

DIVISION OF INSURANCE

80th Percentile Rule Public Comments



STATE OF ALASKA
Department of Commerce, Community,
and Economic Development

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

From: [Rachelle Waller](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: 3 AAC 26.110(a) upcoming hearing
Date: Sunday, March 5, 2023 12:50:20 AM

You don't often get email from rachelle.waller@gmail.com. [Learn why this is important](#)

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Dear Sarah Bailey,

I am writing to oppose any changes to 3 AAC 26.110(a) (the 80th Percentile Rule).

Thank you for your time in considering this opposition.

Sincerely,

Rachelle Waller
Member, Premera BCBS of Alaska

From: [Scott Strand](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: 3AAC 26. 110
Date: Wednesday, February 15, 2023 4:21:03 PM

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Sarah,

I wish to let you know that I support the amendments to change 3AAC 26. 110.

With Congresses passage of the No Surprises Act we no longer need the 80th percental regulation.

Best regards,

Scott Strand
9001 Spruce Run Circle
Anchorage, AK. 99507

From: [Carole Bookless](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: 80% rule comments
Date: Thursday, February 23, 2023 10:15:32 PM

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CAUTION: This email originated from outside the State of Alaska mail system. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Ms. Bailey,

I don't know if the comments that I am going to make are specifically related to the 80% rule but this is what I have experienced.

I have had doctors charge exorbitant prices, that they acknowledge are exorbitant, in order to see how much the insurance will pay. In the past, once the doctor got their payment from insurance, the doctor would "forgive" the balance. That was because the doctor was trying to maximize how much they could make from insurance, but not at crushing expense to patients. They were upfront that this is what was happening. Recently though, some doctors no longer "forgive" the unpaid balance from insurance and now just charge the patient that balance. Basically, it is because they can, and because most doctors no longer do their own billing locally. That is probably why I have heard that most doctors earn about \$2,000,000 per year in Alaska.

Another thing I have seen is doctors/caregivers charging up to 4x more to insurance than they do for the cash price without insurance for the same service. Again this is due to trying to maximize what they can get from insurance. I have also seen a doctor charge a surcharge to have his name used as the provider of services that are done by techs in automated labs. My insurance will not pay these surcharges so I get billed for them. This is why I avoid using our local (only) hospital whenever I can. This doctor is the sole provider of lab services in this hospital. Because this is our only hospital, most people just pay the charges although I have been sometimes successful in the past with challenging these charges.

Currently, most providers associated with our hospital outsource their billing to companies in other states. Their sole goal is to maximize profit by charging as much as possible and being difficult when asked for breakdowns of costs. Again I have successfully challenged charges that were made based solely on a technician's interpretation of a medical chart when in fact, services were not provided.

After a knee surgery 8 years ago, the local hospital sent me monthly bills for \$10,000s of dollars (I can't recall if it was \$40,000 or \$70,000) for a year. My final hospital bill, negotiated by my insurance, was \$500. It was extremely stressful to worry for a year that I would lose my house in order to pay this bill when in fact it was only \$500.

If you want names of these providers, I can give them to you, but I understand that these practices are legal in Alaska, even though they aren't in other states.

Carole Bookless
Douglas, Alaska

From: [Chaplain Randy Hillman](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: 80/20 rule - 3AAC 26.110
Date: Friday, March 3, 2023 9:39:24 AM

You don't often get email from akrevran@gmail.com. [Learn why this is important](#)

CAUTION: This email originated from outside the State of Alaska mail system. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Mrs Bailey

I / we like to express that We Alaskan's want to keep the 80% / 20% medical insurance company reimbursement as is for 3AAC 26.110.

We thank you for your help in this matter.

Blessings to you and your family

Fr Randy Hillman
Valley Anglican Fellowship Church
Palmer - Wasilla
St Andrew's Anglican Church
Anchorage

2 March 2023

Attention: Sarah Bailey
Sarah Bailey
P.O. Box 110805 Juneau, AK 99811-0805

As a practicing physician and consumer of health care in Alaska I strongly **oppose** repealing the **80th Percentile rule / 3 ACC 21.110(a)**.

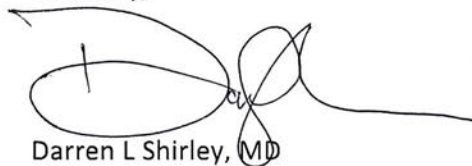
Repealing the **80th Percentile rule / 3 ACC 21.110(a)** will only benefit the insurance companies.

Patients will lose. They will lose the protections against increasing balance billing and out-of-pocket costs for healthcare in Alaska. They will lose the encouragement the 80th Percentile Rule gives providers and insurers to work together in good faith for fair and transparent contracting. They will lose as Alaska's ability to recruit and retain high quality healthcare providers, which are already in short supply, will suffer and reduce access to care in Alaska. They will lose as the "No Surprises Act" fails to offer the same consumer protection offered by the 80th percentile rule for the vast majority of health care consumer expenditures.

Physicians will lose. They will lose the consumer protection that ensures the very few insurance providers operating in Alaska must at least come to the table and negotiate regionally appropriate pricing in good faith. They will lose as the never-ending attempt to recruit and retain specialty and subspecialty providers to practice in Alaska becomes even more difficult. They will lose as flat or decreasing reimbursements are exacerbated by shifting out of pocket expenses to the patients they are trying to serve.

The consumer protections offered by the **80th Percentile rule / 3 ACC 21.110(a)** are absolutely as relevant or more today than they were when the regulation was implemented.

