

80th Percentile hearing
2/22/2023 3:00 pm – 7:00 pm
Atwood Building, Anchorage, Alaska
Computer generated transcript - lightly edited.

19:26

Good afternoon, everyone. This is Lori Wing-Heier. I'm the director of the division of Insurance. I understand you can hear me. We are going to begin this hearing. I apologize that we're a few minutes late.

We are in the Atwood building and right now the time is about 3:07 on February 22nd, 2023. We've put up a slide which is showing some basic housekeeping rules. If we find that there are many, many people who want to testify, we may take the option of limiting testimony.

But with that, if it's OK, I'm going to begin this hearing and we hope that in the very near future the camera will be so that you can see us and that this is going to work a little bit easier.

Hoping you can see these slides up. I know many of you already know what the 80th percentile is, but we're going to go over a brief introduction of what the 80th is. It is a regulation; it is not a statute. The legislature could choose to override me and put this in statute as far as the proposed repeal. But at this point they have asked us to go through this hearing. And see where we end up.

The 80th percentile basically says that a person that provides coverage and this person is going to be an insurance company or a payer, when they determine the final bill paid to be paid to the provider, the payment amount has to be equal to or greater than the 80th percentile of charges based on a statistically credible profile.

Different healthcare providers did charge different things for different services. So when you look at the 80th percentile, you're going to look at a point of where 80% of the number of the number of listed charges fall below the data point and 20% of the charges fall above. And we often get questions on this that this is not 80%, but the 80th percentile.

The rule applies to insured plans, individual market, large group and small group that are insured plans and it does not apply to union trust. It does not apply to self funded plans.

It was put in in 2004 as a minimum of what payments had to be, and it was originally adopted because there was concern that the insurance companies were not paying a fair amount to the providers and consumers in Alaska were left with balanced billing.

Why are we looking at it now for a long time that as long as I've been director, I have said the 80th percentile needs to stay because it was Alaska's response to the No Surprise Act. Consumers in Alaska did not get large surprise billings, but that has changed because in 2020 under an omnibus bill. Congress passed a federal No Surprise Act.

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Previously, consumers were responsible for these balance billing, but with the surprise billing. Consumers are taken out of the middle between the payer and the provider. There are some exceptions to when this works.

In most cases it's going to be ER visits where you don't have a choice to see if you've got an in-network provider or not. If you go to a not an in-network provider but get an in network facility but get a non-network provider. Or services from an out of network air ambulance service.

There is some enhanced disclosures, so consumers are going to know if they are in network or out of network and they would know if they are going to be responsible for a balance billing. There should be a good faith estimate given to them so they have an idea if they choose to go to an out of network provider.

We're doing 3 hearings this one today, one Friday and one March 1st in the State Office building in Juneau.

With me today is Sarah Bailey. Sarah is the life and health supervisor. She resides in Juneau. Of course I'm in Anchorage, but she is in the Juneau office. Again, some housekeeping. I hope you can all see it. And with that, we're going to quit the screen and get into some testimony on the 80th percentile.

And while we let the others in on teams, I'm going to start with the Anchorage, who's in the Anchorage Atwood building. We're going to pay close attention to who's raising hands.

On teams or dialing in to and if you can raise your hand, if you want to testify as on the Team's portion of this, please do so. We will start writing down names and call on you as we can. That being said, Alan you're first on the list that you have the car, Sir and this is Alan Hippler. Hippler. I'm sorry, from Anchorage. You want to give your space.

You can talk whenever you want, Sir.

24:35

Thank you, Ms. Wing-Heier, and thank you to the governor for allowing you to introduce this repeal. I am here to speak in support of the repeal of this regulation. Speaking on behalf of myself, there are quite a few reasons why the repeal should go through. We can look at impacts on costs. We can discuss the distortion of insurance coverage and the perversion of incentives created by this regulation, but really the real reason why this regulation needs to be repealed is that it is damaging to and circumvents the free market, which damages the, uh, the pricing mechanisms that the free market uses to regulate itself. All the problems from this regulation stem from them this regulation prevents the effective pricing system that usual that we're used to in a free market that gives a rational and justifiable system of services. The solution is so simple. Do what all economists say should be done by government in most situations. Nothing, right? Just back away. We don't need this regulation. Repeal the regulation. Let the market do its work. The main defense proffered by the supporters of this regulation generally it focuses on balance billing, but even if that were accurate, which I totally dispute, it does not eliminate the problems

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with balance billing. Even if it did, it's not worth it. The heavy, heavy costs paid by the families of the people of State, Alaska it is huge compared to the minor benefits on balance billing that we realized. This is evidenced by studies which show this distortion in our market. This dates back to the Milliman study about a decade ago, more recently than that in 2018, our own ICER.

ICER out of University of Alaska with our local economists who are professors at the university and also completed a study talking about the problems with this regulation is introduced into our market again. The conclusion is so simple. Government can stop the damage that it is a breaking on our economy by simply stopping undo this unnecessary regulation. It is a special interest favoring regulation. If we eliminate it, we eliminate the distortions that.

