation care delivered to Alaska residents is on par with that of healthcare available in the lower 48 states. We have treated 186 patients since our opening, allowing 186 families to remain closer to home during what is unquestionably one of the most difficult times in life.

For the three and a half years since SROC has been providing service to patients in Juneau, the total amount paid to SROC by patients for services is \$478,674. This equates to only \$2,573.52 per patient for the 186 patients who have received a full course of radiation therapy. This is consistent with the amount for which a patient in the lower 48 would be responsible.

During the same period, the 80% Rule has allowed us to write off \$160,000 in out-of-network adjustments that would normally have been billed to patients.

We oppose repealing the 80th percentile rule, as a repeal would not only have an impact on patient access to quality care, but it would also have a significant economic impact on the areas we serve for several reasons:

- \* Regardless of the initial cost factor, the overall well-being and health of the patient are improved by treating close to home. Better health means less healthcare costs subsequent to cancer. Hospitalizations are dramatically reduced when cancer patients are treated close to home.
- \* When a patient receives cancer treatment locally, all of the direct living costs, sales tax, transportation costs, etc. remain within the community. The economic impact of a patient's two-month stint out of state is estimated at 5-8 times their wages for the same period. Lost local wages spent outside of Alaska represent a huge multiplying effect of



diminished revenue within the state - including less taxes from everyday living spending on items such as gas, food, and other services.

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\* The economic impact of losing healthcare providers and their teams would be significant. Healthcare professionals are significant contributors to local and state revenue streams via philanthropy, scholarship programs, large purchases, housing, attraction of other industries, etc.

\* With the aforementioned cost of doing business in Alaska, and the inherent cost of the technology used in our specialty in particular, it is safe to say that no radiation oncologist could live in Alaska on the rates paid in the lower 48. Physicians would relocate their practices to places with higher patient volumes. Not only would patients be negatively affected, but a very large economic piece of Alaska would be impacted.

In conclusion, the repeal of the 80th percentile rule would create an economic hardship on patients and their families, as well as on the surrounding communities. We respectfully request the Division retain the regulation for the protection of Alaska's medical providers, for the economic health and well-being of our local communities, and most importantly, to protect access to quality healthcare for the patients that we serve.

Sincerely,  
Daniel Moore



1701 Salmon Creek Lane  
Juneau, AK 99801  
907.586.5762  
[www.SoutheastRadiation.com](http://www.SoutheastRadiation.com)

January 4, 2017

Ms. Lori Wing-Heier, Director  
Division of Insurance  
Department of Commerce, Community  
and Economic Development  
P.O. Box 110805  
Juneau, AK 99811-0805

Via email: [chip.wagoner@alaska.gov](mailto:chip.wagoner@alaska.gov)

Dear Director Wing-Heier:

On behalf of Southeast Radiation Oncology Center (SROC), I am submitting this letter in strong support of retaining 3 AAC 26.110(a) commonly known as the "80<sup>th</sup> percentile" rule for determining "usual and customary" charges for healthcare services provided to Alaskan consumers.

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Sincerely,



Dr. Daniel Moore  
Peninsula Radiation Oncology Center  
January 6, 2017

80% Rule Percentile Rule For Insurers

## Marine-Alley, Lynn M (CED)

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**From:** Napoleon, Christopher L (CED)  
**Sent:** Thursday, January 05, 2017 2:02 PM  
**To:** Marine-Alley, Lynn M (CED)  
**Subject:** FW: Scanned on a Bizhub from NovaCopy  
**Attachments:** PROC Letter.pdf

Christopher Napoleon

Alaska State Division of Insurance

Admin Assistant II

907-269-7892

---

Make a difference.....You will... You must... You can....

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-----Original Message-----

**From:** Wagoner, Chip (CED)  
**Sent:** Thursday, January 05, 2017 1:14 PM  
**To:** Wing-Heier, Lori K (CED) <lori.wing-heier@alaska.gov>; Latham, Anna M (CED) <anna.latham@alaska.gov>; Bailey, Sarah S (CED) <sarah.bailey@alaska.gov>; Napoleon, Christopher L (CED) <chris.napoleon@alaska.gov>  
**Subject:** FW: Scanned on a Bizhub from NovaCopy

FYI

Chip Wagoner, SPIR  
Regulations Specialist II  
Alaska Division of Insurance

This email and any files and/or attachments transmitted with it are property of The State Of Alaska, are confidential, and are intended solely for the use of the individual or entity to whom this e-mail is addressed. If you are not the intended recipient or otherwise have reason to believe that you have received this message in error, please notify the sender and delete this message immediately from your computer. Any other use, retention, dissemination, forwarding, printing, or copying of this email is strictly prohibited.

-----Original Message-----

From: Dan Moore [mailto:dan@radiationbusiness.com]  
Sent: Thursday, January 05, 2017 11:40 AM  
To: Wagoner, Chip (CED)  
Subject: FW: Scanned on a Bizhub from NovaCopy

January 4, 2017

Ms. Lori Wing-Heier, Director  
Division of Insurance  
Department of Commerce, Community  
and Economic Development  
P.O. Box 110805  
Juneau, AK 99811-0805

Via email: chip.wagoner@alaska.gov

Dear Director Wing-Heier:

On behalf of Peninsula Radiation Oncology Center (PROC), I am submitting this letter in strong support of retaining 3 AAC 26.110(a) commonly known as the "80th percentile" rule for determining "usual and customary" charges for healthcare services provided to Alaskan consumers.

Our mission is to provide access to quality cancer care as close to home as possible. In radiation therapy, a patient receives treatment every day for up to eight weeks. Prior to the opening of Peninsula Radiation Oncology Center in Soldotna, AK in July of 2013, cancer patients who live on the Kenai Peninsula had no choice but to drive roughly three hours (each way) to Anchorage, or to fly out of state to receive radiation therapy. Traveling long distances for care for the length of these treatments created an emotional, physical, and financial burden for patients and their caregivers.

Radiation therapy is a costly technology anywhere; the "extreme" conditions of living and doing business in Alaska requires additional resources and investment. Our company has invested over \$10 million in order to build and operate our cancer center, and to ensure that the quality of radiation care delivered to Alaska residents is on par with that of healthcare available in the lower 48 states. We have treated 334 patients since our opening, allowing 334 families to remain closer to home during what is unquestionably one of the most difficult times in life.

For the three and a half years since PROC has been providing service to patients in Soldotna, the total amount paid to PROC by patients for services is \$188,896. This equates to only \$565.56 per patient for the 334 patients who have received a full course of radiation therapy. This is consistent with the amount for which a patient in the lower 48 would be responsible.

During the same period, the 80% Rule has allowed us to write off nearly \$100,000 in out-of-network adjustments that would normally have been billed to patients.

We oppose repealing the 80th percentile rule as it will have not only an impact on patient access to quality care, but it will also have an economic impact on the areas we serve for several reasons:

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Sincerely,  
Daniel Moore





240 Hospital Place  
Soldotna, AK 99669  
907.262.7762  
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January 4, 2017

Ms. Lori Wing-Heier, Director  
Division of Insurance  
Department of Commerce, Community  
and Economic Development  
P.O. Box 110805  
Juneau, AK 99811-0805

Via email: [chip.wagoner@alaska.gov](mailto:chip.wagoner@alaska.gov)

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Sincerely,



NES Health

January 6, 2017

80% Rule Percentile Rule For Insurers

January 4, 2017

Ms. Lori Wing-Heier, Director  
Division of Insurance  
Department of Commerce, Community  
and Economic Development  
P.O. Box 110805  
Juneau, AK 99811-0805

Via email: [chip.wagoner@alaska.gov](mailto:chip.wagoner@alaska.gov)

Dear Director Wing-Heier:

On behalf of the emergency physician providers of NES Health, I am submitting this letter in strong support of retaining 3 AAC 26.110(a) commonly known as the "80<sup>th</sup> percentile" rule for determining "usual and customary" charges for healthcare services provided to Alaskan consumers.

NES Healthcare is a national emergency services management company and has been providing services in Alaska *since January 1999*. Our emergency physicians provide high quality, and expedient care to ALL patients, regardless of patient insurance class, economic status, or whether the patient holds insurance coverage at all. A significant portion of our providers' services are written off to charity/care and bad debt (15%), and the repeal of the 80<sup>th</sup> percentile rule will greatly increase reductions in reimbursement to our providers, and may certainly require our partner hospitals to unfairly pay greater subsidies for continued emergency provider services while enduring lower reimbursement for their inpatient services.

- EMTALA obligated providers *must* be exempt from any potential balance billing ban if the DOI significantly changes the 80<sup>th</sup> percentile rule.
- The NES Health emergency physicians provide care to Tri-Care, Medicare, Medicaid, and uninsured patients as required by EMTALA, but without any hope of being paid fairly for this public service. All EMTALA obligated providers protect these vulnerable patient populations by assuring access to emergency care.
- Eliminating or reducing the 80<sup>th</sup> percentile rule will give insurance companies undue leverage in payer negotiations because there will be no public standard for fair payment. Diminishing our NES providers' ability to negotiate will result in more providers remaining out of networks with insurers and ultimately drive costs up.
- As emergency physicians, NES Health providers are in the Emergency Department 24/7 and must be compensated even when patients are not present. Reduction in reimbursement will require that we have to charge our patients *more* for services provided.



- With the current shortage of emergency physicians, reducing compensation for our providers is not an option as they will take jobs elsewhere at higher salaries.
- By allowing insurance companies to reimburse for services at less than the 80<sup>th</sup> percentile, our Alaskan patient's out-of-pocket costs will increase.
- For NES Health, it is extremely expensive for us to recruit and retain physicians in AK. Diminishing reimbursement will further impact successful physician recruitment and could leave Alaska patients without the high quality emergency medicine care they require.

If the 80<sup>th</sup> percentile regulation is repealed or amended to a lower percentile, consumers will pay more out of pocket through balanced billing, and emergency physician reimbursement will be reduced affecting our complete ability to provide effective physician recruitment, retention, and negotiate successfully with our hospital partners for continued services. The 80<sup>th</sup> percentile is the norm in the industry within the US and is recognized as preserving the market rate. This practice must also hold true for the consumers and providers within the state of Alaska. Thank you for your consideration of our request.

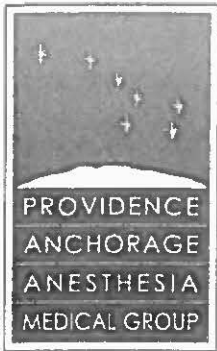
Most sincerely,

NES Health

Dr. Robert Pease

January 6, 2017

80% Rule Percentile Rule For Insurers



January 5, 2017

Ms. Lori Wing-Heier, Director  
Division of Insurance  
Department of Commerce, Community  
and Economic Development  
P.O. Box 110805  
Juneau, AK 99811-0805

Via email: [chip.wagoner@alaska.gov](mailto:chip.wagoner@alaska.gov)

Dear Director Wing-Heier:

1. On behalf of Providence Anchorage Anesthesia Medical Group, PC, I am submitting this letter in strong support of retaining 3 AAC 26.110(a) commonly known as the "80<sup>th</sup> percentile" rule for determining "usual and customary" charges for healthcare services provided to Alaskan consumers.

2. I am an anesthesiologist that has practiced at Providence Alaska Medical Center for twenty five years. I came to Alaska to establish an anesthesia practice and raise a family with my wife who is also a healthcare professional. Clinically, I have served as a general anesthesiologist, an acute pain anesthesiologist, and a cardiovascular anesthesiologist for decades. I have served on our group's Medical Director, on its Board of Directors, and as the Chief of the Medical Staff for PAMC during of my years in practice. I have watched our group grow from eight to thirty physicians as our state and community grew. Please note that we have no requirement to recruit and employ an all anesthesiologist team of physicians with many of our anesthesiologists having fellowships in regional pain, cardiovascular anesthesia, or pediatric anesthesia to serve our patients' needs. We could focus on profits and serve many of our patients with CRNA's like other facilities in the state. However, many of our patients travel long distances to PAMC from facilities lacking these services. They frequently arrive with elevated levels of acuity. We opted to match the skills of the physicians we recruit and employ to the needs of patients coming to PAMC to obtain NICU/PICU, cardiothoracic, trauma, and other higher acuity healthcare services. We treat all patients presenting for care with no regard for their origin, demographics, economic circumstances, or health insurance. My group's physicians have been participating providers with Premiera Blue Cross / Blue Shield for seventeen years. PBCBS is the only private insurer with a credible network and presence left in Alaska. Far more important than our capacity to negotiate future contracts with private insurers is the

potential impact that elimination of the 80<sup>th</sup> percentile rule may have on our patients in a high deductible, high co-pay, narrow network marketplace. The failure of reimbursements to be proximal to the 80<sup>th</sup> percentile will increase their exposure to out of pocket costs and it will adversely impact their access to care. I will elaborate on both of these premises below.

3. Please reflect on the access to care crisis faced by our Medicare patients when Medicare reimbursements became so low that many of the independent internal medicine practices closed and the internists began to leave Alaska. Other primary care physicians could not absorb the impact of these practice closures and rapidly, Medicare patients could no longer access primary care. The emergency rooms became the very expensive portal of access to these patients. Special "Medicare" clinics were developed to serve these patients with funds from ARH and PAMC and the state. Senator Stevens intervened to raise Medicare reimbursements in Alaska. After several years of crisis, the situation stabilized but many smaller, independent practices limit access of Medicare to their practices to survive. As a physician group, we serve all presenting patients. We actively address shortfalls in reimbursements from Medicare, OWCP, Tricare, VA, and uninsured patients by cost shifting to our privately insured patients to survive in practice. As other facilities focus their services on those patients with private insurance and lower acuity, we absorb the impact of an increasing number of under-insured, uninsured, and highly acute patients. We are the practice that is on call 24/7 with pediatric anesthesia services for the neonates, cardiovascular anesthesia services for the heart cases, general anesthesia for emergencies and trauma, and regional pain services waiting for the patient arrivals and transfers from other facilities.