Sincerely,

A handwritten signature in black ink, appearing to read 'Darren L Shirley', with a stylized flourish extending to the right.

Darren L Shirley, MD
Radiologist,
Alaska Radiology Associates

From: [Linda Carroll](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: 80th percentile comment
Date: Monday, February 27, 2023 2:13:45 PM
Attachments: [image001.png](#)
[image002.jpg](#)

You don't often get email from admin@auroramfm.com. [Learn why this is important](#)

CAUTION: This email originated from outside the State of Alaska mail system. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Sarah, please review the following; the article was originally posted 2/7/2023. It supports that there are several medical professional groups in a lawsuit against the No Surprises Act. I ask the state take this into consideration for the 80th percentile review. The 80th percentile still has a valuable reason for existence regardless of the NSA.

Time & time again, a majority of regulations imposed require medical providers to bare the burden of financial cost with no reimbursement or federal funding. These costs should be expected to reflected in the cost of providing a medical service just like any other business that builds its expenses into the cost of service provided.

[Federal judge rules against HHS — again — over surprise-billing arbitration rule \(beckerspayer.com\)](#)

A federal judge in Texas has handed another win to the Texas Medical Association and medical providers nationwide against HHS over a challenge to the arbitration process between out-of-network providers and payers that was established under the No Surprises Act.

On Feb. 6, U.S. District Judge Jeremy Kernodle [ruled](#) that the revised arbitration process "continues to place a thumb on the scale" in favor of insurers and "that the challenged portions of the final rule are unlawful and must be set aside..."

"The decision will promote patients' access to quality care when they need it most and help guard against

health insurer business practices that give patients fewer choices of affordable in-network physicians and threaten the sustainability of physician practices," TMA president Gary Floyd, MD, said.

A CMS spokesperson told *Becker's* in an email it is aware of the Feb. 6 ruling in *Texas Medical Association v. HHS* and is reviewing the decision.

The [lawsuit](#) was originally filed in September alongside UT Health Tyler Regional Hospital and a physician. The AHA and the AMA, along with 30 additional national and state medical groups, filed amicus briefs in support of the lawsuit. Insurance trade group AHIP [filed](#) in support of HHS.

Insurers had argued that there was "no basis" to providers' claims and that there were even "early signs of a beneficial trend, where the [No Surprises Act] has furthered good faith network negotiations over reasonable rates."

The 2020 No Surprises Act protects patients from unexpected medical bills and limits how much they can be charged for emergency and nonemergency services from out-of-network providers. It also established an arbitration process for when payers and providers disagreed about those rates.

Under an interim final [rule](#) unveiled in July 2021, CMS directed the arbitrator in the independent billing dispute resolution process to assume that the

qualifying payment amount (QPA), or the median in-network rate set by payers, is the appropriate out-of-network rate for final payment determination.

The TMA filed a lawsuit Oct. 28, 2021, challenging the rule, alleging that CMS, under President Joe Biden's leadership, failed to follow clear direction from Congress about implementing the dispute resolution process. At the time, the association said the process was a "short-sighted approach" that would drive down reimbursement rates and encourage payers to narrow their networks

A federal judge agreed and [ruled](#) against the administration in February 2022 — a decision that was [appealed](#) by HHS in April.

CMS [released](#) a revised final rule Aug. 19, which the TMA claimed still gave too much of an advantage to payers during arbitration.

"Similar to before, the new final rules unfairly advantage insurers by requiring arbitrators to give outsized weight or consideration to an opaque, insurer-calculated amount — called the qualifying payment amount — when choosing between an insurer's offer and a physician's offer in a payment dispute," TMA President Gary Floyd, MD, said. "This is unfair to physicians, providers, and the patients we care for, so we had to seek fairness."

In the Feb. 6 decision, Mr. Kernodle vacated all of the

revised regulations challenged by the TMA, including HHS' rule that arbiters must primarily consider the QPA.

The TMA filed a [third lawsuit](#) against HHS in November 2022, alleging portions of the rule "artificially deflate the QPA."

A [fourth lawsuit](#) from the association was filed in January 2023 that challenges a 600 percent hike in administrative fees when seeking dispute resolutions.

"The AHA is pleased with yesterday's ruling, which restores the balanced, patient-friendly dispute resolution that Congress chose when it enacted the No Surprises Act," Melinda Hatton, AHA's general counsel, said in a statement to *Becker's*. "The district court correctly observed that the government's final rule would have tilted arbitrations in favor of insurers, thereby inappropriately lowering payments to health care providers and threatening patient access to care."

Becker's has reached out to the AMA and AHIP for comment and will update this article if more information becomes available.

Linda Carroll, CMPE

Manager

Aurora Maternal Fetal Medicine, LLC

4048 Laurel St Ste 202

Anchorage, AK 99508

P 907-677-2636



Education Committee
Membership Committee

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From: [GCI](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: 80th percentile comments
Date: Saturday, February 25, 2023 8:22:33 AM

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As a Alaska retiree I am opposed to the proposed changes to the current regulation.

When retirees travel, as we often do, there is usually little choice in providers and they are likely to be out of network. We would like to maintain the financial protection of the current 80 percentile rule.