Thank you so much. Thank you, Mr. Hippler.

If you can come in, we do have somebody here from the Atwood, but we're going to try to continue taking testimony as he looks to see if we can get the screen. What you need to do, Sir. We thought we'd have a be able to record this and that the cameras would be working.

Oh, oh.

While the gentleman from the Atwood Building is working on this, Josh Andrews, I see you. Sir, can you and Sarah's going down mute you and if you can unmute your line, Sir, and provide your testimony. Josh Andrew is on the Teams.

27:42

Hello, my name is Josh Andrews. I'm calling from Craig. I will be speaking for the repeal of this regulation. Thank you for taking my testimony. I've worked in Alaska public education for over 25 years. For the past 24 years I've worked with the Craig City School District. I currently serve as the board chair for the Public Education Health Trust. The Public Education Health trust or PEHT is a not-for-profit self insured health trust serving public education employees in the state of Alaska.

WPHT represents over 5000 policyholders and nearly 15,000 Alaskan residents. We understand. The salaries and benefits are the largest costs faced by our school districts. PHT strives to meet the needs of districts by providing choice and plan design and local control to facilitate unique recruitment and retention concerns. All of our plans include low administrative costs. While the 80th percentile regulation does not apply to self funded plans like PHT, we are directly impacted by the rule as we attempt to negotiate with providers.

They're continually presented with the rule as the financial floor where conversations begin. In 2018, ISER conducted a study and concluded that nearly 22.5% of the annual increases in healthcare spend could be attributed to the 80th percentile rule.

This alarming cost growth is not sustainable. Medical inflation before the 80th percentile far outpaces education salaries. HPHT, the cost of our insurance plans, direct reflection of the cost of healthcare in our state school districts receiving relief from increasing premium rates, are transferring those costs to employees either by increasing the employee share of the premium or by decreasing benefits by selecting plans with higher deductibles and out of pocket.

Charges with no offsetting increase in education funding or wages. We see these increasing healthcare costs being borne by school districts playing higher premiums or by Alaskan

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educators paying more out of their pocket. Public Education Trust supports the repeal of the 80th percentile regulation. While it will not bring costs down immediately, it will slow the rate with which Alaska's healthcare costs are rising. Thank you for your time.

Thank you Mr. Andrews and next in the Atwood building. So I'm going to pronounce your name wrong, but I think you're the second one on.

Can I ask you a question before? I certainly can. Or like the gentleman who just testified for groups who have their self insured, will they be covered under No Surprises Act in the future?

The No Surprise Act is applicable to self funded. It's a federal law, yes,

So it includes them in the case that in the future there is a discrepancy between what they do want to pay from their plan and what providers, right?

The difference is right now that we see is the division has some oversight of the discrepancies and we don't necessarily of the self insured plans. When there is a discrepancy that's going to have to go back to CMS at this point. But in the future under the that you would have some jurisdiction over this only if it's insured unless we do something in Alaska to say risk management, division of insurance. Someone has to do all of them, but right now we would only have insured plans.

I'm going to stand up here just by opening.

And next is Helen Adams.

31:36

My name is Helen Adams. I'm an emergency medicine physician here in Anchorage, and I represent myself and as a board member of the last chapter of the American College of Emergency Physicians. And my greatest concern about the repeal of the 80th percentile is going to be its effect on essentially the healthcare network of our state. Historically, we've had a really difficult time recruiting to our state and retaining positions in our state, and the 80th percentile is related to this. Essentially. My fear is that with repeal of the 80th percentile, we're going to see ever shrinking specialty coverage, especially specialists and I think the canary in the coal mine for this situation is to really look at pediatric subspecialty care in our state.

We've we currently don't have pediatric GI, Pediatric ENT. We have two pediatric hematology oncology physicians and the others are very limited. We don't have a pediatric nephrologist and historically as we know most pediatric patients in Alaska especially receiving socially care often Medicaid beneficiaries.

And so the cost sharing for these specialists is really important with repeal of the 80th percentile while the initial effects will just be on out of network charges, which most physicians in Alaska are in network now, this is a minority of charges. My concern is that it's going to give all the bargaining power to insurers. Essentially what I think might happen and what we've seen in other states that have implemented the No surprises Act is, is that when there is no repercussion for them going out of network, they're going to start dropping their in network reimbursement rates lower and lower and lower and eventually you could even go out of network with us and we may

be back to having more positions out of network than what we started. But and we also are going to be in a situation where physicians are going to leave.

I recognize that the 80th percentile is problematic. I don't think that the characterization of it as being the only driver of high premiums in our state is accurate. I am a physician, but I am one of my contract employee. I buy my own insurance on the health care marketplace like everybody else. I pay \$2300 a month for a family of four. So I, more than anyone, want to bring down costs in our state. In addition, I'm an emergency physician. So I actually am not really affected by a lot of this. I don't make a lot of money off the 80th percentile or surprise, because it doesn't apply to emergency services. So I'm coming from this perspective of like really being in a moderate position. And my position is that the 80th percentile is not perfect. I think it is inevitably going to be on the way out. We have a federal solution, but I think we need to be really conscientious and nuanced about how we move forward with changing our system. And my ask would be that as we prepare to move away from something like the 80th percentile that we give the Department of Insurance.