4. Please remember that every practice in Alaska is facing MACRA and the cost of complying with this 2177 page regulation effective this year and the losses associated with failures to comply. Failure to navigate this regulation is forecast in the regulation for high percentage of small practices. Most of the physician practices in Alaska meet their definition of small practices. Alaska has frozen reimbursement rates for workers comp services. The VA and Tricare are reducing amounts paid for services from historical levels. OCR at HHS has deployed new Section 1557 regulations elevating the cost of serving patients. Repealing the 80<sup>th</sup> percentile rule on top of these changes to Medicare reimbursements threatens access to care for all government based patients. Unless we can protect physician income and keep it aligned with amounts paid in the lower-48, we will fail in recruiting and staffing to serve patients. The impact will be a return to days of limited access to specialty services or travel to the lower-48 for the same.

5. I am at the end of three decades of service to Alaskans. I should not care about this. However, our patients will lose in both access to care and be economic harmed if you repeal the 80<sup>th</sup> percentile rule. The insurers will profit from the change. You will be asked to fix the consequences of the

change. Thus, I am asking that you retain 3 AAC 26.110(a) to protect our patients and the physicians that serve them.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Pease", written in a cursive style.

Robert Pease, MD  
Anesthesiologist



Dr. Nathan P. Peimann

Juneau Emergency Medical Associates, Inc

January 6, 2017

80% Rule Percentile Rule For Insurers

January 02, 2017

Ms. Lori Wing-Heier, Director  
Division of Insurance  
Department of Commerce, Community  
and Economic Development  
P.O. Box 110805  
Juneau, AK 99811-0805

Via email: [chip.wagoner@alaska.gov](mailto:chip.wagoner@alaska.gov)

Dear Director Wing-Heier:

On behalf of Juneau Emergency Medical Associates, Inc., I am submitting this letter in strong support of retaining 3 AAC 26.110(a) commonly known as the "80<sup>th</sup> percentile" rule for determining "usual and customary" charges for healthcare services provided to Alaskan consumers.

I am a physician that has been practicing emergency medicine for the last 15 years in Alaska. I am a partner in the organization that has served our local hospital for the last 30 years. I am married to a physician that has practiced internal medicine at Southeast Medical Clinic for over 10 years. We both enjoy our practicing medicine in Juneau and have seen significant improvement in medical care in our community since the 80<sup>th</sup> Percentile rule was put in place in 2004. Moreover, we have seen significant reductions in costs to patients with this rule. I never came into medicine with a plan to administer or advocate but I am writing today because I feel that if the 80<sup>th</sup> Percentile rule would change, healthcare in Alaska would cost patients more and specialty care would slowly fade in our state.

I recall a gentleman, Joe, I saw some time ago in our local emergency department. He came in severe pain and distress that had started quite suddenly in his flank. We spent a few minutes getting a history while the we waited for my interventions to ease his suffering. Once more comfortable, we sought to find the cause; in the end, we determined that he had a large, obstructing kidney stone that would not pass and would need surgical intervention. At the time, a new urologist was in town, on-call to the emergency room and available to help with this problem. Ironically, a few weeks ago, I saw this same person for an unrelated matter. He mentioned his thanks again for the interventions and referral to someone that was able to fix his problem he in Juneau. When speaking with the urologist, at the time, I now realize that part of the life-style attraction of this kind of specialist to our state's third largest city was the reimbursement market. He was a success story for the State of Alaska when they instituted the 80<sup>th</sup> Percentile rule. Joe, our mutual patient was served by this regulation with a quick, local solution to a problem that until recently, required out-of-town and often out-of-state travel via costly air-ambulance.

I oppose repealing the 80<sup>th</sup> percentile rule because it would only result in payment reductions from one class of payers, the insurance companies. It would, simultaneously, increase the burden of pay for the same patient's the insurance companies represent in

partial payment. Their reduction in pay, with its repeal, would unfairly burden those folks that would be expected to pay the insurance gap with decreasing payments from the insurance industry. This is a cost-shift away from the private insurance industry onto our Alaska citizens. The repeal of the 80<sup>th</sup> percentile rule does NOT reduce the cost of medicine, it only reduces the amount the insurance industry is responsible for, at the detriment to our patients in our communities that would bear that increased cost directly and unfairly.

I will continue to see all patients regardless of their ability to pay. I will help Joe out anytime he comes but I fear that my ability to help will come at a much higher price to him and others like him if the 80<sup>th</sup> Percentile rule is changed or repealed. If reimbursement for specialty services does diminish as a result, my resources to help Joe will diminish, too. My colleagues that have sought extra training and become very specialized practitioners will not come to replace the urologist or cardiologist or thoracic surgeon. We, in Alaska, will seek more and more of our care away from home and family. We will still bear the higher cost of medicine in Alaska but without the benefit of specialist, like those that helped Joe.

Another area that is relatively new to Juneau that would likely disappear if the 80<sup>th</sup> percentile rule went away is cancer care. Several folks in Juneau currently have their cancer diagnosed in our city, but then, see a specific specialist outside of Juneau, to begin therapy and then return to town rather than stay away for the duration of treatment that lasts several weeks to months. We have seen an increased ability to care for cancer with radiation therapy and oncology now available in Juneau. This is another at-risk specialty group that is here because of our current reimbursement market. Repealing the 80<sup>th</sup> Percentile rule would significantly impact that reimbursement and limit that service to our city of Juneau.

Finally, I would say the biggest impact to patients, our state citizens, is not the 80<sup>th</sup> percentile rule but the insurance gap that would widen if it went away. The insurance industry coined this the "balance bill" or "surprise billing" that comes when the insurance industry only partially pays to a certain level of "usual and customary" that individual insurance companies set in a non-publicly disclosed fashion. This is the way that hard-working people see financial ruin from unfair practices by the insurance company. I would wager that fixing this would be the greatest thing to do for Alaskans. I would like to be held to a regulatory standard NOT to "balance bill" the insurance gap to our patients if and only if the 80<sup>th</sup> Percentile rule is kept. This would ensure we, Alaskans, get the best healthcare in our own communities and the insurance companies would be held to fair payment without a specific "insurance gap" threat to our citizens.

Sincerely,

Nathan P. Peimann, MD FACEP  
Vice President and Partner  
Juneau Emergency Medical Associates, Inc.  
3260 Hospital Drive  
Juneau, AK 99801

Jocelyn Pemberton  
The Alaska Hospitalist Group, LLC  
January 6, 2017

80% Rule Percentile Rule For Insurers



The Alaska Hospitalist Group, LLC

4300 B St., Suite 200  
Anchorage, Alaska 99503  
Phone: (907) 375-3355  
Fax: (907) 375-3351

January 6, 2017

Ms. Lori Wing-Heier, Director  
Division of Insurance  
Department of Commerce, Community  
and Economic Development  
P.O. Box 110805  
Juneau, AK 99811-0805

Via email: [chip.wagoner@alaska.gov](mailto:chip.wagoner@alaska.gov)

Dear Director Wing-Heier:

I am submitting this letter on behalf of The Alaska Hospitalist Group, LLC in strong opposition of repealing 3 AAC 26.110(a) commonly known as the "80th percentile" rule for determining "usual and customary" charges for healthcare services provided to Alaskan consumers. I strongly believe that we need a fair payment regulation in place to protect the Alaskan consumer as well as maintain a robust medical industry that can provide a breadth of medical services in Alaska.

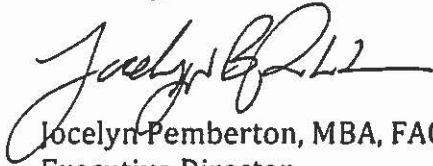
The Alaska Hospitalist Group is a private physician practice of over 70 physicians that serves four acute care hospital across the state as well as two skilled nursing facilities and the state's only long term acute care hospital. We provide medical care to all patients that present at these facilities with medical conditions, regardless of their insurance or their ability to pay. Our practice contracts with the major payers in Alaska and does not balance bill patients who need inpatient care, as long as their insurer pays according to our state's fair payment regulation.

Because we cover the acute care hospitals, we bill many out of state insurers on behalf of our patients. These insurers rarely reimburse at a fair payment according to our regulations and often pay less than Medicaid rates. We appeal on behalf of our patients, at significant cost in staff time, and depend on citing 3 AAC 26.110(a) to get them to pay us fairly. Even with the protective regulation in place, it is still a battle to get paid for the services we rendered. If you were to repeal this regulation, we would not have grounds for appeal leading to financial loss and increased cost to our patients.

We are concerned that Alaska has only two insurers in all practically, and only one in the individual market. This monopolistic scenario provides significant power to the insurers. In the past year we have seen significant shifts in practices contracting with these insurers, and there is now a majority of the specialties under contract. With these market shifts occurring, I request the division to allow for market forces to play out prior to making any regulatory changes that could negatively impact consumers.

The Alaska Hospitalist Group opposes repealing 3 AAC 26.110(a) and we strongly believe that Alaska needs a fair payment regulation in place to protect the Alaskan consumer.

Sincerely,

A handwritten signature in black ink, appearing to read "Jocelyn Pemberton", with a stylized flourish at the end.

Jocelyn Pemberton, MBA, FACHE, CMPE  
Executive Director  
The Alaska Hospitalist Group, LLC

Dr. Davis Peterson

January 6, 2017

80% Rule Percentile Rule For Insurers

## **Napoleon, Christopher L (CED)**

---

**From:** Wagoner, Chip (CED)  
**Sent:** Thursday, January 05, 2017 1:10 PM  
**To:** Napoleon, Christopher L (CED)  
**Subject:** FW: 80th percentile rule

Chip Wagoner, SPIR  
Regulations Specialist II  
Alaska Division of Insurance

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**From:** Davis Peterson [mailto:[peterson@afoc.com](mailto:peterson@afoc.com)]  
**Sent:** Tuesday, January 03, 2017 3:00 PM  
**To:** Wagoner, Chip (CED)  
**Subject:** 80th percentile rule

Dear Sirs,

My understanding of the intent of the 80<sup>th</sup> percentile rule was to provide consumer choice and protection by providing reasonable compensation to "out of network" physicians. In a small marketplace such as Alaska with little subspecialty depth in many areas, unreasonably low physician compensation may diminish access to these services. One need only look at the behavior of payers acting as administrators of self insured entities such as the State of Alaska where the 80<sup>th</sup> percentile does not apply. Out of network physicians have been paid as little as 125% of Medicare rates where as in network physicians may be paid over 300% of Medicare rates. This constitutes punitive behavior and an attempt to coerce non network physicians into signing on and is not simply a cost saving measure.

I would recommend retention of the 80<sup>th</sup> percentile rule or some similar formula to allow patient choice ,and maintain access to critical subspecialty services within the state. Physicians should also have the opportunity to continue to provide care to longstanding patients and families regardless of insurance status.

Davis Peterson MD



Dr. Quigley Peterson  
Bartlett Regional Hospital  
January 6, 2017

80% Rule Percentile Rule For Insurers

## Napoleon, Christopher L (CED)

---

**From:** Wagoner, Chip (CED)  
**Sent:** Thursday, January 05, 2017 1:10 PM  
**To:** Napoleon, Christopher L (CED)  
**Subject:** FW: Hearing 80th Percentile Rule

Chip Wagoner, SPIR  
Regulations Specialist II  
Alaska Division of Insurance

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**From:** Quigley Peterson [mailto:quigleypeterson@gmail.com]  
**Sent:** Saturday, December 31, 2016 9:13 AM  
**To:** Wagoner, Chip (CED)  
**Subject:** Hearing 80th Percentile Rule

Dear Ms Win-Heier,

This is written in support of maintaining the 80th percentile rule. I have practiced Emergency Medicine in Juneau for twenty seven years. Reducing the 80% rule will benefit insurers and add costs to consumers at a time of job losses in the state.

At Bartlett Regional, we gladly care for many uninsured patients, as mandated by federal law. Lots of Medicaid patients utilize us as well because of easy access. This proposed change will place an unfair burden on me as an emergency practitioner, providing 24/7 care. We can not refuse to care for patients who present, like those in private practice. In addition, recruiting physicians who choose to live in, instead of commute to, Juneau has become more difficult. This potential change in pay structure will only exacerbate the problem.

The future of the ACA is at best uncertain. It has allowed many previously uninsured patients better health care access. This would be a terrible time to change what appears to me to work just fine right now in Alaska. What is best for consumers?

I do understand that large groups may take advantage of the rule, but I do not see that as an issue in a small state, at least outside of Anchorage. Should any change be considered, I plea that you exempt Emergency Physicians.

Thank you.

Sincerely

--

**Tim Quigley Peterson, MD**  
**Medical Director**  
**Capital City Fire and Rescue**  
**Staff ER Physician**  
**Bartlett Regional Hospital**  
**Juneau, AK 99801**

Dr. Tiffany Peterson

January 6, 2017

80% Rule Percentile Rule For Insurers

January 5, 2017

Ms. Lori Wing-Heier, Director  
Division of Insurance  
Department of Commerce, Community  
and Economic Development P.O. Box 110805  
Juneau, AK 99811-0805

Via email: [chio.wagoner@alaska.gov](mailto:chio.wagoner@alaska.gov)

Dear Director Wing-Heier:

I am submitting this letter in strong support of retaining 3 AAC 26.110(a) commonly known as the "80th percentile" rule for determining "usual and customary" charges for healthcare services provided to Alaskan consumers.

I am a homegrown Alaskan physician practicing emergency medicine in Anchorage. I graduated from the University of Washington School of Medicine as an Alaska WWAMI student and have been practicing in Alaska since finishing residency. I treat all kinds - insured, uninsured, old, young, critically ill, suicidal, intoxicated, and anything else - at any hour of the day, any day of the year. The diversity of our state makes practicing medicine immensely satisfying and interesting. I have over \$200,000 in student loan debt from medical school. I do not yet own a house and am just beginning to save for retirement at the age of 37 because of many years of school and low wages during residency. I want to stay in this wonderful state to raise my family and practice medicine. Being able to pay off my debt and support a family in the state of Alaska requires that I can negotiate fair pay for the services I provide.

I feel that repealing the 80th percentile rule gives unfair power to insurance companies that have to prioritize their shareholders over patients and the people of our state. There is no public standard for fair payment and insurance companies would have inappropriate negotiating power if the law was repealed. EMTALA providers are required by law to treat any patient at any time. We cannot, nor do we want to, opt out of caring for patients in need. Insurance companies should not be able to opt out of paying a fair portion of those costs. To keep the ER safely staffed with adequate specialty back up, we must have the legal ability to negotiate with insurance companies. Repealing the 80th percentile rule would unfairly benefit those in the insurance business who make money from health care without actually providing any care.