Thank you,

Steve Bradford
4401 Riverside Dr unit B3
Juneau, AK 99801

Sent from Steve's iPhone

2/22/2023

Sarah Bailey
POB 110805
Juneau, AK 99811-0805
Sarah.Bailey@Alaska.gov

3 AAC 26.110. (referred to as the 80th percentile rule), "usual and customary charges for healthcare services" in Alaska was and is ultimately a consumer safety mechanism. One designed to make certain that people purchasing insurance have coverage at least at the 80th percentile of the regionally determined out-of-network costs. Most have been lead to believe that the No Surprises Act is for the same purpose but it is not in one big way, NSA is to protect patients that need to see a provider who is out of network in an emergent situation. This is a common and understandable misinterpretation of the NSA, that it protect patients the same way that 80th percentile does, one encouraged by misinformed media reporting on the act since before it was even passed. The NSA applies primarily to emergency and inpatient care, most healthcare consumed is neither emergency nor inpatient. As a result, its consumer protection, if at all, would be far narrower than the 80th percentile rule provides.

Further, the NSA has been so poorly implemented that it is under attack across the country. There are literally innumerable examples of insurance companies in places that do not have an 80% regulation abusing the NSA to force provider payments well below usual and customary. The payment dispute mechanism set up by the federal government is so overwhelmed that it is effectively broken. Only a small portion of disputed claims have been processed. This means that a medical provider has provided medical care for free and is incurring the cost of waiting for disputes to be resolved. No other industry allows a service to be provided at no cost at the time of receiving service (you cannot go to the grocery store & state send me a bill, you cannot buy gas without paying for it when pumping it, etc.).

This latest drive to abolish the 80th percentile rule seems to be driven by a commercial insurer that has a majority share of coverage in the AK market and seemingly so, this would only work in their favor. Our understanding is that as a nonprofit company, at least 75% of dollars earned (from premiums) must be paid out towards claims. If not, then reimbursement to policy holders is to be given. This carrier had been able to do this until 2022, which indicates that it paid out more than 75% towards claims and coincidentally there was a significant increase in 2023 premiums.

Ove the years, insurance carriers are quick to blame the rising cost of healthcare on physicians (carriers telling employers that because of the 80th percentile medical providers can charge what they want and that's why your premium cost goes up every year) and other care providers, yet no one ever speaks to the rising cost physicians and other care providers have had to take on for which they receive no reimbursement or federal funding for. Additional staff to ensure we are adhering to all these regulations. We are told that this should be expected as the cost of medical business. Each new regulation brings an additional cost to medical providers and financial penalty. Well, it should be expected then that the cost of medical services will include the increased cost of providing medical care.

It should be noted that while the premiums have significantly increased year over year, the allowed amounts have not increased and what is being paid per CPT code has not gone up. What is most likely driving the cost of premiums up is that more people are receiving medical care causing the carrier to pay more dollars out overall.

Again, the fact that an insurance carrier with most of the market share coverage is seemingly driving this initiative to abolish the 80th percentile. This is about insurance companies wanting to increase their bargaining leverage and force physicians into their networks.

- Jim Grazko President of Premera Alaska in asking to remove the 80th percentile said, *"there's not any real reason for some of these providers to come to the table and want to negotiate if they're going to be paid close to billed charges anyway. So I think it would provide an immediate fairly high-impact incentive for providers to want to contract with payers."*

Alaska has unique issues that drive high cost. One major challenge is the recruitment and retention of quality providers as it's difficult and costly in Alaska. If the 80th percentile rule is removed, it will be even more difficult to recruit and most importantly retain providers, especially specialists (which are already in short supply) in Alaska. It is expensive and exceedingly difficult to recruit and retain quality professionals to move to Alaska in any profession. It is even more challenging in healthcare, particularly among specialists, whose training programs often span 15 years and whose families are well rooted in their urban training centers by the time they are able to practice.

All considered, we are extremely fortunate to have such a robust network of primary care and specialty physicians in Alaska. It was not always so. There is little that one must travel out of state for today, and that improves the quality of life for all Alaskans.

Sincerely,

A handwritten signature in black ink that reads "Corinna Muller D.O." in a cursive script.

Corinna Muller, DO, FACOOG



Independence Park Medical Services

9500 Independence Drive Suite 900
Anchorage, AK 99507
Phone: 907-522-1341 Fax: 907-522-1343

Sarah Bailey
Division of Insurance
Alaska Department of Commerce &
Economic Development
PO Box 110805
Juneau, Alaska 99811-0805

Sent via email

RE: Proposed Changes to 3AAC26.110, aka the 80th Percentile Rule

Ms. Bailey,

I am writing to comment on the division's proposed changes to 3AAC26.110, specifically, the deletion of paragraphs (a)(1) and (a)(2), and the revision of paragraphs (4) and (5)(A). **Dr. Bradford Fenton** OPPOSES the proposed changes.

Our concern is that the proposed changes further unbalance the patient / provider / carrier relationship in the insurance carrier's favor. Simply put, the proposed regulation changes grant more power to the carriers to force medical providers into their networks. Many of our members are small or single practice providers. Many patients prefer this simple, personal treatment setting. Large providers, such as corporate chains, have negotiating power in contract negotiations with carriers. For our smaller practice members, it's "take it or leave it" - join our network for a drastically reduced reimbursement, or treat the patient for free.

We are aware that the 80th percentile rule is seen as a cost driver by some. Your supporting materials state that the federal No Surprises Act protects consumers from "some" kinds of medical bills from out-of-network providers. As patients ourselves we applaud that, but it doesn't apply to our members and patients in this market. Our average patient, with annual physical, doesn't receive "surprise" billings, but rather relatively low fees for regular treatment.