All the power it needs to watch this market as it changes, and we do that by supporting director Wing-Heier and creating an all payer claims database that is robust and functional. We currently don't have one and for those that aren't familiar with all pair of claims database, the most common one you could Google would be FAIR health.

Right now we have the infrastructure to create our own all pair claims database in Alaska, but we need to give the Department of Insurance the power to compel insurance companies to participate and needs to be robust. And without this we are going to run into problems with the No Surprises Act those problems will be.

Without having a robust all payer claims database, the arbiter is going to have a hard time identifying what is the median network cost that they should be considering when doing arbitration between physicians and insurance companies. Insurance companies have bottomless pockets with which to fight us in arbitration. We are small practices. We don't have bottomless pockets with which to fight in arbitration. It gives them a huge, like, what would I say? Give them an advantage over us?

So that's the first thing. So we need a robust all payer claims database. We need also that doing so will give director Wing-Heier the ability to be watching the market using that data to identify insurance companies that aren't playing fair. So that if an insurance company does start to inappropriately drop its rates or go out of network with the majority of its providers, they can be called out as having badly within the market.

If we were to suddenly repeal the 80th percentile without enacting these other considerations, I think we're going to see decreased access in our state, specifically for emergency services. And I'm not saying I'm going anywhere, but what's going to happen is your child, your loved ones, going to come to me in the ER and I'm not going to have someone to call. I'm going to have to send them to Seattle. So while it will decrease some of our costs initially, in the long run I think it's going to make our already fragile system weaker. It's going to increase out of state transfers

and I don't trust insurance companies to trickle any of the savings down into our premiums. I think that they're going to keep our premiums the same and they are going to have increased leverage while negotiating with us over time.

Thank you for your comments, Doctor. I do appreciate them. We're going to go back to teams.

Mark Reese.

If you could unmute yourself. We want you to understand and if you could unmute yourself and make your comments please.

Thank you, director. My name is Mark Reese. I'm a public policy director for CVS Health and Aetna. Thank you for the opportunity to speak to you guys today. We are strongly in support of repealing the 80th percentile rule. I kind of wanted to start where you started director which is the No surprises Act is is a game changer right? It, it is a public protection, it is a consumer protection that simply is going to change the face of surprise billing across the entire country and more specifically as enabled Alaska really to move away from the 80th percentile.

In a manner that both protects consumers and which I'll touch on in a second, actually provides some very, very robust provider protections as well. I've had the privilege or some might say the burden of helping Aetna actually implement the 80 or excuse me, implement the No surprises act on a federal basis. And so just to kind of provide everybody a little bit of context of how that's gone is extremely complicated, but the thing that it has unequivocally done is protect consumers. Consumers are not getting balance billed. Consumers are not stuck in the middle of payment disputes between providers and insurance companies, and regardless of whether you end up at an out of network ER, if you see an out of network anesthesiologist at a network facility, all those classic surprise billing scenarios, the consumer has been protected.

And so first and foremost, the the No surprises Act is doing its job. And if you look back to exactly what you how you started today's hearing, which is in 2004 when the 80th percentile rule was passed, it was to try and help consumers, help protect consumers. That protection is largely in place now in a more robust way than ever under the No Surprises Act. Secondly, the thing that the act is done is it, it's established a process for pain providers in a manner that I think is fair and equitable and per previous comments.

Uh, in support of the rule, it is market based and I fully understand the concerns of the previous speaker who just testified around kind of leverage and network leverage dynamics, right. That's something we deal with every day as a health insurer. But with the 80th percentile rule does is obviously right now probably gives an enormous amount of leverage to the provider. It creates a floor. You already heard that once today in testimony, it kind of creates a negotiating floor what the NSA does is it pegs the qualifying payment amount is the term of art it uses for out of network providers, which is the median contracted rate. And some might say, OK, so then carriers are in control of contracted rates and they can kick everybody out of network and can control everything. But the No Surprises actually has some built-in protections there. First off, the initial median contract rate year that it looked at was 2019. And so all of the payments going forward, unless it's a new service with an entirely new CPT code which is fairly rare. It's all

based on a 2019 benchmark, which unfortunately in Alaska is significantly higher than national averages because for the last almost 20 years health insurers have been trying to negotiate in network rates against the 80th percentile rule, right. So you already have that kind of provider inflation, if you will, built into the QPA itself. So I think that, you know, when comparing the Alaska market to the national market, we're going to see the providers will still continue to do very, very well.

Um, financially under the No surprises act. On top of that, the payment dispute process, which is called the independent dispute resolution process under the No Surprises Act, has proven pretty equitable to both payers and providers. Sometimes we win, sometimes those are the providers when the volume is significantly higher than anybody anticipated. And I think that's because it's clear that providers are doing pretty well and it's worth the financial risk of trying to push things into arbitration. And so that there is that.