Insured patients should be guaranteed that their insurance will cover their care. I would support a ban on balance billing if, and only if, the existing 80th percentile rule is kept in place.

Thank you for considering protecting the 80th percentile rule.

Sincerely,

Tiffany Peterson, MD

**Dr. Charles A. Portera, Jr.**

**Alaska Surgical Oncology**

**January 6, 2017**

**80% Rule Percentile Rule For Insurers**

# ALASKA SURGICAL ONCOLOGY

3851 Piper St., Suite U230, Anchorage, AK 99508 Tel.: (907) 868-2075; Fax: (907) 312-5882

[www.Alaskasurgicaloncology.com](http://www.Alaskasurgicaloncology.com)

Charles A. Portera, Jr., M.D.  
Surgical Oncology

January 5, 2017

Alaska Division of Insurance  
P.O. Box 110805  
Juneau, AK 99811-0805

Attention: Chip Wagoner

**RE: Response to request for public input concerning possible changes to the 80<sup>th</sup> percentile rule provision under 3 AAC 26.110.**

Dear Mr. Wagoner,

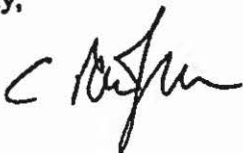
As a surgical oncology specialist practicing in Anchorage Alaska, I am very concerned regarding proposed changes to the "80<sup>th</sup> percentile rule" provision under 3 AAC 26.110 as the impact would be detrimental to patients and the overall state of healthcare throughout the state of Alaska.

Despite efforts to work with commercial insurance carriers to provide quality healthcare at affordable rates, the insurance carriers have shown unwillingness to contract at reasonable rates leaving most practitioners with no other option than to remain as out-of-network providers. This results in much of the financial burden being shifted by the insurance carriers to patient out-of-pocket responsibility. Since the introduction of Patient Protection and Affordable Care Act, insurance carriers have routinely decreased coverage while significantly increasing patient deductibles and premiums. A change to the 80<sup>th</sup> percentile rule would result in the insurance carriers shifting even more of the financial responsibility to the patient consumer leaving them unprotected from increased financial hardship. This will happen in spite of the insurers recording record profits and receipt of millions of dollars of taxpayer subsidies.

Over the past 2 years, my practice has experienced drastic decreases in insurance reimbursements as my patients have been forced to take on much of the health care burden. If this trend continues, Alaska will be unable to attract and retain high quality health care providers and patients will not be able to keep pace with increased premiums, resulting in a state-wide health care crisis. A change to the 80<sup>th</sup> percentile rule would hurt the state of Alaska by resulting in a shortage of physicians, increased waiting times for appointments, and significant additional costs to patients traveling outside their geographical region for medical care.

I strongly recommend no change to the 80<sup>th</sup> percentile rule and will make myself available to discuss in further detail my strong opposition to this proposal at your convenience.

Sincerely,



Charles A. Portera, Jr., M.D.

Jeffery A. Ranf

USI Northwest Kibble and Prentice

January 6, 2017

80% Rule Percentile Rule For Insurers



## Marine-Alley, Lynn M (CED)

---

**From:** Wagoner, Chip (CED)  
**Sent:** Friday, January 06, 2017 2:36 PM  
**To:** Wing-Heier, Lori K (CED); Latham, Anna M (CED); Bailey, Sarah S (CED); Marine-Alley, Lynn M (CED)  
**Subject:** FW: Written Testimony for 80th Percentile rule Jan. 6, 2017

FYI

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**From:** Jeff Ranf [mailto:Jeff.Ranf@usi.com]  
**Sent:** Friday, January 06, 2017 1:52 PM  
**To:** Wagoner, Chip (CED)  
**Cc:** Jeff Ranf  
**Subject:** Written Testimony for 80th Percentile rule Jan. 6, 2017

My Name is Jeff Ranf.

I work for USI Insurance Services and am a member of the Alaska Association of Health Underwriters. I have been in the healthcare / insurance business as a consultant/broker market place for more than 30 years.

Today, my written testimony is on behalf of myself.

There is no question that Alaska, especially in the metropolitan areas possess high quality, accessible healthcare. However, in the bush or rural communities that is not necessarily true. How the 80<sup>th</sup> affects those areas I don't think we really know. In other words, I don't believe there are data points illustrating how costs have been affected the rural areas by this rule. From claims data on a raw, rudimentary basis that I see, costs are high and balance billing does exist just like it does in the metropolitan areas. Costs are naturally higher however, in the bush communities. The cost of doing business is higher and true lack of competition is very prevalent.

There are providers that are clearly attempting to be fair with their patients. Typically, these providers are in-network (INN) versus out-of-network (OON) and use a pricing methodology that they deem to be fair and do not & CANNOT balance bill. It's the OON providers that in my opinion are causing balance billing and lack of transparency issues across the state, ultimately driving up costs and the water mark of the 80<sup>th</sup> Percentile. As previous testimony given illustrated, many times a small group of providers in a sub-specialty controlling at least 20% plus of that procedure in the market place can easily push that water mark upwards to an unsustainable level. This is the issue and it is COST.

I listened to this morning's testimony from various providers and came to the conclusion that there isn't a clear understanding what exactly the 80<sup>th</sup> Percentile truly represents. Or, for that matter how insurance vs. the cost of healthcare functions. There is empirical data illustrating the cost of care is directly related to the cost of insurance. Insurance premiums cannot rise at the levels they've been increasing without the cost of healthcare playing the major roll. Premiera Blue Cross has reported the last 10-15 years that they net about 2 – 2 ½ % a year. Regulation and statutes also dictate that insurers produce financials illustrating what their bottom line is.....especially Blue Cross since they are not-for-profit. That same data however, is available from Aetna as well.

I would agree that the ACA has played a part in the cost of care, but, not as much in Alaska as it has in other parts of the country. The testimony from the ER physicians and Alaska Radiology did not convince me that they understood how the 80<sup>th</sup> Percentile has raised the water mark in Alaska. They see it as a continuing tool to recruit new sub-specialties, that they'll be able to come here and do pretty well vs. the lower 48. My response is at what point does the cost of care rise so high with no ceiling that it becomes unsustainable? THIS IS THE QUESTION AT HAND. Where an employer says "I

cannot continue to hire people because I can't afford the cost of insurance because healthcare is too expensive in Alaska. That I cannot compete with the lower 48." That we live in a remote state with no neighboring states and few options of healthcare and no methods to truly control rising costs. Where and how do we draw the line so that it's reasonable for providers and the consumer?

Lastly, there is virtually a week that doesn't go by where our office isn't dealing with a balance billing issue for one of our insureds. It is rare that the issue comes up with an Alaska employer with insureds in the lower 48, they are 98% of the time from providers in Alaska. We're dealing with balance billing by OON providers, rising costs with no ceiling and virtually no transparency. Some providers are transparent, but, many of the OON are not.

Thank you for allowing me to testify on this important subject.


**Jeffrey A Ranf**

VP Employee Benefits

USI Northwest, Kibble and Prentice

3800 Centerpoint Drive, Suite 540, Anchorage, AK 99503

907-334-4703 | c. 907-301-6067 | f. 907-355-9730 | VOIP 44703

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Dr. Christopher M. Reed  
Imaging Associates  
And  
Alaska Radiology Associates  
January 6, 2017

80% Rule Percentile Rule For Insurers



January 3, 2017

Ms. Lori Wing-Heier, Director  
Division of Insurance  
Department of Commerce, Community  
and Economic Development  
P.O. Box 110805  
Juneau, AK 99811-0805

Via email: [chip.wagoner@alaska.gov](mailto:chip.wagoner@alaska.gov)

Dear Director Wing-Heier:

As the Medical Director of Imaging Associates, a local physician, and an Alaskan of nearly ten years, I am submitting this letter in strong support of retaining 3 AAC 26.110(a) commonly known as the "80<sup>th</sup> percentile" rule for determining "usual and customary" charges for healthcare services provided to Alaskan consumers.

After serving in the Air Force medical corps for 9 years, I had the whole country available to me in which to build my practice. Many desirable places around the country are saturated with physicians, even sub-specialists like myself. But Alaska was different. There was and remains a unique need in our state for specialists to join the medical community and provide services that are either not yet offered or are without enough depth to care for the population. I found an area in radiology that was underserved, and I left Alaska for one year to complete a fellowship in that area (my 14<sup>th</sup> year of training). I returned as part of Alaska Radiology Associates, the largest Alaskan radiology group and the only offering the depth of sub-specialty training we have. Over the years our group of skilled physicians have pioneered literally dozens of Diagnostic and Interventional Radiology services in Alaska, many of which we remain the only providers of in the state today; and we are in-network with every major insurer in Alaska.

The 80th percentile "rule" for determining "usual and customary" charges for healthcare services in Alaska was and is ultimately a consumer safety mechanism. One designed to make absolutely certain that people purchasing insurance have coverage at least at the 80<sup>th</sup> percentile of the regionally determined out-of-network costs. But in addition to protecting consumer's wallets, the rule also protects consumers by encouraging the kind of physician recruitment Alaskans need to receive life saving diagnostic and treatment services right here at home. Critics have often stated that we are unique in that no other state has such a rule. But that is not the case, in recent years at least two large East Coast states instituted nearly identical rules to protect their own consumers and physicians alike.

Healthcare costs vary across the nation. Alaska's costs are high. Costs are inherently cheaper in large metropolitan areas that have the benefit of millions of people pooling their risk coupled to an over supply of physicians who commonly choose to stay and practice where they train. Training for specialists like myself is commonly a 14-15 year long process. Naturally families are started and community roots are set firm during that kind of training commitment. Alaska is different than Seattle or Portland; with a limited population, geographical isolation, no physical in-state medical school and only a single family practice

residency program, few specialists are born here and none are trained here, they must be convinced to come here, and more importantly to stay.

For our practice that means we are forced to offer considerable premiums over "lower 48" compensation norms and yet we still expect to have few interested candidates over much longer search periods.

Interestingly, the same goes for our skilled staff of technologists, who are often just as difficult to recruit and retain. In many instances, we find ourselves paying sign-on bonuses for the same positions every other year. Still our practices employ nearly 70 local Alaskans!

While protecting consumers, the 80% rule has also protected Alaska's physicians and assured we are on an even playing field with the ever more monopolized private insurance industry here. I often hear it commented that "some specialists" in Alaska have a virtual monopoly in their market as they themselves represent greater than 20% of the supply or their services in the state. Yet the insurance monopoly is more powerful than ever before. Compared to most local physician charges, insurance rates are increasing at a far greater rate. Further complicating a comparison of how much insurance rates have really increased, plans change coverage levels and deductibles nearly every year so an apples to apples comparison is nearly impossible. A 15% increase in a consumer's insurance premium usually buys lower quality coverage this year than last, making the real rate of rise higher than published and impossible to calculate.

That brings me to an important overlying point; healthcare insurance costs have risen catastrophically since the unaffordable Affordable Care Act (ACA) took effect nationwide. The term "healthcare costs" should be used to describe the costs of actual services rendered. Doctor's visits, diagnostic tests, hospital stays, prescription drugs, etc. When we talk about the skyrocketing costs of "healthcare" since the ACA went into effect what we are really talking about on a local and national level are the skyrocketing costs of healthcare insurance. This is what we small business owners ourselves actually feel. As a community, we are experiencing double digit increases in insurance costs year over year while concurrently our deductibles are rising into the stratosphere.

But that shouldn't surprise us. It is, after all, what educated readers of the ACA have known was the intent of the law from the beginning. By legislatively eliminating risk pools, the government made healthcare insurance more like expensive pre-paid healthcare. By mandating people buy it anyway; the government gave the insurance industry a gold star. Insurance must now be priced to include the onslaught of high utilizers, which joined the ranks of the privately insured. True catastrophic insurance has been virtually eliminated. Health Savings Account limits have increased from only \$5650 per family per year in 2007 to \$6750 in 2017. So despite rapidly increasing deductibles the government has not allowed families to set aside virtually any more tax-free dollars to cover those costs. In summary, physician's rates are not at the root of why healthcare insurance costs have skyrocketed in Alaska and beyond; rather the ACA has eliminated traditional insurance and replaced it with something no one can afford. That has absolutely nothing to do with the 80% rule!

Along those lines, no matter how one feels about the ACA, we know with a very high likelihood that it will be repealed or significantly altered THIS year. One would hope that, at the very least, there will be an end to the individual mandate and insurance markets may be free to offer a larger variety of products again, tailored to the needs of consumers and priced according to their more specific risk and needs. For Alaska to make its 80% rule the scapegoat of our insurance crisis immediately before the root cause is rebuilt would be irresponsible and premature.

The 80% rule has done GREAT things for Alaskans. It has protected consumers by assuring them of the quality of their insurance product in the community in which they live and seek care and it has protected Alaska's physicians from the healthcare insurance monopoly by ensuring those companies must negotiate locally acceptable in-network rates in good faith because of the level of protection offered by the 80% rule for out-of network care.

Should the 80% rule be repealed or significantly altered, the state would be handing private insurance a free pass to call out-of-network allowable rates whatever they want, regardless of local charges. The immediate effect would be a loss of patient access to many out-of-network specialists; specialists we are lucky to have here.

Interestingly, my group, Alaska Radiology Associates (ARA), is and has been, for many years, in-network with every major healthcare insurance company operating in Alaska. More importantly, we are in network with every government payer as well, providing unlimited access to all Medicare, Medicaid, Tricare and Veteran beneficiaries. Further, ARA contracts to provide all Interventional Radiology services at Alaska Native Medical Center. In fact, despite common misconception, there are many services Alaska Native beneficiaries must seek in the community of private practice physicians and physician groups--services that could disappear if the state abandons the consumer protections of the 80% rule.