We understand that you regulate insurance and not providers, but without the 80th percentile rule there will be no laws in place to ensure healthcare providers are fairly reimbursed, especially our smaller or single practice members. Absent this rule, there will be fewer medical providers to choose from and more of those who are left will be forced in to cash practice. More patients are going to find it difficult to find care. The division's website lists the division's mission as: "to regulate the insurance industry to protect Alaskan consumers." How are Alaskan consumers protected under the scenario described above?

Please DO NOT proceed with changes to 3AAC26.110 until you can provide additional language with assurances for smaller or single practice providers that better reflect conditions in this market.

Thank you,



Independence Park Medical Services

9500 Independence Drive Suite 900
Anchorage, AK 99507
Phone: 907-522-1341 Fax: 907-522-1343

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Alaska Department of Commerce &
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Thank you,

Cydney Fenton
Cydney Fenton, MD



Independence Park Medical Services

9500 Independence Drive Suite 900
Anchorage, AK 99507
Phone: 907-522-1341 Fax: 907-522-1343

Sarah Bailey
Division of Insurance
Alaska Department of Commerce &
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Juneau, Alaska 99811-0805

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Alaska Department of Commerce &
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PO Box 110805
Juneau, Alaska 99811-0805

Sent via email

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Thank you,

 Natasha Sherrill, APRN

3841 Piper St.
Suite T 100
Anchorage, AK, 99508

Sarah Bailey
PO Box 110805
Juneau, AK 99811
Sarah.Bailey@alaska.gov

RE: 80th percentile regulation – 3 AAC 26.110 (a)

1 March 2023

Dear Ms. Bailey:

It is my understanding that Alaska Division of Insurance is now considering eliminating the 80th percentile rule. This is extremely concerning to me. You don't know me but I am an Interventional Cardiologist, father of three beautiful children, and husband to an amazing wife. In other words, I am a physician, resident, and current patient of the Alaska healthcare system. In my opinion, this makes me well suited to comment on the impact of changes like this within our community. Thank you in advance for taking the time to read this letter.

I respectfully request your assistance to retain 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. The No Surprises Act (NSA) provides protection for out of network emergent care. Therefore, if the 80th percentile regulation is removed there will be nothing protecting the consumer if healthcare providers in good faith fail to negotiate with the insurance entity and thus are forced to go out of network. Most specialists have entered into contracts with insurance companies and the NSA would not provide Alaska consumers healthcare protection if a specialty was not in network.

Additionally, removal of the 80th percentile rule favors insurance companies and puts coverage decisions, reimbursement, and what is determined as usual and customary in their hands. History has already provided significant precedent in regards to the dangers of such actions. Insurance companies are incentivized for continued reduction in reimbursement, minimize coverage, and skew what is deemed usual and customary toward maximizing profit and not necessarily what is in the best interest of patients. The current state of healthcare in Alaska is poor. Patient's are unable to find primary care providers or subspecialists because they either do not exist or are no longer accepting patients. The ability to recruit good qualified healthcare providers is already extremely difficult in this environment and in this location. This proposed action will perpetuate this challenge.

Removal of the 80th percentile rule will assuredly compound the desperate situation that too many Alaskans currently face. Please accept my strong opposition to repeal or amend the 80th percentile rule. Thank you for your time and advocacy.

Respectfully,

Ryan McDonough, DO, FACC

February 24, 2023



Attention: Sarah Bailey
Sarah Bailey
P.O. Box 110805
Juneau, AK 99811-0805
Sarah.Bailey@alaska.gov

907.561.3211
alaskaheart.com

I am providing written comment on the 80th 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 "80th percentile" rule for determining "usual and customary" charges for healthcare services provided to Alaskan consumers.

I currently serve in two positions- Chief Executive Officer for Alaska Heart & Vascular Institute which is the largest provider of cardiovascular services for the state as well as Chief Executive Officer for Envoy Integrated Health Solutions which is a Clinically Integrated Network in the state comprising of 31 multi-specialty care offices and nearly 300 physicians.

The reason the 80th percentile regulation was put into effect was to provide more transparency and greater consumer protections and I would contend that this has certainly been the case.

The vast majority of specialists in Alaska entered into an in-network status with commercial payors over the past several years and did so by agreeing to a material reduction in compensation. Additionally, six years ago the State of Alaska orchestrated further reductions to specialist compensation bringing Medicaid payments for many in line with Medicare which resulted in a 25-30% reduction in Medicaid allowable without any adjustment for inflation. In the interim, insurance premiums have only seen significant increases.

During the Senate Labor & Commerce meeting this week, Lori Wing-Heier Division of Insurance seemed misrepresent the No Surprises Act (NSA). She stated that removing the 80th percentile regulation would now be acceptable since consumers of healthcare are protected by the NSA. The NSA only provides protection for out of network emergent care and as everyone is aware, most primary and specialty care is routine, therefore if the 80th percentile regulation is removed there will be nothing protecting the consumer if healthcare providers in good faith fail to negotiate with the insurance entity and thus are forced to go out of network.