Additional backstop to ensure that providers, um are not completely locked into the median contracted rate, but do in fact have another opportunity to increase reimbursement when warranted by the case, right? I would assume that there needs to be some kind of outlying circumstance for the arbitration process to reward a provider, but that's exactly what it should be for if it goes above and beyond with the median contracted rate represents the IDR process. Is there a couple other things I wanted to touch on about the rule and this has been mentioned a couple of times today.

OK. This rule, the impact of it goes well beyond the fully insured market that is subject to the rule, right, the insured market because it actually impacts in network rates. All Alaskans feel the impact of it every day. Every time they show up to a provider that potentially benefits from the 8th percentile rule, those providers are incentivized to stay out of network. So there's an increased likelihood you're going to see an out of network provider. It certainly impacts the in network contracted rates. And so overall premiums go up, but something that hasn't been touched on too much today.

The cost sharing link between obviously what the insurer pays and what the patient actually owes, the higher the reimbursement rate whether it's in network or out of network, you know the more actual dollars are coming out of Alaska's pockets and I think that cannot be overstated. The impact on cost sharing that it is percentile rule has there's some protections around treating it as an in network benefit, but if you haven't met your deductible yet or you still have that 20% coinsurance which is the same as in network.

That the price keeps going up and up. It's 20% of a larger number every time you show up at the ER or if you haven't met your deductible covering the entirety of the cost there is a significant burden and as a health plan we do what we can to try and drive costs down. But this rule has unfortunately been working against us for a number of years on that front. So we strongly support the rule. You know it's kind of a win, win, win for us. Consumers have that protection built into the No surprises act. It moves cost away from kind of the lopsided build charge methodology that.

Is kind of the bones behind the 80th percentile rule and providers are still very well protected under the No Surprises act from a reimbursement standpoint. And the last thing I would leave you with on some of the network concerns that were brought up by the previous speaker. I completely understand that dynamic workforce is an issue across the entire country. It's especially felt in Alaska giving both the rural communities and just the overall, you know, economics of the state and this geography. But director, I think it'd be safe to say that if I came to you with the filing that showed I had dropped every provider from all my networks, you might have some network adequacy, adequacy concerns and you have the regulatory authority to do that, to look into it, to actually force us to go and have a robust network. There's federal rules around network adequacy for anything that falls under the Affordable Care Act, which would be the entire individual and small group market. And I can tell you in the large group market, the last thing an employer wants to hear is that a network is skinny and has no providers in network. That's something that we can't compete on as an insurer. So there's kind of inherent built-in protections, not only in the No Surprises Act to protect network adequacy, but you as a regulator yourself obviously have that authority. And those two protections I think are really important to consider as we try and move away from the economic issues that the 80th percentile raises, but still have the consumer protections in place that benefit patients and providers alike so that they happen to answer any questions. Otherwise, thank you for the opportunity and we strongly support the repeal of the rule.

Thank you, Mark. Next for you to go back in the room and you Sir, are up, Clifford Ellingson.

44:51

I'm Cliff Ellingson and I am a pediatric emergency medicine provider at Providence Alaska Medical Center. I also serve on the Alaska Council for Emergency Medical Services. And I also am physician advisor for children. And I worry every day I see when I work, I see patients from Alaska, their families, their emergency situations, and I depend heavily on pediatric subspecialists to assist with diagnosing and treating.

Patients in their emergency conditions and pediatric subspecialists in Alaska is a bare backbone of what it needs to be. We have a very difficult time recruiting and retaining pediatric subspecialists here in Alaska despite the reports of high compensation and increased pay year and a lot of our pediatric subspecialists. We might have one that serves a particular specialty, we might have two. We have two hemo-oncologist who serve. We have a pediatric surgeon group and these.

These groups depend on the percentile rule to function, and I worry that repealing of this, of this act so quickly and so perhaps without getting all the data is going to affect those specialists and whether they stay in Alaska or not and will affect children and their ability to access medical care. And I do agree that healthcare in Alaska needs to be adjusted and the cost needs to be fixed. But I don't know if necessarily rushing into this without collecting the data and the best way to do this with the right solution. So I came to advocate for children for Alaska and for their access to medical care. I think it would be nice to have Affordable Care. About what good is Affordable Care if you don't have any care access?

Thank you for your testimony, Sir.

Do we have anyone else on the teams?

Rhonda, I see you've raised your hand. We'll unmute you.

And if you can unmute yourself, Rhonda, you've got the floor.

Thank you, director. Can you hear me? I can.

47:04

I'm calling in today on behalf of the Alaskans for sustainable Healthcare cost coalition. We're a group of employers that joined together back in 2017 to address the cost of providing benefits to our members, our supporters, our employees in the state of Alaska. We are a group of telecommunication, financial institutions, consultants, automotive industry, restaurants. We fully support the repeal of the 80th percentile regulation. Employers have faced the brunt of high cost of healthcare.

And healthcare services. For a number of years, our bottom lines have been squeezed such that we are not able to grow our businesses, hire more people or pay more in salaries due to the cost of our healthcare benefits. It is to this end that we hardly support the repeal of the 80 percentile regulation with the hope that the high cost of healthcare can begin to be seriously addressed. Enacted in 2004, it was seen as a Patient Protection administrative rule and in a time where there were a lack of providers in our community.