Like in the lower 48, our national healthcare system is built on cost sharing or "shifting" between the private sector and the government sector that undeniably pays less than most providers' costs, particularly in Alaska. As a result, practices like ours are able to provide care to our most vulnerable patient groups because of the rates we negotiate with the private payers. We, and all Alaskan physicians, can only negotiate with Alaska's insurance industry because our regionally determined out-of-network charges have to be respected at least at the 80<sup>th</sup> percentile level within our communities.

If the state were to determine regionally accepted out-of-network rates could be ignored, some patients would lose access due to the expensive differences between real local out of network charges incurred for a service and what insurance companies determine their own fair rate of compensation should be (the "balance bill"). Many other patient groups who have little to do with the 80% rule would likely suffer even more. As local practices begin to succumb to the downward pressure of our thin insurance industry, no longer required to measure local usual and customary rates, many practices will be forced to either eliminate the lowest payers from their practices altogether or simply just leave. Today, many providers can only afford to see Alaska Medicaid beneficiaries (often not being reimbursed for many months longer than industry standard) because their charges for privately insured patients are reasonably respected. This is true in any market, but the difference between the physician's total costs in Alaska and those offered by state programs like Medicaid is far greater here than in most other states.

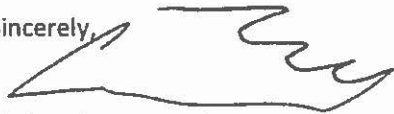
Frankly, if the guardrails in place around Alaska's patients and their physicians were to be removed, our thin network of local providers could quickly dry up. Rather than talking about participating in medical tourism, it could quickly become our only option for many high-risk procedures and treatments. Unfortunately, that is often not as "fun" as it sounds. Contrary to what is often suggested, it is not good care either. When something goes wrong when you return home, it's even worse. We as a state know this to be true, despite common public overtures to the contrary. We have, after all, invested millions of dollars in localizing care outside of Anchorage; taking the position that for rural patients, even traveling to Anchorage is too far. By putting their hand on the scale in favor of the insurance industry over patients and

their doctors, Alaska could be reversing the progress that has been made in favor of local community healthcare for Alaskans.

In the nearly ten years Alaska's healthcare system has grown from one filled with holes to one that is a complete puzzle, but without any spare pieces. Specialties like Radiology, Neurosurgery, Trauma Surgery, Surgical Oncology, Pediatric Surgery, Bariatric Surgery, Radiation Oncology, and on and on have seen world class physicians join our ranks over the last decade. We are a privileged state in so many ways. Our diverse network of healthcare providers make living here possible for many.

Please retain 3 AAC 26.110(a) commonly known as the "80<sup>th</sup> percentile" rule for determining "usual and customary" charges for healthcare services provided to Alaskan consumers. At the very least, let's not jump ahead of the changes coming to the ACA this year, chasing our tails while the national discussion is about to change.

Sincerely,

A handwritten signature in black ink, appearing to read "Christopher M Reed", with a stylized flourish at the end.

Christopher M Reed MD  
Medical Director, Imaging Associates  
Partner, Alaska Radiology Associates

**Dr. Tim Silbaugh**  
**Alaska Emergency Medicine Associates**  
**January 6, 2017**

**80% Rule Percentile Rule For Insurers**



January 3, 2017

Ms. Lori Wing-Heier, Director  
Division of Insurance  
Department of Commerce, Community  
and Economic Development  
P.O. Box 110805  
Juneau, AK 99811-0805

Via email: [chip.wagoner@alaska.gov](mailto:chip.wagoner@alaska.gov)

Dear Director Wing-Heier:

On behalf of Alaska Emergency Medicine Associates, I am submitting this letter in strong opposition of repealing or amending 3 AAC 26.110(a), commonly known as the "80<sup>th</sup> percentile" rule for determining "usual and customary" charges for healthcare services provided to Alaskan consumers.

I am the business manager and an active partner in the Alaska Emergency Medicine Associates. AEMA has provided emergency medical services at Providence Alaska Medical Center since 1980. In addition, AEMA provides leadership in the Alaska Emergency Medical Services community, including directorship of aeromedical and EMS transport programs, involvement in the local EMS system, and physician assistant oversight to the North Slope and other rural Alaska settings. AEMA is an independent, local, physician owned group. AEMA is the largest emergency medicine physician group in the state and is committed to providing the highest quality emergency care to all Alaskans. AEMA is committed to providing fair, reasonable, and transparent billing to patients.

I also have a personal interest in the Alaska health care system. I moved to Alaska in 1989, received my Masters in Teaching at the UAA and taught biology at West Anchorage High School. I then went on to attend the Alaska WWAMI medical school program through UAA and the University of Washington, returning to practice Emergency Medicine with AEMA at Providence Alaska Medical Center in 2002. I have been an active member of the Alaska community since 1989 and I am personally committed to the Alaska and Anchorage communities and am specifically committed to preserving the highest quality medical care at fair costs to our community.

In the field of Emergency Medicine, we are governed by EMTALA laws, which require that we treat patients regardless of ability to pay. In this setting, a majority of our billed services go unpaid. The 80<sup>th</sup> percentile rule provides the critical guarantee that our services will be paid at fair levels for those patients who do have insurance. In the absence of a fair pay rule, emergency medicine providers, as well as inpatient providers, who are required to see all patients regardless of ability to pay, would be subject to the insurance companies decisions on what fees are paid. This would place a devastating burden on the

EMTALA regulated providers who already face significant limitations on collection of fees for services, and who provide an essential role in the safety net for uninsured or underinsured patient populations. Emergency physicians are advocates and care providers of all patients regardless of ability to pay. The 80<sup>th</sup> percentile rule protects patients' access to high quality emergency medical care.

There has been much discussion and concern in medical billing regarding "surprise" or balanced bills. The 80<sup>th</sup> percentile rule helps minimize unexpected bills by establishing a reasonable and fair baseline for accepted payments. As many providers set their fee schedule within the range of the 80<sup>th</sup> percentile rule, balanced billing is unnecessary and the concerning and unexpected burden to the patient is avoided. Removing the 80<sup>th</sup> percentile rule would force providers to establish balance billing practices, shifting the responsibility of payment to the patient in the form of secondary, balanced bills. AEMA supports the 80<sup>th</sup> percentile rule as it protects the patient from unexpected balanced billing practices.

It has been stated that the 80<sup>th</sup> percentile rule has resulted in inflationary manipulation of usual and customary fees by dominant specialty groups. As the largest emergency medicine practice in the state, AEMA would certainly be classified as the dominant specialty provider within our Fair Health region. In establishing our fees, AEMA has consistently strived to stay within the fee ranges charged throughout the state and country. A look at the Fair Health data provides a direct comparison of current statewide and national rates. As an example, fee 99285 represents the fee for our most complicated emergency department patients. Fair Health data shows the 80<sup>th</sup> percentile 99285 fee to be as follows: Anchorage- \$1021, Ketchikan-\$1340, Kodiak-\$1021, Juneau -\$ 996, and Fairbanks -\$928. Nationally, Fair Health data reveals a similar trend: Anchorage- \$1021, Seattle -\$1120, Dallas-\$1488, Miami- \$1793, New Orleans- \$1924. Of note, Miami and New Orleans are dominated by large national staffing companies, whereas in Alaska, emergency medicine is entirely run by local independent physician groups who are committed to their communities. The 80<sup>th</sup> percentile rule protects the patient by providing a transparent and comparable fee schedule agreed upon by both insurers and providers.

The 80<sup>th</sup> percentile rule is essential for maintenance of our excellent health care system. The Alaskan medical care system has grown and improved significantly over the last 30 years. As those of you who lived in Alaska in the 80's know, at that time there was a significant shortage in medical care options in Alaska. Specifically, neurosurgery, cardiothoracic surgery, pediatric surgery, as well as many other pediatric and internal medicine sub-specialties were lacking in the state and it was common for Alaskans to leave state for care at Virginia Mason or other lower 48 locations. This has drastically changed and we currently have high quality neurosurgical care options, an excellent trauma system with level II trauma care and pediatric trauma care, pediatric subspecialty care, advanced cardiac care, and an increasing array of subspecialty care services. The 80% rule has played a key role in clearly establishing a fair pay system whereby providers coming to our state can have clear access to the accepted pay rates for medical services in the state.

In specialty care, the 80<sup>th</sup> percentile rule is essential to our remote state's ability to recruit and maintain specialty providers. As an example, over the last year several cardiothoracic

surgeons left practice and we currently lack adequate cardiothoracic surgical care in the state. This service is critical for many emergent surgical conditions and its absence puts at risk the health of many patients who might otherwise have to be transferred out of state in an unstable condition, greatly reducing chances of survival. With our current 80<sup>th</sup> percentile rule, we can specifically recruit cardiothoracic surgeons and other providers with a predictable and fair fee system protected by the state. Removing the 80<sup>th</sup> percentile fee protection would make the decision to relocate to Alaska, an already bold move for some, financially questionable.

In summary, Alaska Emergency Medical Associates is dedicated to providing the highest quality emergency care in Alaska at fair and transparent rates. The 80<sup>th</sup> percentile rule is essential to maintaining our mission, and modification or removal of this fair payment protection will have a devastating impact on our ability to provide emergency care to all Alaskans.

Sincerely,

Tim Silbaugh MD, FACEP  
Business Manager  
Alaska Emergency Medicine Associates  
907-903-9261

Mr. William E. Sorrells  
Alaska Medical Group Management  
Association  
January 6, 2017

80% Rule Percentile Rule For Insurers



January 5, 2017

Ms. Lori Wing-Heier, Director  
Division of Insurance  
Department of Commerce, Community  
and Economic Development  
P.O. Box 110805  
Juneau, AK 99811-0805

Dear Director Wing-Heier:

On behalf of the Alaska Medical Group Management Association I am submitting this letter in strong opposition of repealing or amending 3 AAC 26.110(a) commonly known as the "80<sup>th</sup> percentile" rule for determining "usual and customary" charges for healthcare services provided to Alaskan consumers.

The Alaska Medical Group Management Association (AKMGMA) is a professional organization comprised of group practice administrators, managers, health care executives, consultants and vendors located throughout Alaska. AKMGMA provides resources essential to enhance the skills required of medical practice management professionals by offering educational programs, federal and state updates affecting the medical practice, as well as networking opportunities. AKMGMA is a pathway to meet with colleagues to share ideas, experiences, and problems and solutions. We represent over 100 members from around the state and their respective healthcare organizations.

Our organization has grave concerns of the impact of making amendments or repealing 3 AAC 26.110(a) without first waiting and analyzing impacts of any changes to the Affordable Care Act (ACA). With a new Presidential administration coming in and a Republican controlled U.S. Congress, they are currently posturing to make significant changes that will no doubt affect healthcare in Alaska. Making any changes to 3 AAC 26.110(a) without first considering the abovementioned impacts would be irresponsible and not in the best interest of Alaskans and healthcare general for Alaska.

The Alaska Medical Group Management Association is strongly requesting the State of Alaska, Division of Insurance, Department of Commerce, Community and Economic Development take time to fully gain an understanding of the possible changes to the healthcare landscape by altering 3 AAC 26.110(a) , including changes to the ACA, before making any changes to 3 AAC 26.110(a). It is our strong belief that significant negative consequences to Alaskan healthcare will result including impacts to access to care for Medicaid, Medicare, Tricare and Veteran Affairs patients currently being served within the local communities.

Your consideration for our abovementioned recommendation is greatly appreciated. We're happy to provide additional testimony if required and can respond on short notice if needed.

Sincerely,

William E. Sorrells  
President  
Alaska Medical Group Management Association  
3705 Arctic Blvd, PMB 109  
Anchorage AK 99503  
(907)250-2061

**Dr. Art Strauss**

**Golden Heart Emergency Physicians**

**January 6, 2017**

**80% Rule Percentile Rule For Insurers**

# **Golden Heart Emergency Physicians**

*3875 Geist Road, Ste. E 381*

*Fairbanks, Alaska 99709*

*(907) 458-6943*

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Michael R. Burton, MD	President
Arthur J. Strauss, MD	Secretary, Medical Director
Terry A. Conklin, MD	Director
Kenneth D. Glaeser, MD	Director
Maria E. Mandich, MD	Director

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Mark O. Simon, MD	Director
Stanly W. Robinson, MD	Director
Brian A. Tansky, MD	Director
Caroline E. Timmerman, MD	Director
William D. McIntyre, MD	Director

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January 5, 2017

Ms. Lori Wing-Heier, Director  
Division of Insurance  
Department of Commerce, Community  
and Economic Development  
P.O. Box 110805  
Juneau, AK 99811-0805

Via email: [chip.wagoner@alaska.gov](mailto:chip.wagoner@alaska.gov)

Dear Director Wing-Heier:

I am submitting this letter in strong support of retaining 3 AAC 26.110(a) commonly known as the "80<sup>th</sup> percentile" rule for determining "usual and customary" charges for healthcare services provided to Alaskan consumers.

I am a Board Certified Emergency Medicine Physician practicing in the Emergency Department at Fairbanks Memorial Hospital and the acting Medical Director for our group. I have been practicing medicine in Fairbanks since 1999. I enjoy living in Alaska and appreciate all the unique opportunities it has provided for me and my family. Those opportunities however, come with their own set of sacrifices and adjustments.

As an Emergency Department Physician I must be available and prepared to treat any and all patients no matter their current circumstance. I am not granted the luxury of being able to help my patients plan for their medical care until they are sitting in front of me with an immediate need for treatment. This puts both the patient and myself in a situation where we do what needs to be done in the moment and are forced to try and resolve issues such as follow up care and billing at a later time. If resources were abundant this would be a simple undertaking, unfortunately this is not the case for most Alaskans.

Repealing or revising the "80<sup>th</sup> percentile" rule will force providers to invest more of their time trying to negotiate with insurance companies to ensure that payments are fair for both the patient and the provider. This potential reallocation of time would take away from the time needed to help the patient get the treatment they require and would possibly yield very few positive results.

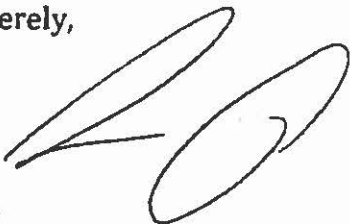


Expecting that patients will be able to afford skyrocketing insurance premiums and also be able to pay additional amounts for services rendered is unrealistic. Patients are being forced to choose which bills they can afford to pay and the additional medical expense is almost never the priority. I cannot fault patients for making this choice but it presents a challenge for our group while trying to run a practice and raise families in the same community. With less and less of our patients able to pay for their care, we as a practice will likely be put in a position of having to raise our rates for those that are still paying. This will only work for so long before the list of non-paying patients will outweigh the paying patients and it will become unsustainable to maintain our practice.