Sami Abuzaid, MD,
FACP, FASE, FACC
Eric Anding, MD
Richard Anschuetz, MD, FACC
Krzysztof Balaban, MD, FACC
Mario Binder, MD, FACC
Blake Charlton, MD
Steven Compton, MD,
FACC, FACP, FHRS
Scott Ebenhoeh, DO
Herman Feringa, MD, PhD,
MPH, RPVI, FACC
John Finley, MD, FACC, FASE
Lisa Gray, DO, FACC
Linda Ireland, DO, FACC
Jacob Kelly, MD, MHS, FACC
Thomas Kramer, MD, FACC
Seth Krauss, MD, FACC, FSCAI
Adam Mason, MD, FACC
William Mayer, MD, FACC, FACP
Jonathan McDonagh, MD
Ryan McDonough, DO, FACC
Suneet Purohit, MD
Gene Quinn, MD, MS, MPH
Brian Scully, MD, FACC
Mark Selland, MD, FACC
Alan Skolnick, MD, FACC
Hung Vo, MD
Stanley Watkins, MD, MHS, FACC
Carson Webb, MD
Mark Willcox, MD
Yiming Wu, MD, PHD

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AHVI WASILLA
3125 E Meridian Park Loop.
Suite 200
Wasilla, AK 99654

AHVI SOLDOTNA
240 Hospital Place
Suite 202
Soldotna, AK 99669



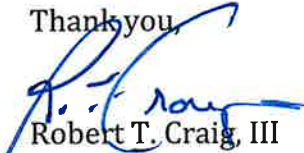
Apparently one insurance company has been actively and erroneously messaging Alaska employers/businesses misrepresenting why Alaska's premiums have been dramatically increasing each year and blame the 80th percentile regulation as the reason and convey that the NSA is now in place to protect the consumer making the 80th percentile regulation obsolete.

907.561.3211
alaskaheart.com

Finally, please accept my strong opposition to a repeal or amendment to the 80th percentile rule. Most specialists have entered into contracts with insurance companies and the NSA would not provide Alaska consumers of healthcare any protection if a specialty was not in network.

Do not hesitate to contact me at 907-550-2232 or craig@alaskaheart.com.

Thank you,



Robert T. Craig, III
CEO



Michelle Thomas, M.D., M.Sc., F.A.C.S.

3340 Providence Dr. Suite 359

Anchorage, AK 99508

Ph: (907) 644-1033

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March 3, 2023

Sarah Bailey

Division of Insurance

Alaska Department of Commerce & Economic Development

P.O. Box 110805

Juneau, AK 99811-0805

Sarah.Bailey@alaska.gov

Sent via email

RE: Proposed Changes to 3AAC26.110, aka the 80th Percentile Rule

Ms. Bailey,

I am writing to comment on the division's proposed changes to the 80th Percentile Rule. My physician has provided surgical services, both emergent and elective, to the residents and nonresidents of Alaska for over 20 years and **WE OPPOSE the proposed changes.**

Sincerely,

Geri L. Lightner, CPC

Office Manager



**Speech and Language Therapy
Occupational Therapy
Physical Therapy**

1327 Kalakaket St
Phone 907-452-4517

Fairbanks, AK 99709
Fax 907-452-4263

To Whom It May Concern,

Recently the Alaska Department of Insurance proposed a regulation change to eliminate the 80th percentile regulation as the floor for health care claim payments. The justification is that elimination of the 80thile regulation will decrease healthcare costs for Alaskans, however, this claim is not supported by any available data, including the data reported in Guettabi's 2018 financial study. Nor does it address the questions: "Who's healthcare costs are getting lowered?" or, "How are they getting lowered?" In failing to address these points, the argument to repeal the regulation is deceptive and misleading. It does a disservice to Alaskans who rely on it for access to healthcare services.

The repeal of the 80thile regulation is predicated on data from a 2018 financial study conducted by UAA (Guettabi 2018). The study concludes that, yes, healthcare costs have increased over the last 20 years (just like every other service in the state and country), however, it cannot account for the actual cause for the increased cost of healthcare in the state, or who is actually paying these increased costs. Guettabi's (2018) study concludes the following:

These findings have significant limitations as the data does not allow us to address the extent to which the regulation has reduced the out of pocket burden for households. Additionally, we are not able to conduct specialty specific analysis, and are unable to quantify the extent to which the higher expenditure are due to higher prices or higher usage and therefore it is best to think about our estimates as upper bounds given that spending is the product of prices of and quantity consumed.

This study clearly does not provide a defense for the repeal of the 80thile regulation, in fact the study states it is possible the regulation increases access to healthcare by consumers, resulting in increased costs due to increased utilization and financial security when accessing services. It certainly does not eliminate enough variables to be used as a basis for creating or modifying state policy.

The statement that the "No Surprises Act" renders the 80thile regulation redundant is simply false. These two laws accomplish separate goals. "The No Surprises Act" ensures a consumer knows the cost for an out of network service and understands that they may have to pay the remainder of any balance that is not covered by their insurance company. This protects the consumer from the provider by making sure they understand the cost of the service, and their responsibility when paying. The 80thile regulation obligates insurance companies to pay a specific percentage of a bill, if no in-network providers are available. This is a common occurrence in Alaska, where consumers may have to travel 300 to 1500 miles before they can find an in network provider, or wait for 6 to 12 months for a provider to be available. It protects consumers from insurance companies by legally obligating them to pay for a set percentage of

local services when the insurance company's preferred providers are not available, or when it requires impossible travel.

Alaska is unique and presents with a diverse set of opportunities and challenges. Healthcare costs can be explained simply as a supply, demand and access problem. The state has experienced a shortage of healthcare workers in its various fields for over 20 years. To get people up here, employ them, and keep them here, hospitals, clinics and outpatient centers often have to pay wages in the top 5% in the nation. That is why healthcare is so expensive in the state, especially in rural areas and in the interior, and why many providers have such high operating costs. When answering the question: "Why is a given provider choosing not to be network enrolled?" The most commonly heard response is that they cannot afford it.