The rules set forth a what fully insured plans must consider as an allowable charge amount for providers that are not participating in their network. This data source for the floor was a database compiling provider build amounts. The age percentile for those build amounts per service code became the floor. Additionally, that floor was reset twice a year. This mechanism provided for the significant increase in healthcare cost in our state as many prior speakers have spoken to the ISER study on top of Towers Watson, on top of Howard Hewett. Howard Aon Hewitt have brought forth the impact of the 80th percentile rule in the state of Alaska. The adverse and unintended consequences have harmed our state, our communities, employers and employees. With the passing of the No Surprise Act, patients now have protections for emergency and ancillary services with the growth of providers in our community and participation within network agreements.

80th percentile rule is no longer needed. Thank you for your time director.

Thank you, Rhonda. Next coming from teams, we're going to go to Sandra Heffern.

Sandra you've got the floor.

49:19

Thank you, director. Wing higher. You know about 90% of Alaskans have some sort of health insurance coverage. About half of the insured population has insurance that is employer sponsored or privately secured. The other half is government funded. You know whether federal, state or a combination of both, government payers typically do not cover the full cost of care which then compels providers to offset expenses by shifting costs to payers with more flexibility in negotiating rates, in effect commercial plans. A market approach does not work in healthcare.

Typical market systems are facilitated through supply and demand laws. When demand increases, price will increase accordingly. This makes sense for the sale of a T-shirt or a laptop. However, the market for Healthcare is priced in elastic. Essentially, demand will stay the same for the most part despite price fluctuations. Second, when you have no control over what half of your players will pay the ability of providers to compete based on price is severely limited. Finally, not all payers pay for a full array of services. Some providers are almost fully reliant upon a single payer source such as Medicaid. There's no place for them to cost shift to to offset any losses due to frozen rates or actual cuts to the reimbursement rates. Disruptions to payments in one healthcare area affects the balance of the healthcare ecosystem. As an example, significant losses in the availability of Home Care Services can impact the ability of hospitals to discharge patients who are medically stable but still require some level of home care to be safe during their recovery and beyond. This has the effect of increasing costs in the most expensive part of our healthcare system.

Repeal of the 80th percentile regulation or repeal of the Certificate of Need or other one-off healthcare system remedies may help in slowing the healthcare cost growth rate. But without current and accurate Alaska based healthcare claims data, Alaskan payers, providers and policymakers will not be able to evaluate whether any of the policy levers are actually affecting the type of change we're seeking. There are current funds in in the current year budget for a health payment and utilization database which is a start towards an all payer claims database which has been mentioned previously. I agree that the No Surprises Act in essence makes the 80th percentile regulation obsolete. I believe the 80th percentile has done its intended purpose of protecting consumer consumers whose time has come to an end. Thank you.

52:28

Thank you, Sandra.

We're going through the Teams right now to see if there's any more hands up. For those of you that are on the phone, we see some numbers and if you would wish to testify, if you would push star five, that will let us know you wish to speak and then if you push star 6, you can unmute your line.

At this time, we're not seeing anyone else in the queue to speak. So the hearing is open till 7. We're going to mute ourselves until we see someone either enter the room or join the Teams call.

1:10:01

Hi, this is Lori Wing-Heier. I'm the director of the division of Insurance and it's about 4:00. We're one hour into the 80th percentile hearing all the people in the room in the Atwood Building as well of those as well as those that have raised their hand have testified as if any recent joinees would like to testify, please raise your hand and we will call upon you. Otherwise we're going to remain mute until we, we will check in every 20 minutes or so but until we see someone raise their hand, there is no one to testify at this point.

Thank you.

1:19:27

Good afternoon. This is Lori Wing-Heier from the division of insurance. It is 4:07 and in the Atwood Building we have Mr. Jim Myers who has joined us and would like to testify. Mr. Myers testimony is yours, the floor is yours.

I'm Jim Myers. I am the CEO of Alaska Behavioral Health and I just wanted to testify and ask that as you consider repealing the 80th percentile report, you look at the potential replacement. Though I'm not a big fan of the 80 percentile rule, in part because it's hard to understand and I have no way of knowing what the 80th percentile of charges in Aetna or Cigna or Premera's database is. There's other methodologies that are more understandable.

The ISER study that was done in 2018. I found 2 interesting quotations from that study. One and specifically around clinician and physician services and the ISER study mentioned that the gap and I quote the gap between D2 and D1 tells us that Alaska's position and how clinicians services would have been 2.56% lower without the rule. So they attributed 2.56% of the cost of clinician and physician services to the 80th percentile.