As it stands now our healthcare system is stressed and difficult for many to navigate. With many moving pieces involved it can be challenging to make a change without creating a domino effect in a negative direction. I fear that making changes to our system before having a better understanding of what is to come on a national level would put us a greater risk of collapsing the already fragile Alaska healthcare system.

I will continue to provide excellent care not only because of EMTALA regulations but because I believe that our community deserves access to quality healthcare. Alaskans should not be required to seek treatment out of state because more and more regulations have forced providers to close their practices. Emergency Departments should not have to shoulder the burden of treating patients with such limited resources available.

Sincerely,

A handwritten signature in black ink, appearing to read 'Art Strauss', with a large, stylized loop at the end.

Art Strauss, MD

Dr. Art Strauss  
And Dr. Mike Burton  
Golden Heart Emergency Physicians  
January 6, 2017

80% Rule Percentile Rule For Insurers

## ***Golden Heart Emergency Physicians***

*3875 Geist Road, Ste. E 381*

*Fairbanks, Alaska 99709*

*(907) 458-6943*

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Michael R. Burton, MD	President	Mark O. Simon, MD	Director
Arthur J. Strauss, MD	Secretary, Medical Director	Stanly W. Robinson, MD	Director
Terry A. Conklin, MD	Director	Brian A. Tansky, MD	Director
Kenneth D. Glasser, MD	Director	Caroline E. Timmerman, MD	Director
Maria E. Mandich, MD	Director	William D. McIntyre, MD	Director

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January 4, 2017

Ms. Lori Wing-Heier, Director  
Division of Insurance  
Department of Commerce, Community  
and Economic Development  
P.O. Box 110805  
Juneau, AK 99811-0805

Via email: [chip.wagoner@alaska.gov](mailto:chip.wagoner@alaska.gov)

Dear Director Wing-Heier:

On behalf of Golden Heart Emergency Physicians, We are submitting this letter in strong support of retaining 3 AAC 26.110(a) commonly known as the "80<sup>th</sup> percentile" rule for determining "usual and customary" charges for healthcare services provided to Alaskan consumers.

Golden Heart Emergency Physicians is a partnership made up of ten Board Certified Emergency Physicians that provide care exclusively in the Fairbanks Memorial Hospital Emergency Department. A majority of our providers moved here from out of state and have happily made Alaska their home. We are committed to providing the best care possible for the people that have become our friends and neighbors.

While we see a majority of our patients come from the surrounding Fairbanks area, we also see a significant number of patients brought in from northern rural areas as we are the only hospital north of Anchorage. We are the first stop for any and all medical emergencies that occur in a majority of the state.

We understand that most people do not plan to use the Emergency Department and when they need to do so they are hit with any number of unexpected charges for their visit. We have come to know that there are a number of patients that will not pay any portion of their bill out of pocket. As a group we do our best to work with our patients on any outstanding balances. Out of the nearly 39,000 patients we saw in 2016, we waived most if not all of more than 5,900 accounts.

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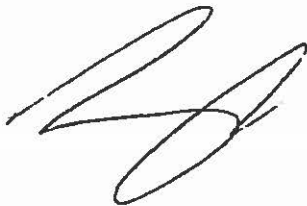
A growing number of members in our community aren't able to establish primary care due to insurance restrictions already in place. Because of this we have a higher volume of patients coming to us for care. For many of these patients, this is the only medical care they will receive. As EMTALA obligated providers, we will always evaluate and treat these patients appropriately no matter financial status. With a change in the "80<sup>th</sup> percentile" rule it is more than likely we will see a drop in revenue while still requiring our operating costs to maintain their current path. This is not an effective business model and will almost certainly cause an already challenged field to become even more limited in resources.

As much as our group has come to love practicing in Alaska, it is not without its challenges. Our patient acuity varies greatly and we struggle with limited providers and resources daily. Remote location, weather, and high cost of living are just a few issues we struggle with while trying to run our practice. Repealing or revising the "80<sup>th</sup> percentile" rule would add yet another obstacle to an already trying place to provide medical care. The possibility of even more limitations on reimbursement would likely cause many of our providers to reconsider continuing on in Alaska.

While we strive to provide as much care locally as possible there are many times we have to send our patients out of town and sometimes out of state to be treated. As a state we are limited by the number of specialists we have available to treat our patients. If we continue to add barriers to our providers, we will continue to see the number of available providers drop. In addition to causing our current providers to look for other options, this will add another "con" to the list discouraging new providers from considering Alaska as a practice location.

We understand and agree that it can be beneficial to review and possibly revise regulations as the needs of parties involved can change from time to time. This revision however will not be to the benefit of the patients or providers and will cause more harm than good to our communities. We strongly urge you to retain the "80<sup>th</sup> percentile" rule as it stands and help protect our vulnerable healthcare system.

Sincerely,



Art Strauss, MD  
Medical Director



Mike Burton, MD  
President

Dr. Mary Stewart  
Alaska Oncology and Hematology LLC  
January 6, 2017

80% Rule Percentile Rule For Insurers

**Marine-Alley, Lynn M (CED)**

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**From:** Wagoner, Chip (CED)  
**Sent:** Friday, January 06, 2017 4:09 PM  
**To:** Wing-Heier, Lori K (CED); Latham, Anna M (CED); Bailey, Sarah S (CED); Marine-Alley, Lynn M (CED)  
**Subject:** FW: Support to retain 80th Percentile Rule

FYI

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**From:** Tammy [<mailto:Tammy@hotsheet.com>]  
**Sent:** Friday, January 06, 2017 4:06 PM  
**To:** Wagoner, Chip (CED)  
**Subject:** Support to retain 80th Percentile Rule

Chip Wagoner, SPIR  
Regulations Specialist II  
Alaska Division of Insurance  
Mr. Wagoner,

Your office has been inundated with letters and comments this week, I will keep this short.

On behalf of Alaska Oncology and Hematology, LLC, I am submitting this email in strong support of retaining 3 AAC 26.110(a) commonly known as the "80<sup>th</sup> percentile" rule for determining "usual and customary" charges for healthcare service provided to Alaskan consumers.

We are a community based oncology practice serving cancer patients since the late 80's in Anchorage at the Alaska Regional Hospital campus. Cancer is a frightening time of a patient's life especially if a patient needs to be sent out of state as determined by their insurance company. We offer patients affordable, efficient and effective care when they need it, in our office close to their home, family and support systems.

As a medical oncologist I am concerned about the continued access to specialty care in Alaska for my patients as well as my family and friends. I am submitting this letter in strong support of retaining 3 AAC 26.110(a) commonly known as the "80<sup>th</sup> percentile" rule for determining "usual and customary" charges for healthcare services provided to Alaskan consumers and hope the Division of Insurance will consider changes carefully.

If you'd like further conversations, please call me at 907-279-3155.

Sincerely,

Mary Stewart, MD  
[mstewartonc@yahoo.com](mailto:mstewartonc@yahoo.com)  
Alaska Oncology and Hematology, LLC

submitted by Tammy Thiel, Administrator, Alaska Oncology and Hematology, LLC

Tiffany Stock  
Northrim Benefits Group, LLC  
January 6, 2017

80% Rule Percentile Rule For Insurers

January 6, 2017

**State of Alaska - Division of Insurance**

Attn: Chip Wagoner

*Re: Public Comment on 80th Percentile Rule*

Dear Madame Director,

First, thank you for the opportunity to submit my written comments in support of a repeal/replace effort or serious modification of the 80<sup>th</sup> percentile rule (3 AAC 26.110).

I am an Employee Benefits Consultant with Northrim Benefits Group, an Alaskan based brokerage and consulting firm and have been in the industry for 8 years. Over that time, I have seen my clients, Alaskan-based employers with 2-300 employees, burdened with the rising cost of their health insurance plans, putting that expense as one of their biggest budget items and concerns. While some of those employers are on the larger side and self-funded, which is not directly impacted by this regulation, the majority of my clients are small businesses in fully-insured health plans that are one of the key groups the 80<sup>th</sup> percentile regulation affects. While I do not believe that this regulation is solely responsible for the rising costs of health care in our great state, I do feel it is a significant contributing factor.

Under the current regulation, the 80<sup>th</sup> percentile just sets the watermark for costs an insurance company must consider "allowed" for covered services, leaving no impetus for what is actually a fair and equitable cost for that service. And we all know that there is a direct correlation between the cost of care and the cost of health insurance.

I ask the Division to repeal the current regulation in its form today and replace it with a more modernized, balanced approach that supports our future market goals for a system that provides quality care that is accessible and affordable, creating a baseline and ceiling for payments to providers and facilities, protecting the member cost share and out of pocket responsibility and provides a healthy living to those in the medical field servicing our population. I would recommend at the same time a balance billing regulation be implemented, to protect the individual consumer's out of pocket risk. We all know that the cost of living in Alaska is much higher than the majority of states in this country, but costs are not three times, and sometimes five-to-seven times higher; our medical expenses should not be that disparate.

The fact that a provider (or provider office) who has more than 20% of the market share in a small populous like Alaska can dictate what the "going" rate is for that service and requires the private payers to cover that cost in-full, creates a system where abuse can occur due to financial gain, and the rates adjusting every six months puts a burden on the system to be able to estimate future claims costs. I'm not proposing that we cut the amount that is considered "allowed" today,



what I'm suggesting is we make a change that prevents the cost of care from inflating in future years at the same unsustainable rates it does today.

My understanding is that the original intent of this regulation was two-fold: to make sure insurance carriers were paying providers a fair amount for services rendered and to give Alaskan providers a recruitment incentive to get more types of care into the state (i.e. guaranteeing a provider will get paid a certain amount if they practice medicine here.) Many individuals and businesses have had to raise their deductibles and cost-shares which are the consumer's responsibility due to the rising cost of insurance over the last 10+ years. When an individual is responsible for the deductible or coinsurance of their plan, this regulation is hurting consumers out of pocket expense and there are still scenarios where a provider is charging above and beyond the 80<sup>th</sup> percentile and patients can be balance billed, not all are but there is no protection to prevent it.

I believe that if we all work together we can address multiple reasons why the cost of care in Alaska is skyrocketing at an unsustainable rate and talk about solid solutions to fix the problems. There will be give-and-take on all sides of the table – insurers, medical providers, consumers and the State. Perhaps there is a better way for Alaska to recruit medical providers to the state without subconsciously saying that they will get "rich" off the healthcare delivered to Alaskans.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Tiffany Stock".

Tiffany Stock  
Employee Benefits Consultant  
Northrim Benefits Group, LLC  
3111 C Street, Suite 500  
Anchorage, Alaska 99503  
(907) 263-1401

Sheela Tallman

Premiera

January 6, 2017

80% Rule Percentile Rule For Insurers

January 6, 2017



Sheela Tallman  
Senior Alaska Legislative Affairs Executive

Division of Insurance  
Chip Wagoner  
P.O. Box 110805  
Juneau, AK 99811-0805

Via email to: [chip.wagoner@alaska.gov](mailto:chip.wagoner@alaska.gov)

**Re: Notice of Public Scoping for Possible Changes to Regulation that Requires Health Care Insurers to Pay Out-of-Network Health Care Providers for a Covered Service or Supply at No Less than the 80<sup>th</sup> percentile of Charges in the Geographical Area**

On behalf of Premera Blue Cross Blue Shield of Alaska, I am submitting comments in response to the public scoping of the "80<sup>th</sup> percentile rule". Premera is very concerned with how high healthcare costs are in Alaska and that costs continue to grow at a faster rate than other areas of the country. This places a significant burden on individuals, families, and employers to continue to afford coverage.

*Impact of Rule on Networks and Costs*

The 80<sup>th</sup> percentile rule is based on provider billed charges by service and geographic area, and payment is established by ranking the bills from highest to lowest. For example, if there are ten bills for a service, the eighth highest bill (i.e., the 80<sup>th</sup> percentile) is the amount that must be paid to the provider. This essentially establishes a "floor" for reimbursing non-contracted providers who can adjust their billed charges and drive the rate up at any time, thereby increasing reimbursement from health plans. If a provider group performs 20% of the services in an area whether they are contracted or not, they effectively set the reimbursement level for all non-contracted providers at this highest in the area billed charges level.

With this rule in effect, providers have few reasons to contract with health plans (and many have chosen not to), resulting in more out-of-network care and higher costs for individuals, families, and employers. The rule also influences the reimbursement levels for contracted providers. It limits the ability to contract with providers for lower than the 80<sup>th</sup> percentile, as providers are likely to only contract within a limited range of the 80<sup>th</sup> percentile, or they can terminate a contract at any time and receive the 80<sup>th</sup> percentile if they choose. It is a significant barrier to establishing stable, cost-effective networks for our members.

Alaska's Medicare reimbursement is approximately 20-25% higher than the national base rates, acknowledging that costs are higher in Alaska. Also, cost of living indexes estimate living in Anchorage costs about 20% more than living in Seattle. Premera's experience shows that overall professional reimbursement in Alaska is more than double reimbursement in Washington, which is far higher than the 20% higher cost of living index. Some non-contracted provider specialties in Alaska are reimbursed

January 6, 2017



Sheela Tallman  
Senior Alaska Legislative Affairs Executive

from 500% to over 1000% of Medicare which is four to seven times higher than their counterparts are reimbursed in Washington for similar services. Alaska's significantly higher costs, compared to other states, coupled with a faster rate of increase in Alaska is unsustainable and is creating a significant and growing economic challenge for employers and patients.

We understand the 80<sup>th</sup> percentile rule was intended to protect consumers from balance bills; however, our members are being balance billed. We understand that some providers do not balance bill their patients, and instead increase billed charges which drives the 80<sup>th</sup> percentile amount and their reimbursement higher. While this may protect patients from being balance billed at the time, these higher costs are reflected in the ever higher premiums that all customers pay and cause fewer people to be able to afford insurance.