Becoming an in network provider typically results in a required reduction in payment of 30 to 50 percent for various claims. Usually with little or no appreciable benefit to the provider depending on their region of operation. They're expected to take this loss for nothing. With the extremely high operational costs associated with Alaska, many local and regional outpatient centers cannot sustain that reduction of income and would simply have to close their doors, or choose to operate until bankruptcy. Then no one gets any services, for any price.

If the 80thile regulation is repealed, in partnership with the "No Surprises Act", it will shift the burden of healthcare costs away from insurance companies, removing their obligation to pay for out of network services in various situations. The burden of cost will shift directly and completely onto the shoulders of individual Alaskans, stripping them of their consumer protections. It will not reduce healthcare costs, it will just change who is paying for them.

This leaves little recourse for either providers, who may not be able to afford the 30-50% loss in income by becoming network enrolled, or the consumer who will either pay out of pocket costs, or lose access to a potentially medically necessary, or even lifesaving service. It creates a legal precedent where insurance companies exercise control over their customers, dictating the physicians, services, and locations consumers are allowed to access, based not on the quality of care, but by which provider is the least expensive.

We need to be clear that insurance companies do not exist to help people, they are businesses. The goal of an insurance company is to make money and they do that by collecting premiums, and refusing to pay for claims. Deregulation of their industry, using methods such as the elimination of the 80thile regulation, will force consumers to both pay premiums, and out of pocket costs, or, will cause consumers to lose access to their preferred providers and possibly forego medically necessary treatments all together.

We at Talkabout Inc strongly encourage you to uphold the 80thile regulation. It may not solve every financial and healthcare issue plaguing the state, but it is a vital consumer protection and a stabilizing force for access to healthcare in Alaska.

Please feel free to contact me with any questions.
Thank You,

David Jamison
M.S. CCC-SLP
Talkabout Inc.
907-452-4517
Dave.Talkabout@gmail.com
3/1/2023

From: [Jacob P. Kelly, MD](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: 80th Percentile regulation - 3 AAC 26.110 (a)
Date: Thursday, March 2, 2023 1:04:04 PM

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Sarah Bailey
PO Box 110805
Juneau, AK 99811
Sarah.Bailey@alaska.gov

RE: 80th percentile regulation – 3 AAC 26.110 (a)

Dear. Ms. Sarah Bailey:

It has come to my attention that the Alaska Division of Insurance is re-evaluating the 80th percentile rule that was created in 2004 to protect patients from balance billing and ultimately reduce out-of-pocket costs for healthcare in Alaska while encouraging providers and insurers to work together in good faith for fair and transparent contracting to benefit patients. There is no current situation that should lead to repealing the 80th Percentile rule and I strongly oppose repealing the 80th Percentile rule. This re-evaluation appears to be driven by Insurance Companies who are all based in the lower 48 and continue to enjoy substantial profits while increasing insurance costs annually to patients well above inflation. Of note, The Federal No Surprises Act applies only to emergent care and does not replace the patient protections in the 80th Percentile Rule.

In the event that the Alaska Division of Insurance repeals the 80th percentile rule, there will be many untoward effects including a limited sampling:

1. There will be an exodus of specialty care that leads to patients traveling to the lower 48 for routine specialty care as was routine in Alaska as recently as the late 1980s and early 1990s.
2. There will be a return to balance billing and surprise medical bills.
3. Urban and especially rural Alaska Health Care access will be reduced and potentially eliminated.
4. Insurance companies and The Premiera BCBS Alaska commercial insurance company will have a further imbalance in power over patient consumers and physicians/providers.

Thank you for reviewing my concerns for all Alaskans. Healthcare is a major employer of Alaskans with well-paying jobs accompanied by good benefits that support an overall healthy economy. I strongly oppose all efforts to repeal the 80th Percentile rule and instead favor prioritization of legislation that encourages highly skilled workers to migrate to Alaska, make Alaska home for future generations to prosper and enjoy the wonderful nature, culture and beauty that our amazing state has to offer.

Sincerely,

Jacob

Jacob Kelly, MD, MHS, FACC
Medical Director of Heart Failure
Alaska Heart & Vascular Institute

Jacob Kelly, MD, MHS, FACC
3841 Piper St.
Suite T100
Anchorage, AK 99508
jkelly@alaskaheart.com

From: [Kati Hackenberger](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: 80th Percentile Regulation
Date: Friday, February 24, 2023 12:39:47 PM
Attachments: [image001.jpg](#)
[image002.png](#)

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Dear Ms. Bailey,

I am writing to comment on the Alaska Division of Insurance's proposed changes to 3AAC26.110, specifically, the deletion of paragraphs (a)(1) and (a)(2), and the revision of paragraphs (4) and (5)(A). Alaska Hand Rehabilitation **OPPOSES** the proposed changes. As President-Elect of the Alaska Medical Group Management Association, I also **OPPOSE** the proposed changes.

Our concern is that the proposed changes further unbalance the patient / provider / carrier relationship in the carrier's favor. Simply put, the proposed regulation changes grant more power to the carriers to force medical providers into their networks. Many of our members are small or single practice providers. Many patients prefer this simple, personalized treatment setting. Large providers, such as corporate chains/hospitals, have negotiating power in contract negotiations with carriers. For our smaller members, it's "take it or leave it" - join our network for a drastically reduced reimbursement, treat the patient for free, or be forced to not accept patients for most payer populations.