They also say in quote in Alaska healthcare infrastructure, particularly doctor's offices has grown considerably. This increase in availability and variety of facilities has made it easier for Alaskans to get care in state. It's safe to assume that increased availability translates into more use. I know very few states that wouldn't be willing to pay 2.56% more to get better access to healthcare services. So if the 80 percentile rule is responsible for this increase in healthcare costs of 2.56%. I argue that it's a small price to pay to get better access to healthcare services. And I also strongly believe and know from our own experience that if this rule is replaced and or is repealed and not replaced with something, we will have less access. Alaska Behavioral Health Service provided 3835 services last year, 572 individuals without a network insurance or that would have out of network insurance if this is repealed, I say would have because we're currently only contracted with one insurance company and that insurance we're contracted in Anchorage but not Fairbanks. And the reason that is is our fair banks rates are half of what our Anchorage rates are. When we approach the insurance company a couple of years ago about changing those Fairbanks rates, they said no, essentially your Fairbanks rates are the rates we want your anchorage.

These are too high. We want to renew, renew your contract. We want to lower your rates of anchorage. So we didn't do anything. Our contract expired. They continued to pay us as if we were in network even though technically we're not. And I suspect that's because they would be paying us even more if we were out of network like we are in Fairbanks now, get higher reimbursement, Fairbanks being out of network, then if we do, if they're expired, contract. So I suspect that the second, the 80th percentile was repealed, that they would notice that our contract has expired and we wouldn't have. I don't know.

The cost that they so for behavioral health providers, there is no negotiation with the insurance companies. They hand us a fee, schedule it's take it or leave it. They often believe they have an adequate network. I did a little research Cigna one of the insurance companies were not contracted with. If you go to their provider website, they list 96 therapists in Fairbanks if you look at those listings.

Four of them are private practice. I know these therapists. They are legitimate and private practice in Fairbanks for an outfit out of California, and they have a Fairbanks address, but they're also listed under the Anchorage addresses too. So I don't know if they're in. I know at

least one of them, I know who they are. They're actually in Anchorage, not in Fairbanks. The other 84 are virtual counseling only. So though they say they have a provider network of 96 therapists, 84 of the 96 are virtual only, and probably four of them are. If you go to psychiatry, they only list 15. One of them is actually there and Fairbanks. The other fourteen are virtual provision home.

So healthcare, a lot of insurers do not have adequate networks or behavioral health. And so a lot of providers are out of network. The reimbursements they offer us are less than our costs and in many cases they are far less than the Medicaid rates, which one of the reasons we have not contracted accepted their rates and contracted we would be subsidizing their patients care with state funds using Medicaid and CHTR grants to make up the difference between what they reimburse us.

Thank you for your testimony. Since Mr. Myers started his testimony, we've been joined by two others. Jennifer, do you want to?

1:24:38

We're now going to Jennifer Mahof for her testimony.

Thank you.

Hi, I'm Jennifer, Mahoff. I am today a here representing the Alaska Association of Health Underwriters. We are a member organization that Consults with and partners with thousands of employers around the state, which represent hundreds of thousands of employees and members around the state. We strongly support repealing the 8th percentile. Healthcare costs in Alaska are higher than those in lower 48. We all know that. They've increased, usually by double digits, far outpacing other free market inflation. Hey, I think we've mostly all seen that studies have linked some of the increases to the 80-percentile regulation once touted as a consumer protection. I would argue that really that never truly protected consumers because often they were still balanced billed by providers.

Amounts didn't cover the full expected payment. What it created was a ceiling for payment. A ceiling that usually increased every six months or so with, I'm sorry, floor payment, which would be every six months or so with no seating for payment.

The impact of the group market in particular has been seen by small employers disproportionately with high prices, limited options, and kind of know where to turn. Now patients are protected by the federal No Surprises Act and removal of the 80th percentile will ease confusion about which rules to follow and claims resolution. Now is the time. So we really support repealing the 80th percentile. Thank you, Jennifer. Thanks.

1:26:35

Jim. Are you ready to go?

Jim Grazko will be our next presenter, Jim, is with Premera.

Premera Blue Cross Blue Shield of Alaska representing.

I think we probably are getting a call that, Jennifer, you were kind of hard to hear. Jim could I ask you to come, they heard you, but it was very muted. So I want to make sure people are testifying that they can hear you on teams. Thanks, Jim.

So my name is James Grazko, I represent Premier Blue Cross Blue Shield of Alaska and I've worked there for the last 24 years.

My role with the company has been primarily working with data in the two states that we operated in, Alaska and Washington. So I work with medical claims and cost data every day, and as such I'm in a unique position to see first hand the impact of the 8th percentile rule on medical claims cost trends in Alaska.

The 80th percentile rule was originally adopted to protect consumers from excessive bills. Over the past decade, the rule has been a significant driver of healthcare cost increases in Alaska, pushing costs up between 8 and 24% higher over the last decade than they otherwise would have been, according to a recent study by the University of Alaska. Alaska now has the highest healthcare cost on the planet.

One quick example to illustrate that there are many others. A simple COVID test in Washington cost \$40 today and I'll ask you the same test cost 139 dollars, 350% more. There are many other examples and the cost differences between Alaska and even other very high-cost regions of the country are steep. They're statistically significant and they're largely driven by the 80th percentile rule. Think about it, what is the position or provider have to contract with the payer at? Why would they contract with the payer at a reasonable low cost rate when they know going into any negotiation, but if they choose not to contract at all, the 80th percentile rule requires they be paid based on the eighth highest build charge for that service. The foundation of the 80th percentile rule build charges is arbitrary, unregulated, and can be increased anytime, further driving up healthcare costs in Alaska.