The problem of non-contracted providers is not just an issue in parts of the state with limited provider competition. In areas with fewer physicians, a provider group may perceive minimal benefit from being listed in a provider directory and being in-network. However, the problem of non-contracted providers remains in Anchorage and other areas where there is relative provider competition for many services. The Anchorage area has more providers per 1,000 population for many provider specialties compared to Washington's Puget Sound region.

For these reasons, we believe the rule is not functioning as once intended – to protect consumers – but rather, the rule is harming consumers.

### *Policy Approach*

Premera supports a new policy approach to address reimbursement for out-of-network charges that protects consumers from balance billing. The key objective must be to provide a balanced environment that encourages providers to contract with health plans. These contracts benefit consumers who will be able to seek services in-network from quality providers that allow for more predictable and lower out-of-pocket costs.

The approach must carefully balance provider reimbursement to non-contracted providers as well as the impact to those who contract with health plans to avoid disruption to existing networks where members currently seek in-network care. In addition, any new policy must correct the flaw in the current methodology that allows providers to set the non-contracted reimbursement amount based on billed charges that can be raised at any time. This approach increases healthcare costs, and the current situation reflects this.



January 6, 2017



Sheela Tallman  
Senior Alaska Legislative Affairs Executive

Premera recognizes that Alaska has some unique challenges that impact healthcare costs. Any viable solution must account for these challenges and allow for a more predictable and manageable cost of care through in-network coverage options. In the absence of a process that works to rationalize the cost of healthcare, larger purchasers are moving to implement strategies to better manage spiraling costs, with 125% of Medicare reimbursement (or some % of Medicare) being an example. It's a drastic change, but one that appears to be encouraging some providers to start contracting discussions with health plans.

We look forward to the opportunity to work together on a solution.

Thank you for the opportunity to provide comments on this important topic. If you have questions, or wish to discuss any of these issues further, please feel free to contact me.

Sincerely,

A handwritten signature in black ink that reads "Sheela Tallman". The script is fluid and cursive.

Sheela Tallman

**Dr. Heather Tauschek**  
**Alaska Native Medical Center**  
**January 6, 2017**

**80% Rule Percentile Rule For Insurers**



January 3, 2017

Ms. Lori Wing-Heier, Director  
Division of Insurance  
Department of Commerce, Community and  
Economic Development  
P.O. Box 110805  
Juneau, AK 99811-0805

Via email: [chip.wagoner@alaska.gov](mailto:chip.wagoner@alaska.gov)

Dear Director Wing-Heier:

As the medical director of Providence Imaging Center, a partner in Alaska Radiology Associates, the lead interpreting physician for mammography and breast imaging for Imaging Associates, Anchorage Neighborhood Health Center and Norton Sound Health Corporation, and a life-long Alaskan physician, I submit this letter in strong support of retaining 3 AAC 26.110(a) commonly known as the “80th percentile” rule for determining “usual and customary” charges for healthcare services provided to Alaskan consumers.

I was born at Providence Hospital and raised in Anchorage. My father was a public health dentist who traveled to Alaskan Bush villages with a portable dental kit; a wall-sized map of Alaska in our home was studded with small red pins marking each village he visited. Some of my fondest childhood memories are of float plane trips to Kokhanok and Pedro Bay on Lake Iliamna, where I assisted my father with dental procedures and picked berries with the local kids.

Medical education required me to leave Alaska, because there is no subspecialty post-graduate medical training in Alaska. After fifteen years of education, including four years of medical school, a five-year residency in diagnostic radiology, and a fellowship specializing in breast cancer detection and intervention, I came home to Alaska. Alaska’s warm and independent people and its mountains, ocean and sky are where my heart is.

My job is to minimize death from breast cancer: I catch it early. I specialize in the detection, diagnosis of, and intervention for breast cancer using mammography, ultrasound, and MRI. My practice, Alaska Radiology Associates (ARA), diagnoses at least two thirds of the breast cancers in the state of Alaska. We treat insured and uninsured patients alike. We provide free care to low-income and uninsured patients through Anchorage Project Access. We work with Alaska’s Breast and Cervical Health Check program to ensure that women unable to pay for breast imaging and care are provided with the same high-level of care as all other patients. We accept all Medicare and Medicaid patients. We are in-network with all major insurers in our state.

In addition, we provide high-level subspecialty care to patients of Alaska Native Medical Center (ANMC) as well as military patients and their families at Joint Base Elmendorf Richardson (JBER). The tribal and military health systems do not provide a full spectrum of diagnostic radiology and breast imaging services: breast MRI and MRI-guided breast biopsies are not provided at ANMC or JBER, for example, in spite of breast MRI being the most sensitive way to screen for early breast cancer in high risk women. As a result, the patients at highest risk of breast cancer at ANMC and JBER are routinely referred to me and my practice for evaluation and intervention.

Our goal is to provide high-level subspecialty care for all Alaskans, and we have structured our practice to do so, even insofar as to take care directly to patients in remote areas of Alaska. Screening mammography reduces death from breast cancer by up to 30%. However, screening mammography requires advanced imaging equipment that is unavailable in places even as large as Seward and Valdez. Thus, like my father with his portable dental kit, we go to them with our mobile mammography unit. Our technologists brave the ferries, the highways, and mountain passes to bring potentially life-saving technology to our Alaskan patients.


Unfortunately, high-level medical care in Alaska is costly. Recruiting subspecialty physicians and technologists to Alaska costs money; we have to pay significantly higher salaries in Alaska to attract capable and competent clinicians because of our climate and remote location. Purchasing and maintaining the highest-quality imaging equipment is costly. Sending a mobile mammography unit to rural Alaska, with state-of-the-art three dimensional imaging capability and specialized technologists on board, costs money. Transporting rural patients to Anchorage for even higher level imaging and intervention costs money. Providing free care to the neediest Alaskans in our community is costly.

Repealing the 80th percentile rule will not cut these real costs. It will only cut costs for insurers, who will pass these costs on to my patients—even those who have paid high premiums for “good” health insurance—as out-of-pocket expenses. It will support the Premiera monopoly in our insurance market at the expense of Alaskans. It will erode our ability to provide free care to those patients who truly need it.

I am opposed to repealing the 80th percentile rule, because it will limit my patients’ access to life-saving care. My patients, faced with increased out-of-pocket costs, will not seek appropriate preventive and diagnostic care. In my practice I will see more advanced stage breast cancers at the time of diagnosis. I will see more breast cancers eroding through the skin. I will see more Alaskans dying from breast cancer. Please retain the 80th percentile rule.

Thank you for your time and your concern for the health of Alaskans.

Sincerely,



Heather Tauschek, MD



Mr. Curtis Thayer  
Alaska State Chamber of Commerce  
January 6, 2017

80% Rule Percentile Rule For Insurers



January 5, 2017

Lori Wing-Heir, Director  
Division of Insurance  
PO Box 110805  
Juneau, AK 99811

Dear Director Wing Heir,

The Alaska State Chamber of Commerce (Alaska Chamber) would like to express its support for amending the provisions under 3 AAC 26.110, or as more commonly referred to as the 80<sup>th</sup> percentile rule.

The mission of the Alaska Chamber is to promote a positive business environment in Alaska. We represent hundreds of businesses, manufacturers and local chambers from across Alaska. It is imperative that efficiencies and cost effective measures be implemented to curb the increasing burden of rising healthcare costs on employers and their employees.

The cost of healthcare in Alaska is one of the highest in the nation with Alaska having the highest average annual costs for employee health benefits. Under the existing 80<sup>th</sup> percentile rule we see a lack of competition among some provider categories. In addition, the State of Alaska health plan pays out of network providers at the 90<sup>th</sup> percentile, contributing to the ever increasing charges for care. Moving to a model that creates a ceiling and a floor for the charges of care, which would be a part of the solution to the rising cost of healthcare in Alaska while protecting consumers.

Thank you for the opportunity to comment on this regulatory change that will hopefully have a positive impact on the cost of healthcare in Alaska.

Sincerely,

A handwritten signature in black ink, appearing to read 'Curtis W. Thayer', written over a horizontal line.

Curtis W. Thayer  
President & CEO

Cc: Chip Wagoner, Division of Insurance

Dr. James W. Thompson  
Bartlett Regional Hospital  
January 6, 2017

80% Rule Percentile Rule For Insurers

**January 6, 2017**

**Alaska Division of Insurance  
Attn: Chip Wagoner  
Box 110805  
Juneau, AK 99811-0805**

**Re: 3 AAC 26.110**

I am an emergency room physician who has been working in the emergency department at Bartlett Regional Hospital since 1984. I have been practicing medicine in Alaska full time since 1975. During that period our medical community in Juneau has been well served. This has to do with many factors including life style, commitment to our patients. Reimbursement has also been a factor in that we have been treated fairly until recently.

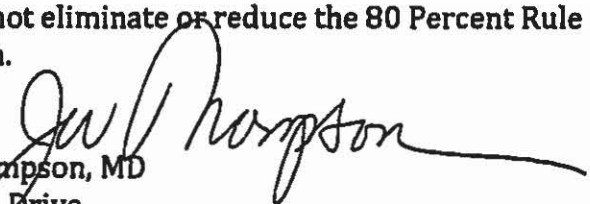
We are feeling a reduction in reimbursement for a variety of reasons. EMTALA mandated care in the ED for non covered individuals who are not covered by a federal or state program such as medicaid or medicare pay less than 1.0% of charges. We are essentially providing an untold amount of pro bono care.

There are a large number of patients that have excellent coverage and the "80<sup>th</sup> percent rule" is an important factor in supporting care for not just those covered but for those who can not pay. I feel that it is vitally important that the "80<sup>th</sup> Percent rule is not jeopardized. If our reimbursement declines there is no question that medical care provided in this isolated community will suffer as it will become difficult to be able to hire new recently trained superb residency trained emergency physicians from approved American medical schools. We will end up just making ends meet with foreign medical graduates who may not even be able to communicate well in English.

If the "rule" is abolished we will likely loose specialty care for emergent conditions such as surgeons, critical care providers resulting in a significant increase in medevac patients to ANC (72000.00) or SEA (102000.00) per trip. Who wil pay for these transfers? If the patient can not, there will be trickle down to the medevac company who will likely pull there services and then all of us who live here will be in serious jeopardy.

I urge you to not eliminate or reduce the 80 Percent Rule for Fair Compensation.

Sincerely  
James W. Thompson, MD  
3260 Hospital Drive  
Juneau, Alaska 99801  
brhed@gci.net



Dr. Stephen S. Tower  
And  
Julie Veronick  
Tower Joint Replacement Clinic  
January 6, 2017

80% Rule Percentile Rule For Insurers



December 30, 2016

Ms. Lori Wing-Heier, Director,  
Division of Insurance  
Department of Commerce, Community  
and Economic Development  
PO Box 110805  
Juneau, AK 99811-0805

Via email: [chip.wagoner@alaska.gov](mailto:chip.wagoner@alaska.gov)

Dear Director Wing-Heier:

On behalf of Dr. Stephen Tower and Tower Joint Replacement Clinic, I am submitting this letter in strong support of retaining 3 AAC 26.110(a), commonly known as the "80<sup>th</sup> percentile" rule for determining "usual and customary" charges for healthcare services provided to Alaskan consumers.

Dr. Tower is a lifelong Alaska, born and raised here and the son of the late Dr. John Tower. This gives Dr. Tower a unique perspective of having been involved in Alaska's medical community from a very early age. As his practice administrator, I have been in Alaska for almost 40 years. Both Dr. Tower and I have seen a vast number of changes in the healthcare field overall but especially in Alaska. Dr. Tower has provided orthopedic care to Alaskans for over 25 years and he is one of the few Alaskans doctors who still freely sees Medicare and Medicaid patients; those who continue to do so are a fast dwindling number. Our combined population of these two patient insurance types runs about 60%. As a result, we depend on fair and equitable reimbursement from our private payers to allow us to continue providing services to all patients but especially to a patient population that many physicians increasingly choose to limit or refuse to see at all.

This year, due to the merger of two large orthopedic offices in town, we reluctantly opted to be in-network with three major payers (Aetna, Cigna, and Premiera). For the small, one-, two- or three-physician offices, it is vitally important that the 80<sup>th</sup> percentile rule remain in place in order to allow us to remain financially competitive with larger groups whose volume allows them to continue to do business despite the heavy penalties that would be incurred if the 80<sup>th</sup> percentile rule were abolished. Otherwise we will literally be dying on the vine due to decreased reimbursement and inability to sustain write offs that larger groups would be able to sustain. Again, this would lead to loss of our ability to serve not only our private payer patients but, especially, our Medicare and Medicaid population. If we cannot negotiate competitively, we simply cannot exist solely on the revenue of Medicare and Medicaid patients, no matter how great Dr. Tower's desire is to serve this underserved population.

With the 80<sup>th</sup> percentile rule in place, smaller groups will be able to continue to compete and provide care alongside mega groups. This would allow patients a continued choice in their care and allow patients to not feel like they are just a number in a mega group, as we have heard so many patients state. The 80<sup>th</sup> percentile rule allows us to negotiate on a level playing field with insurance companies and encourages more providers to enter into negotiations with networks, thereby ultimately bringing about the cost savings that are the constant focus of today's healthcare world.



Lori Wing-Heier, Director, St of Ak Division of Insurance  
December 30, 2016  
Page Two

If orthopedic care, especially for those who require total hip and total knee replacements, is to continue to be an all-access option in Alaska-including for Medicare and Medicaid patients-we need the 80<sup>th</sup> percentile rule to remain in place. While costs vary around the nation, our currently contracted rates are now very competitive with many areas of the Lower 48, allowing Alaskans to stay in Alaska for surgery and follow-up care. The alternative would have insurance payers encouraging or requiring patients to travel elsewhere for surgical care, leaving those patients with the possibility of no local follow-up care if complications should arise postoperatively. And those same insurance companies are certainly not going to pay for patients with complications to return to the operating surgeon in the Lower 48. That's not what local physicians want for their patients and it's not what we, as Alaskans, should expect as our model of care in this day and age. Dr. Tower and I call on the State of Alaska Division of Insurance to ask that the 80<sup>th</sup> percentile rule be retained for the protection of all Alaskan providers and patients.