This scenario is especially true for Premera Blue Cross, the largest payor in Alaska, who has spearheaded this effort to remove the regulation. Just two weeks ago, I received a letter from my chiropractor that she would be leaving the Premera network due to a drastic reduction in her contract rates. She simply could not afford to be in-network any longer. Without the protection of this regulation, I fear she will be forced out of business entirely which will for certain happen to other small offices. Just this week, Alaska Regional Hospital has closed their Senior Clinic. Thousands of seniors will go without care without this facility. This facility's primary payor was Medicare. Without the 80th percentile, carriers will follow Medicare's rates. Small business healthcare providers will drown. As a consumer of healthcare in Alaska and as an Administrator, I am worried for the future of healthcare in Alaska.

We are aware that the 80th percentile rule is seen as a cost driver by some. The supporting materials state that the federal No Surprises Act protects consumers from "some" kinds of medical bills from out-of-network providers. As patients ourselves we applaud that, but it doesn't apply to our members and patients in this market. Please be reminded that the protections under the No Surprises Act for balancing billing only protect those being treated in an acute hospital setting. Providers can still balance bill those being seen in an outpatient setting. The 80th percentile rule held payers accountable for a reasonable and customary allowed amount (not 80% of our charge amount as some would say) that allowed our practice(s) to keep our business(s) open and provide care to a broader range of patients.

Without this rule, patients will endure higher costs, as carriers will pay providers far less than reasonable and patients will be left with the bill for the difference.

Let's look at what is happening across the nation as a response to the No Surprises Act. We have not seen premiums decrease nor are we seeing patients' liability, deductibles and coinsurances, decrease. These are states without any consumer protections similar to Alaska's 80th percentile rule, so how is removing it going to reduce cost? We are seeing a push from payers Nationwide to drop provider contracts as well as close panels so that providers cannot contract. We see this trend especially for facility-based providers. They are then denied any recourse; the IDR is non-functioning and has only raised its fees to providers.

We understand that the Division of Insurance regulates insurance and not providers, but without the 80th percentile rule there will be no laws in place to ensure healthcare providers are equitably reimbursed for the services provided, especially our smaller or single practice members. Absent this rule, there will be fewer medical providers to choose from and more of those who are left will be forced in to cash practice. More patients are going to find it difficult to find care. The division's website lists the division's mission as: "to regulate the insurance industry to protect Alaskan consumers." How are Alaskan consumers protected under the scenario described above?

Please DO NOT proceed with changes to 3AAC26.110 until additional language with assurances for small providers that better reflect conditions in this market can be provided.

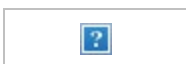
Thank you,



Kati Harkreader (Hackenberger), BA, CMPE
Practice Administrator
Secretary/Treasurer of the ESOP Board of Directors

Alaska Hand Rehabilitation, Inc | 100% Employee Owned
4015 Lake Otis Parkway, Ste 200, Anchorage, AK 99508
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Executive Board President Elect
Alaska Medical Group Management Association



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Terry G Philley
NW Insulation Workers Health and Welfare Trustee

I support the repeal of the 80th Percentile regulation 3 AAC 26 110.

The current regulation has increased health care costs in Alaska. Alaska now has the highest health care in the United States.

20 years ago when this regulation was implemented it forced insurance companies to consider payment for non-contracted services at the 80 percentile of all health care charges for that service. We know since that initial time providers have raised the rates to gain more profit. The 80th percentile point has moved with those rates. Allowing providers to control the new price point. Creating a disincentive to negotiate discounts with insurers and payors.

The regulation when put into place was needed and served its purpose at that time. Today as health care costs and the number of service providers have changed dramatically, it is time to remove ACC 26 110 regulation.

Federal legislation has provided patient protection with the implementation of the “No Surprises Act” (NSA). Patients have standardized protection from surprise billings for in network and non-contracted services.

3 AAC 26 110 should be repealed.

Respectfully submitted,

Terry G Philley
5800 East 162nd Avenue
Anchorage, AK 99516

From: [Stuart, Vicky A.](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: 80th Percentile Regulation in Alaska
Date: Wednesday, February 15, 2023 3:38:59 PM

You don't often get email from vicky.stuart@chenega.com. [Learn why this is important](#)

CAUTION: This email originated from outside the State of Alaska mail system. Do not click links or open attachments unless you recognize the sender and know the content is safe.

DOI Director Lori Wing-Heier,

I am writing to express my support for the abolishment of the 80th percentile regulation. This regulation unnecessarily makes healthcare more expensive and significantly contributes to the healthcare cost growth experienced across the State of Alaska. These increased costs are borne by employers and consumers directly. Alaska's 80th percentile regulation unnecessarily makes healthcare more expensive and contributes to Alaska's highest-in-the-nation healthcare costs.

I have worked in Human Resources for over 30 years in Alaska, with employees in Alaska and across the Lower 48. The gap in cost of healthcare is much larger than cost of living factors – it exists in facility (hospital), ancillary (MRI's, etc) and physician charges. No other state has the 80th percentile rule, that I am aware of, and my personal HR experience has confirmed that costs have risen more sharply in Alaska than in other states since the implementation of the 80th percentile rule.

Please see the link below – the UAA Institute of Social and Economic Research studied this topic in 2018.

[INS_ISER_2018Study.80thPercentile.pdf \(alaska.gov\)](#)

While the 80th percentile regulation was originally meant to protect patients from balance billing, it has instead contributed to Alaska's soaring healthcare spending. With the implementation of the Federal No Surprises Act in 2022, which protects consumers from balance billing, the 80th percentile regulation is no longer needed.