As mentioned previously, in the 80th percentile rule was adopted to protect consumers and employers from excessive costs in the form of surprise billing. In 2020, the federal government passed the No Surprises Act that does just that, but it does it with one hugely important distinction that is not inflated. It's not inflationary to healthcare costs, unlike the percentile rule. Now that Congress has enacted the No Surprises Act, it's time to eliminate the 80th percentile rule and rid Alaskans of its costly impacts.

Thank you Jim. Thank you.

1:29:14

We will go back and I'm going to ask is there anyone on teams that wants to testify if you could please raise your hand and for those of you on the phone, if you wish to testify.

Would you please, I think it is star five you need to push and that will let us know you wish to speak and then you would need to use STAR 6 to unmute your line for those on the phone.

Not seeing any we're going to go back on mute and we will wait for our next presenter to either join teams or join us in the Atwood Building.

1:38:10

3/10/2023

Hi again. This is Lori Wing-Heier with the division of insurance in the Atwood. We have been joined by Lisa Rogers and she would like to testify. So Lisa the floor is yours.

OK, my name is Lisa Rogers. I own a small accounting firm, Rogers and company CPA, PC. We pay \$935.44 a month for insurance. It's health and dental insurance. That's an awful lot of money.

You know, multiply it out there. We're getting close to \$12,000 a year just for health insurance and dental insurance so that people could be healthy, and vision insurance so that they can see. I've been reading information about this 80th percentile regulation. Seems to me that needs to go away really badly sooner rather than later. My humble opinion is that we really need to overhaul the way we do healthcare and health insurance in this country. And in this state, it's just insane at risk statistics that we have the highest cost of health care in the country and I think you've been maybe it's the highest in the world because I don't know anybody in any other countries that pays for healthcare like we pay for it here. So, um, really? That's the essence of my testimony, with a little bit of personal, personal facts there for you to know and I'd be more than happy if anybody wanted to contact me and my contact information is there in the sign up sheet, but I really think this 80th percentile thing has got to go away, these physicians and healthcare facilities have got more solidarity than this strongest union that could ever be created in my humble opinion, and it's just it's breaking their backs as small business people. It is breaking our backs and as citizens. It's causing people to go bankrupt. It's just tragic and it's wrong. Thank you very much.

Thank you, Lisa, for your testimony. We will go back on you until we see that someone else is either on teams or enters the room to testify. Thank you.

1:59:46

Hi, this is Lori Wing-Heier. I'm the director of the division of Insurance for the State of Alaska and it is 4:48. And we have a party on the line that has raised their hand to speak. The last four numbers are 4466. And sir, if you can or ma'am, if you can hit STAR 6 on your phone, you will have the floor. Please introduce yourself and offer your testimony.

Hello, Director Wing-Heier. I am. My name is Ellen Eiser. I have lived in Alaska for the last 33 years. When I came here, my first job was at a bank and they paid 100% of employee health care. Today, that same bank only has a high deductible health plan. This can be directly attributed to the increase in healthcare cost in Alaska due to the 80th percentile regulation.

I currently work for an insurance carrier and manage fully insured and self funded plans.

These plans all recognize the impact the 80th percentile has had on their cost. They are hesitant to pick up as providers carry a lot of industry in the state because of their high net worth mostly thanks to the 80th percentile. Providers could easily impact their bottom line.

This is for banks, credit unions, engineering firm, union shop and even government plan.

On their behalf, I ask you to please eliminate the 80th percentile and the extra territorial aspect of the regulation. Thank you.

Thank you, Ms. Eiser, for your testimony.

2:01:36

3/10/2023

We will go back on mute until we have another uh guest who wishes to testify. We are still in the Atwood building at 4:50 and there are still several people on teams listening to the hearing. Thank you.

2:39:35

Hi, this is Lori Wing-Heier. I'm the director of the division of Insurance for the State of Alaska. It's approximately 5:30. We're just checking back in. We are still in the Atwood building and monitoring teams. We will be back with you if someone shows up to testify or if we see someone join teams or by phone that wishes to testify. Thank you.

3:11:54

Hi, this is Lori Wing-Heier, the director of the Division of Insurance for the State of Alaska. We're just checking in. It is 6:00 o'clock PM. There is no one in the room at the Atwood that will choose to testify and there is no one online on the Teams meeting portion that has raised their hand to testify. We just wanted to let you know we're still here, we're still monitoring and if we see someone raise their hand to testify, we will put them up as soon as we can. Thank you.

3:43:26

Hi, this is Lori Wing-Heier, the director of the Division of Insurance for the State of Alaska. It is 6:30. We are still in the Atwood building and we're monitoring teams, but at this time there is no one to testify. If and when someone shows up to testify, we will respond immediately. We have 30 minutes left and we will close out the hearing. Again if anyone joins teams or shows up at the Atwood to testify, we'll put them on immediately. Thank you.