Sincerely,

A handwritten signature in black ink that reads "Stephen S. Tower".

Stephen S. Tower, MD  
Orthopedic Surgeon,  
Tower Joint Replacement Clinic

A handwritten signature in black ink that reads "Julie Veronick".

Julie Veronick,  
Practice Administrator  
Tower Joint Replacement Clinic

Dr. Edwin D. Vyhmeister  
Kenai Peninsula Orthopedics  
January 6, 2017

80% Rule Percentile Rule For Insurers





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Soldotna, AK 99669  
907-262-6454  
[www.kenaipeninsulaortho.com](http://www.kenaipeninsulaortho.com)

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*Orthopaedic Surgeons:*  
**Henry G. Krull, M.D.**

*Hand and Wrist Specialist:*  
**Edwin D. Vyhmeister, M.D.**  
*Physician Assistant:*  
**D. Max McLean, P.A.-C**

January 05, 2017

Ms. Lori Wing-Heier, Director  
Division of Insurance  
Department of Commerce, Community  
and Economic Development  
P.O. Box 110805  
Juneau, AK 99811-0805

Via email: [chip.wagoner@alaska.gov](mailto:chip.wagoner@alaska.gov)

Dear Director Wing-Heier:

I am submitting this letter in strong support of retaining 3 AAC 26.110(a) commonly known as the "80<sup>th</sup> percentile" rule for determining "usual and customary" charges for healthcare services provided to Alaskan consumers.

I am a Surgeon and I am the only "Board Certified Hand Surgeon" in the entire Kenai Peninsula. I moved my practice here from the lower 48 two years ago to bring services to this underserved area. I am currently providing my services to the Emergency Room Hand Surgery Call at our hospital. About 50% of my patients are uninsured or have some form of basic government healthcare plan. The rest of my patients have commercial insurance.

The cost of living is higher in Alaska. The population density is low, and a volume practice cannot be expected in this rural area I currently serve.

In the medical community, we are aware that preventive care and earlier treatment for medical conditions is **less expensive** and produces **better outcomes**.

The 80<sup>th</sup> percent rule was passed to protect the patient and consumer from large balances that could not be paid by the individual and would lead to economic disaster for the



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patient.

Healthcare cost and technology has continued to increase and now, more than ever, the patient needs the protection with the 80<sup>th</sup> percent rule.

The insurance industry has learned long ago that increased deductibles and co-pays will decrease the likelihood the patients will seek care. The insurance industry "out of network" scheme is disingenuous. Several insurance companies pay the same for in or out of network services. If the 80<sup>th</sup> % rule was repealed, the insurance company would win again by forcing many patients to delay or not seek necessary-appropriate treatment due to large "out of network" sums. Removal of the 80% rule is detrimental to the public, to the patients, and costlier to society.

I oppose repealing the 80<sup>th</sup> percentile rule because I believe it will have a negative impact on patient care, quality of care, access to care, and ultimately the cost of care. If the 80<sup>th</sup> percentile rule is repealed it will give insurance companies tremendous leverage to decrease reimbursement without necessarily passing the savings on to the consumer. Insurance premiums *never* decrease. This would benefit *only* the insurance company. Lower reimbursement may lead to higher charges, and may lead to greater out-of-pocket expenses for patients. Lower reimbursement may compromise my desire to remain in Alaska, and may ultimately restrict access to care, both for specialty and primary care. Patients lose, providers lose, and insurance companies have more profits.

In summary, I am strongly opposed to changing or repealing 3 AAC 26.110(a), the 80% rule. A change or repeal will only benefit insurance companies, at the expense of local healthcare providers and Alaska residents, and will not decrease the cost of healthcare in this state. It will increase the cost of medical care, and increase the out-of-pocket expense to consumers, and may ultimately drive many quality healthcare providers out of the state.

Sincerely,

Edwin D. Vyhmeister MD  
Hand Surgeon  
Soldotna, AK

Ingrid Vyhmeister

January 6, 2017

80% Rule Percentile Rule For Insurers

## Napoleon, Christopher L (CED)

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**From:** Wagoner, Chip (CED)  
**Sent:** Thursday, January 05, 2017 1:24 PM  
**To:** Wing-Heier, Lori K (CED); Latham, Anna M (CED); Bailey, Sarah S (CED); Napoleon, Christopher L (CED)  
**Subject:** FW: 3 AAC 26.110(a)

FYI

Chip Wagoner, SPIR  
Regulations Specialist II  
Alaska Division of Insurance

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**From:** Ingrid Vyhmeister [mailto:ingrid4005@mac.com]  
**Sent:** Thursday, January 05, 2017 1:15 PM  
**To:** Wagoner, Chip (CED)  
**Subject:** 3 AAC 26.110(a)

January 04, 2017

Ms. Lori Wing-Heier, Director  
Division of Insurance  
Department of Commerce, Community  
and Economic Development  
P.O. Box 110805  
Juneau, AK 99811-0805

Via email: [chip.wagoner@alaska.gov](mailto:chip.wagoner@alaska.gov)

Dear Director Wing-Heier:

I am submitting this letter in strong support of retaining 3 AAC 26.110(a) commonly known as the "80<sup>th</sup> percentile" rule for determining "usual and customary" charges for healthcare services provided to Alaskan consumers.

I oppose repealing the 80<sup>th</sup> percentile rule because I believe it will have a negative impact on our quality, access to, and ultimate cost of care. If the 80<sup>th</sup> percentile rule is repealed it will give insurance companies tremendous leverage to decrease reimbursement, likely without passing the savings on to the consumer. Already, Alaskan residents purchase insurance at "Alaska rates", yet insurance companies now want to reimburse services at "lower 48 rates." Insurance premiums *never* decrease. A change would benefit *only* the insurance company by increasing their profit margin. Lower reimbursement may lead to higher charges, and likely greater out-of-pocket expenses for patients. Lower reimbursement may compromise, and may ultimately restrict access to both specialty and primary care. Patients lose, providers lose, and insurance companies earn more profits. Sounds like a bad proposition for everyone except the insurance companies.

In summary, I am strongly opposed to changing or repealing 3 AAC 26.110(a), the 80% rule. A change or repeal will only benefit insurance companies, at the expense of Alaska residents and our healthcare providers, and will *not* decrease the cost of healthcare in this state. It will increase the cost of medical care, and increase the out-of-pocket expense to consumers, and may ultimately drive many quality healthcare providers out of the state.

Sincerely,

Ingrid Vyhmeister

Kenai, AK

[www.AlaskaDaisy.Etsy.com](http://www.AlaskaDaisy.Etsy.com)

Dr. Keith Winkle  
Emergency Department  
Alaska Regional Hospital  
January 6, 2017

80% Rule Percentile Rule For Insurers

## **Napoleon, Christopher L (CED)**

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**From:** Wagoner, Chip (CED)  
**Sent:** Thursday, January 05, 2017 1:12 PM  
**To:** Napoleon, Christopher L (CED)  
**Subject:** FW: 3 AAC 26.11(a)

Chip Wagoner, SPIR  
Regulations Specialist II  
Alaska Division of Insurance

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**From:** Keith Winkle [mailto:kwinkle@gci.net]  
**Sent:** Wednesday, January 04, 2017 4:52 PM  
**To:** Wagoner, Chip (CED)  
**Subject:** 3 AAC 26.11(a)

January 5, 2017

Ms. Lori Wing-Heier, Director  
Division of Insurance  
Department of Commerce, Community, and Economic Development  
PO Box 110805  
Juneau, AK 99811-0805

R. Keith Winkle, MD  
600 Orchid Circle  
Anchorage, AK, 99515

Dear Director Wing-Heier,

I am writing in strong support of retaining 3 AAC 26.110(a), commonly known as the "80<sup>th</sup> percentile rule" for determining usual and customary charges for healthcare providers to Alaskan consumers.

I have lived in Anchorage and practiced emergency medicine there since 1994. I had been practicing in Portland, OR, and grown disenchanted with the insurance climate there at the time. Due to HMO's and capitated care I found myself making a phone call on almost every insured patient to obtain further studies or schedule emergent procedures. The last straw was when a patient who was under capitated care had an episode of chest pain with a syncopal episode three weeks after suffering a ventricular tachycardia cardiac arrest. His primary care physician refused to admit him to a hospital, refused to consult a cardiologist, and basically told me my care would go unpaid if I admitted the patient to the hospital. He wanted the patient to drive across town to his office. I have truly enjoyed practicing in Alaska without those types of restraints and it is one of the reasons that keeps me here, even though my group is currently receiving about 35 cents on the dollar for what we bill. Many of our patients are unable to pay or are underinsured and we serve as the only physician they are able to see. I find it especially depressing that our seniors, who are amongst my favorite

patients, often get the short end of the stick when trying to obtain primary care because Medicare underpays so badly. Our healthcare system has unfortunately evolved around cost shifting, and nowhere is this more apparent than in emergency medicine. Under federal law we are required to evaluate every patient who presents to the ED. We see a disproportionate amount of the underinsured because cost shifting results in patient shifting. If private insurance is allowed to decide what is customary and usual, as they did before 3 AAC 26.110(a), this cost shift and patient shift will be even more burdensome.

Not only am I a provider of medical services, I am a consumer as well. Both my wife and I have been referred out of state to see specialists not available in Alaska. Thirteen years ago Debbie had a large brainstem tumor that no neurosurgeon in Alaska felt comfortable removing and she was referred to Seattle. It was difficult trying to care for her in Seattle (thank God we have family there, something not available to everyone) while my three young children were here with their grandmother who flew up to stay with them while I was gone. After a week in Seattle, I flew back up to be with them, only to have my wife suffer a complication soon after my arrival. It was one of the most painful periods of our lives. Since that episode, we now have a neurosurgeon in Alaska who can deal with this type of problem. I also know he is here because the income offsets the difficulty of living in isolation from the rest of the country and allows him to take his family to visit relatives and leave the state to visit his son in college. Four years ago I contracted a rare (and if you read the literature "frequently lethal," three times more fatal than malignant melanoma) and was forced to spend four months in Seattle undergoing treatment. Once again, even though I have family in Seattle, separation from my immediate family, with children still in high school, was difficult. About a year ago we lost the only interventional neurosurgeon in town. The hospital has had difficulty finding a replacement. Two days ago my hospital had to transfer a patient to Seattle for a problem that would have been cared for in Anchorage two years ago.

Retention of highly trained physicians in Alaska is a real problem. Although I live year round in Alaska, I know several physicians (intensivists, cardiologists, gastroenterologists) who work here for two to three weeks then go home elsewhere. I find it rather enlightening that the president of Alaska Premera continues to live outside the state. I recently tried to improve the wages of our hospitals unit clerks by comparing them to what Premera's customer service agents make for answering the phone while living in Seattle. Our clerks, who work 24/7/365, directly impact patient care, and also answer the phone under more stressful circumstances, make less than the insurance equivalent who have more regular hours and less stress. My group has had a very difficult time finding well-qualified board certified emergency physicians to staff our emergency department who are willing to live in Alaska. We have frequently had to rely on locums about whom we knew little and occasionally in a few, in retrospect, wish we had known more. Finding good physicians who are willing to remain here full time has been a struggle.

I am somewhat concerned about the monopoly Premera Blue Cross has in the state currently and the effect this will have in the future. I and my family are one of their insured. To keep our personal costs down, my group obtained a policy that, unbeknownst to us, did not cover inpatient mental health coverage. My youngest daughter tried to kill herself while at college last year and my wife and I are now footing the bill for 4 weeks of inpatient psychiatry. It galls me that insurance executives seem to feel that they and their employees seem to feel they should be reimbursed in a manner commensurate, if not more so, than those who actually provide round the clock care. I am sure part of my opinion is because as a provider I have had to deal with some of the games insurances companies play to delay paying a claim as long as possible. But it's also because I've had an insurance company refuse to pay for the surgery for my wife's bone anchor because they said it was a hearing aid. It didn't matter to them that she couldn't even wear a hearing aid until she had the implant.

In summary, I would once again like to express my opposition to repealing this law. I think its repeal will result in less qualified providers practicing in Alaska. It will make it more difficult, if not penalize, those who care for patients under federal EMTALA statutes to meet their obligation in caring for the underinsured. As one of those providers, I would be supportive of banning balanced billing if this law were retained. If it is not retained, however, then I feel EMTALA obligated providers such as myself would need to be exempt from a balanced billing ban, otherwise we are forced to see patients unfunded or not and working in Alaska would be unpalatable.



Thank you so much for your time. I am afraid this is a somewhat long-winded letter but it is on a subject about which I have strong feelings. Having on both sides, both as provider and consumer, I am deeply concerned about the effects the middle man can have unfettered when they have very little skin in the game.

Sincerely,

R. Keith Winkle, MD, FACEP, FAAEM  
Department Chair  
Emergency Department  
Alaska Regional Hospital  
Anchorage, AK

Dr. Bryan Winn  
Department of Radiology  
Providence Alaska Medical Center  
January 6, 2017

80% Rule Percentile Rule For Insurers



January 2, 2017

Ms. Lori Wing-Heier  
Division of Insurance  
Department of Commerce, Community  
And Economic Development  
P.O. Box 110805  
Juneau, AK 99811-0805

Dear Director Wing-Heier:

I wish to register my strong support of retaining 3 AAC 26.110(a) commonly known as the "80<sup>th</sup> percentile" rule for determining "usual and customary" charges for healthcare services provided to Alaskan consumers.

I am a neuroradiologist (imager of the brain and spine) who received the majority of my medical school training in Alaska through the state sponsored WWAMI program. I am proud to now play a small part in providing high quality subspecialized health care to rural communities throughout Alaska. In my current practice I treat patients across the state, from Iliukliuk Clinic in Dutch Harbor to Norton Sound Regional Hospital to Providence Valdez Health Center. It is a privilege for me to live, raise my children, and treat patients in the same community here in Anchorage where I was raised, not far from where my grandparents homesteaded in the 1950's.

*I testify that repealing the 80<sup>th</sup> percentile rule would be detrimental to the health of Alaskans.* This rule secures access to subspecialty health care for rural Alaskans who otherwise would have to travel out of state, at great inconvenience and expense. Repealing this rule would result in a net migration of subspecialist physicians such as myself from Alaska. As the former president of my medical group I have first-hand experience trying to recruit specialized providers to our state, from a small nationwide pool. We are already working at a competitive disadvantage, and repealing or amending the 80<sup>th</sup> percentile rule would only make recruiting and retaining physicians more challenging.

*Repealing the 80<sup>th</sup> percentile rule would make navigating health care more onerous and confusing for elderly Alaskans.* My grandmother passed away a few weeks ago at the age of 94. As my father and I sat with her in the Pioneer Home, sorting through her various medical bills I got an education on how disorienting it can be keeping track of bills and insurance payments. Repealing the 80<sup>th</sup> percentile rule would make this process even more opaque and more cumbersome as insurance companies reduce reimbursements and providers send balance bills directly to patients. If this protection is repealed I am convinced consumers will become

frustrated and disgruntled, faced with less transparent billing practices and rising out-of-pocket expenses.

As someone who has dedicated their professional career to improving the health of Alaskans I urge you to please retain this regulation for the protection of patients and their providers.

Respectfully,

A handwritten signature in black ink, appearing to read "W. Bryan Winn", with a stylized flourish at the end.

W. Bryan Winn  
Medical Director, Department of Radiology  
Providence Alaska Medical Center

Dr. Anne Zink

Alaska Chapter American College of  
Emergency Physicians

January 6, 2017

80% Rule Percentile Rule For Insurers

January 6, 2017

Ms. Lori Wing-Heier, Director  
Division of Insurance  
Department of Commerce, Community  
and Economic Development P.O. Box 110805 Juneau, AK 99811-0805  
Via email: [chip.wagoner@alaska.gov](mailto:chip.wagoner@alaska.gov)  
Dear Director Wing-Heier:

RE: Letter from the Alaska Chapter of the American College of Emergency Physicians (ACEP)  
in support on keeping the 80th percentile rule in Alaska.

Dear Ms. Wing-Heier,

I am Dr. Anne Zink, a board certified, residency trained emergency physician practicing at Mat-Su Regional Hospital. I have been caring for emergency patients in Alaska for 8 years. I am the current President of the Alaska Chapter, American College of Emergency Physicians, a group that represents greater than 80% of the Emergency Physicians across the State in both very remote and very urban areas who staff and maintain the emergency safety net of our health care system, 24 hours a day, 7 days a week, 365 days a year. I have also had the honor of working with many of you over the past year with the creation on SB 74 in an attempt to improve the value and quality of health care for the hard working people of Alaska.

Thank you, Madam Director, for the opportunity to appear here today on behalf Alaska ACEP chapter and in support of the hundreds of other physicians whose patient care is provided entirely within the hospital setting. This testimony reflects the collaboration of numerous emergency physicians around the State. You have also already heard from other Emergency Providers and additional letters have been submitted from those who could not testify in person today. As Emergency Medicine providers we feel strongly about this issue because we are always on the front line of failed health policies and in other states the cost sifting that could happen to patients as a result with removal of the 80th percentile regulation would unequally and unfairly burden patients in an emergency and the providers who care for these patients. As also mentioned, other states have now implemented similar regulation such as New York and Connecticut, which have used the 80th percentile of all charges as a consumer protection issue to prevent balance billing and control cost. Connecticut's July 1, 2016 "Surprise Billing" legislation uses the 80th percentile rule and is thought to be the best consumer protection bill for patients in an emergency in this country.

We support the mission of the Division of Insurance to protect Alaska consumers while encouraging the growth of a strong and competitive marketplace for all Alaskans. We particularly support the Division's intent in the matter before us to reduce "surprise" bills when insurance companies have left a gap in coverage, such as when the patients are either billed for large

deductibles, or out-of-network balance bills. This has been a growing problem locally and nationally. The number of people enrolled in low-premium, high-deductible health plans has increased by 40 percent in the last six years, according to the CDC. Nearly one in four Americans (registered voters) reported their medical conditions got worse — because they didn't go to the emergency department out of fear their health insurance companies wouldn't cover the costs (Morning Consult 2016).

Also, nearly one in five Americans (19 percent) said they contacted or went to urgent care centers or doctors' offices but were sent directly to an emergency department because they needed higher levels of care than those facilities could provide (Morning Consult 2016). Think about the last time you called a closed pharmacy or your doctor's office after hours. How many of you have heard "if this is a medical emergency please call 911." These patients should also not be worried about a medical emergency creating financial crisis afterwards in their time of greatest need.

My oath and both moral and legal obligation is to my patient. If a mother presents to the emergency department with her daughter unable to breathe, I do not ask what insurance she has, I care for her. When a 50 year old male presents with chest pain I work them up for chest pain, whether they are drunk or sober, pleasant to work with or not, and whether or not they have an ability to pay. This is not a fair market system, this is a health safety net. This is what we have been trained to do, what I took an oath to do and what I love to do, but it is also what the federal law, EMTLA (Emergency Medical Treatment and Labor Act) requires us to do. The need for evaluation is based on the patient's perception of an emergency. We cannot turn away a patient prior to evaluation, seek prior authorization or ask if they are "in network". We see everybody and we treat everybody. But to keep those doors open, and have adequate specialty back up, we must be able to be fairly compensated and must have the legal ability to fairly negotiate with insurance companies. Fair payment is a patient protection issue. This is why we feel compelled to speak out about any intent to eliminate the 80<sup>th</sup> percentile rule. Insurance companies have slowly been driving a wedge between patients and physicians, and this is one more attempt to do so.

Most Alaskans do not realize how fragile and thin our medical network really is until they need care. We have minimal thoracic surgery even in Anchorage, no burn unit, occasional facial surgery, no on call cardiology in Juneau, and no on call neurosurgery in Fairbanks. In just these past few weeks there were no inpatient beds available in South Central Alaska. With every hospital on diversion, patients have been "boarding" in the emergency departments for sometimes days as we await an inpatient bed or until we can jury rig a "less than ideal" outpatient plan for them, often resulting in their return to the Emergency Department in a few hours to days. We board psychotic patients for days to weeks in the emergency department because of a lack of inpatient psychiatric care. A lack of intensive care physicians in the Valley left us looking to transfer some of our sickest patients to Seattle, 6 crucial treatment hours away. Transfers are not only expensive, they can be dangerous despite our amazing flight crews. Boarding in Emergency Departments has been shown to increase patient mortality.

We believe that the 80<sup>th</sup> percentile rule has helped to fill its intended purpose, to provide Alaska's patients with quality healthcare providers by allowing us to recruit and retain capable physicians to practice and live in Alaska. However that job is not yet done. The physicians who are on call often go above and beyond and outside of their "normal scope of practice" to care for our community when no other care is available. I often spend hours every shift making phone calls, negotiating, looking for specialist care for acute medical emergencies, and this is with the protection on the 80<sup>th</sup> percentile rule. When I wake up a specialist in the middle of the night asking them to come care for an injured or sick patient they come regardless of the insurance. I want the consultant to be assured that at least in an insured patient they will have fair compensation. A patient shouldn't have to worry if the EMTLA specialist is in network, or if their in network hospital is on divert, or worry about being taken to the other hospital when the care could be provided locally. Removing the 80<sup>th</sup> percentile rule without some other clear protection for fair payment would result in the loss to the safety-net EMTLA care in this state. This would shift costs to the patients and potentially increase total cost by with increased transfers. This would delay stabilizing care and potentially result in avoidable suffering and death. This is cost shifting NOT a cost saving measure.

We, as Alaska's emergency physicians, get that insurance is expensive, and the State is in a financial crisis. We share your same goal of protecting the patient and trying to save the patient and the system money. We have heard moving testimony about the cost of health care. We have those conversations every day with our patients and we, like many of you are also employers providing health care, we also are patients and parents to patients ourselves. The devastating news a child has a cancer, is quickly followed by the question "how will we ever pay of this?" The tears I share with a mother of 5 who finally came to the emergency department when a breast mass ate through her chest wall, as she was too afraid of the health care cost, are real. The anger that we don't have a better system for her to access that care earlier, so she can live to see her children grow, is also real. These are the stories and the patients that fill my days at work and we are committed to finding solutions with everyone in this room, patients, providers, insurers, and the government.

We share your same goal of protecting the patient and trying to save the patient and the system money. We have taken a proactive approach to reducing low acuity emergency department visits, decreased opioid prescriptions, improved care coordination and produced financial savings though our involvement with legislative initiative SB 74, the Emergency Department Coordination Project (EDCP). Washington State used a similar method and saved Medicaid \$33.6 million in one year, and we hope to have similar per-patient savings. We care about cost and efficiency in the delivery of effective emergency care. With these changes we can effect a systems based change, savings that will be realized in the private insurance market as well.

There has been testimony on the high cost of Alaska health care and there have been some significant miss direction in testimony. We would encourage everyone to look at the as Fair Health Consumer database ([www.fairhealthconsumer.com](http://www.fairhealthconsumer.com)) created after a law suit where an insurance company was found to have been manipulating charge data in determining what is



“usual and customary.” As mentioned before a “99285” service, billed for the most complex cases in emergency care, has a charge at the 80<sup>th</sup> percentile in Anchorage of \$1,021 while in Seattle that same service has a \$1,120. In Dallas TX that service runs at \$1,488 while in Miami this same service has a charge of \$1,793, and in New Orleans it is \$1,924. Premera countered this and quoted an “in-net work” cost of \$300. This is not comparing apples to apples. The physician then must balance bill this difference. Again, by removing the 80% rule we will cost SHIFT, not cost save. We believe that emergency physician care in Alaska is less expensive than in many parts of the country because of local competition and the strength of independent, locally owned Emergency Medicine groups who live and are invested in their community, rather than being run by large investor-owned staffing organizations. Also Alaska’s existing fair payment provisions allow us to keep charges down because health plans must pay fairly.

We feel that a payment standard that is not publicly available, predictable, enforceable and transparently derived will be easily manipulated by health insurers to the detriment of patients and providers. We share the concerns of the department, the insurance companies and the public of extreme billing practices, but Emergency Medicine providers are setting fair, nationally competitive prices and these are the only prices we can directly comment on. We have also seen locally where increased competition between specialists has resulted in more in-network providers and decreased cost. Where extreme billing practices are found, individual cases or large groups can be investigated. However, broadly addressing this by eliminating the 80<sup>th</sup> percentile rule will have profound and un-intended consequences to the health care system, especially the safety net.

We note that the Division of Insurance’s 2015 Annual Report showed that a full two-thirds of all health insured covered lives in the state of Alaska is controlled by just two insurers, Premera and Aetna. Changing or eliminating the 80<sup>th</sup> percentile rule will serve to benefit these health plans without substantially benefiting even a majority of Alaska’s patients, who, under the current rule, receive no balance bills today because their emergency providers’ charges are below the market rate of the 80<sup>th</sup> percentile. We also do not know what will happen on a federal level and, if the Affordable Health Care act were reversed and the state’s 80<sup>th</sup> percentile rule was taken away with a balance billing ban, insurance companies could set what-ever price they want for reimbursement, make as much profit as they can, and our health care safety net would collapse.

We can support a ban on balance billing if the 80<sup>th</sup> percentile rule is kept in place as this would support fair payment without placing patients in the middle. If the Division of Insurance decides to revise Alaska Administrative Code to eliminate or reduce the 80<sup>th</sup> percentile rule then, in order to preserve the safety net, all EMTLA-obligated providers, including on-call specialists, must be exempt from any out-of-network balance billing ban, although again, this puts the patient in the middle where they do not belong during a medical crisis.

Additionally, we ask that the Division keep intact the AK statute (AS 21.54.020) that recognizes the assignment of benefits to a healthcare provider. Health plans must not pay to the patient health insurance benefits owed to a medical provider, especially when no contract is in place

between the health plan and the provider. Paying benefits to the patient only confuses patients, serves no public interest, increases abuse of the system (now patients can get paid and get treatment) and is only a means of forcing providers to join health plans under otherwise onerous conditions. This is anti-competitive and bad public policy.

The key is to have the definition of “usual and customary” publicly available, predictable, enforceable and transparently derived so that monopoly insurance companies do not set arbitrary standards. Such a publicly available standard eliminates lawsuits over fair payment and a burdensome appeals process as commonly occur in other states with a fair payment standard is not clear or objectively determined. Patients must not be burdened with an appeal process that is complicated by an unclear standard. The matter must be resolvable between the provider and the payer. Placing the patient in the middle is burdensome to the patient and unreasonably benefits the payer.

We would also like to encourage the commissioner to look at having the insurance companies be responsible for collecting their high deductibles, and take the physicians and hospitals out of middle. This would simplify and increase transparency in the billing practice, again saving cost to the system.

Emergency care and access in Alaska is slowly improving, and most of our sickest patients are well cared for within our system. However eliminating the 80<sup>th</sup> percentile rule and putting all power in the insurance companies hands will take us back decades and leave our patients without coverage when they need it the most. We ask this in defense of our numerous patients who live in this wild and wonderful State. Patients should be able to access basic emergent and life saving care at their closest facility without the fear of financial ruin or significant transport away from their communities.

In summary we, AK ACEP, humbly ask the commissioner:

- Consider that Emergency Provider physician in Alaska fees are competitive nationally
- Recognize that removing the 80th percentile rule does not necessarily not save on cost, it cost shifts and will increase the practice of balance billing in Emergency Medicine
- Preserve the 80th percentile rule and allow this to fully mature. Competition, transparency, and simplicity in the market place will drive down the cost, not reducing the insurance industries responsibility to pay.
- Recognize we still have a fragile and limited health care network in Alaska and removing the 80th percentile rule puts this safety network at risk.
- We we can support a ban on balance billing, similar to Connecticut, if the 80th percentile rule is preserved.
- Maintain AK statute - AS 21.54.020 - requiring insurers to pay the provider, not reimburse the patient.
- Require insurance companies to bill for their deductible and co-insurance amounts, instead placing the physician in the middle.

Thank you for considering protecting the 80<sup>th</sup> percentile rule to maintain a safety net for our community. We appreciate your time and attention to this matter, your patients during lengthy testimony and we ask for the opportunity to work with the Division and with the legislature to assure that any revision to state law does not compromise access to quality emergency care for Alaskan residents.

Thank you for your time and effort.

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