3:48:23

This is Lori Wing-Heier. I'm the director of the division of Insurance and it's approximately 6:36. We have been joined from by Mr. Musa. Dr. Musa, who is going to give his testimony, Sir, you have the floor.

All right, good evening. I'm here to just kind of discuss at least from a position and a physician's point of view about the 80% insurance rule.

One of my biggest concerns if this thing is repealed is the effect that's going to have on patients and patient cost. Right now there are really only two main insurers in Alaska that even though the number of patients have grown in the last at the number of people who actually insure us has gone down. So they pretty much fixed the prices for reimbursement and there are very few providers who are out of network right now because if they're out of network, they can't even see, they can't take care of their patients. So if you if this, If this bill is repealed or if you take away the 80% rule, it's it shifts a lot of power already into the insurance company that are close to a monopoly on this market. And that's going to have a negative price pressure on the patients. Because what has happened across the nation is that as insurance is consolidate and get more ability to set the prices, reimbursement has traditionally gone down for physicians especially specialist and costs and premiums for the the patients have really remained the same. So now you have patients who are struggling to find providers who are in network or who will accept their insurance because it's untenable for them to really stay in practice. And Alaska is very

difficult because there's not, there's not unlimited amount of specialists and there was some comment on that that specialist in Alaska can.

Arbitrarily have 21% of market share and and basically fixed the price so they can charge whatever they want. But if even if that were the case in the past that's not the case now. The majority of specialists are in that work whether you're orthopedic. I'm an interventional pain specialist that I also treat general practice patients and my multi-specialty clinic and we're in network with as many as insurances as possible so. For the few patients who we are out of that are out of network with if the 80% bill is repealed then that gives us less ability to treat those patients and, but more importantly if there now with the advent of balance billing if we drop the percentage to 70 or 60% then now patients are responsible for a higher amount of cost right now in an already expensive situation in Alaska. And really the state of healthcare in Alaska, or the ability to retain providers here is rapidly shrinking, as I'm sure many of you are aware of the closing of the mild senior clinic because there's not a lot of providers who will accept Medicare. And if they can't bill, then they won't. They not, they're not here, they're not staying here. And my clinic is actually taking a portion of those, my health, those are my healthcare or my health clinic patients because like we're here to provide a service. So the majority of providers who are here in Alaska aren't here to try to artificially inflate costs in the system. They're here because they want to be here. The reimbursement in Alaska, although in some ways it's better than the lower 48. The market pressure here with the limited insurers, the limited resources and limited places to practice specialties and just the complexity of your patients, it's it's not we're it's we're not here to just kind of make crazy numbers because even if you try the system doesn't really support that anymore. There's there is ambulatory centers to treat patients. There's hospitals to treat patients now most patients if they can't find it in network facility. They are afraid to get care and it sometimes leads to worsening problems for patients. And if we do anything that can cause a increase price pressure on the patient and the last award is already fragile, we're in trouble. There were recent statistics that showed that we already have a deficit of 3000 healthcare workers in the city. And if you put if you change the legislation that even gives the appearance that Alaska is not a place that uh specialists would wanna practice we're already in trouble. It takes it takes on average at least a year to recruit a specialist in a practice, in a private practice here based on the length of time of credentialing, the length of time of getting license in Alaska, and usually about 60 to 70% of providers who recruited and the specialist especially capacity leave within five years. So if you if we repeal this 80% rule that can give the appearance that this is not a physician friendly state for specialists that come now we're scaring away the few providers who want to come to Alaska and we're also putting the unnecessary additional financial burden on our patients. And we're now giving the insurance companies even more ability to set the price because you you believe Premier has about 80% market share here in Alaska and if you're, if you're not in network with them, you're you have a lot a larger number of patients that you can't see. And if you're the only specialist let's say like in the specially like rheumatology in Alaska where there's maybe four or five, but now you decrease this 80%, you'll get rid of this 80% bill. So the insurance company could set their price for this out of network provider. Now this specialist has no reason to be here because they can't even get the in network rates or seeing their patients. So I just think it would be devastating for patients and Alaska if we repeal this 80% rule and it would give an appearance that would deter other physicians from coming here.

Thank you for your time.

Thank you, Doctor Musa, through testimony. We do appreciate it. I'm glad you made it your time.

3:56:39

We're going to go back on silent for the last 16 minutes. We will check in one more time and then we will end the hearing for today, but we will resume on Friday.

4:11:05

Good evening. This is Lori Wing. I'm the director of the division of Insurance for the State of Alaska. It's 7:00 o'clock. I want to thank everyone who has stuck with us throughout this four hours and those that testified for the 80 percentile regulation hearing either pro or con. You like it or you don't. We appreciate all the testimony and look forward to reviewing not only the testimony that has been provided tonight, but the letters and emails that we've been receiving. We will resume again at 1:00 o'clock on Friday for the second hearing in Anchorage, AK. At this time we're closing out the Wednesday hearing. And again I thank you all for participating. Have a good evening.