Thank You,

Vicky Stuart

Senior Vice President, Human Resources

Chenega Corporation

O: 907-677-4971 | C: 907-227-1439

3000 C Street, Suite 301

Anchorage, AK 99503

Chenega.com

From: [Jason Hipszer](#)
To: [Bailey, Sarah S \(CED\)](#)
Cc: [Nadja Hipszer](#)
Subject: 80th percentile regulation
Date: Friday, February 24, 2023 6:10:24 PM

[You don't often get email from jasonhipszer@rocketmail.com. Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification>]

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To whom it may concern

Hello, I commented today and listened to other comments. I am not much of a public speaker and was under the understanding that we were limited to 2 minutes. I have more to say and maybe this method suits me better. Again, I am for the abolishment of this regulation.

I do understand the spirit of the regulation and understand how it can be misused or benefit the public. It is a very complex issue and I can only assume my perspective is not as informed as the state's DOI. However, fundamentals of neoclassical economics can be applied and free market capitalism may not be the best answer even though that would be better than the existing regulation. An unregulated free market approach would work in the long run, but it may take awhile to reach an equilibrium. Pricing is being manipulated either intentionally or is a by product of the system in place.

Here are a few thoughts:

-There can be no influence to mandated pricing by providers.

-If we must have a price floor we also need a price ceiling.

-Since our wages and cost of living in Alaska are on par with the rest of the western U.S. can we use that whole region to determine price floors and ceilings? The providers in those regions have no vested interest in Alaska pricing and it is a large enough market to prevent a hand full of providers from manipulating prices.

-Can we use a process that eliminates more outliers in the market and combats price manipulation better?

-In the big picture, I have received health care services outside of Alaska and the United States; the quality of care was better and more advanced than the care I receive here in Alaska. It was about 1/4 of the price. The differential is so massive that there is no question that we have a problem. This problem cannot be justified through economies of scale or geographic location. In these other locals the providers were still very wealthy, lived in beautiful homes, had luxury cars and took their families on extravagant vacations.

-The wages of Alaskans relative to the cost of living here are too low. People are leaving the state. Wages are for a different discussion, but controlling health care costs can bring down the cost of living significantly. Stopping the exodus and growing our population will benefit all Alaskans including providers. It is understandable that the providers do not see it that way, but our state government can and should.

-Do not accept the fear mongering and threats of the providers to leave the state and go somewhere else. I would ask them, where else are you going to build your 15,000 square foot home that you can park your airplanes under and take off from your private lake to go fishing, hunting, camping and playing with your family in one of the most beautiful places on earth? This really happens here and it happens often. My business helps make this a reality for my clients, of which, many are in the health care industry.

-The majority of Alaskans have insurance policies that are self funded, the money is only flowing to the providers.

-The situation that has been created by the 80th percentile regulation may need a forceful government regulation to remedy. The principles of free market economics would fix the problem, but it would take a long time to do so and may be very painful along the way. A new regulation would have to recognize a long term equilibrium in the free market and have that as its ultimate goal.

It is disheartening that I'm raising children in Alaska and the cost of living compared to earnings potential may not make it the right choice for them to stay here and do the same. There are many contributing factors to our problem with population decline and our youngsters leaving. This is one of the big ticket items though and one of the large contributors to the overall cost of living. We need to figure this out and get it under control. This is a beautiful state with many incentives to live here. Doctors will live here for other reasons than the 80th percentile regulation. Maybe the providers that live here solely for the benefit of the 80th percentile regulation are occupying a space that could be filled by a doctor that would live here for all the other wonderful attributes Alaska has to offer.

Thanks for taking the time to read this and consider my ideas,

Jason Hipszer

Hipszer Company LLC / Northland Concrete LLC / 82nd Business Complex LLC
907-350-3754
jasonhipszer@rocketmail.com

From: [Sean Lee](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: 80th Percentile Regulation
Date: Saturday, March 4, 2023 10:24:05 PM

You don't often get email from sean.lee@anchoragebariatrics.com. [Learn why this is important](#)

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March 4, 2023

Re: 80th % Regulation

To: The State of Alaska Division of Insurance

Attn: Sarah Bailey

I strongly oppose the repeal of the 80th % regulation.

I am a general and bariatric surgeon, and co-owner of Anchorage Bariatrics a private practice in Anchorage employing two surgeons, one MD bariatrician, three physician associates, three registered dietitians, two part-time psychologists and 11 support staff. My partner and I work exclusively out of Alaska, and greatly enjoy our practice. An important aspect of our practice, and a key to the satisfaction we derive from it, is our ability to offer our services as an in-network provider through all major private insurers as well as all government-based health insurance programs.

We are concerned that repeal of the 80th percentile rule will change that, as it may cause changes in the insurance reimbursement system that will negatively effect our practice and our patients. As we are the only full-time bariatric surgery practice in the state, many patients would then have to seek care out of Alaska who could have otherwise received care here with us. This would not only further disadvantage populations who already struggle to access care here, the increased travel expenses would significantly increase the cost of care for these patients.

I feel that the 80th Percentile Rule already protects patients from balance billing and out-of-pocket costs for healthcare in Alaska. The 80th Percentile Rule encourages providers and insurers to work together in good faith for fair and transparent contracting to benefit patients. The Federal No Surprises Act applies only to emergent care and does NOT replace the patient protections in the 80th Percentile Rule.

Repealing the 80th Percentile Rule will only benefit insurance companies, all of whom are based in the lower-48 and enjoy substantial profits. Any claim that increasing insurance company profits will "trickle-down" to reduce the individual Alaskan's healthcare costs is dubious at best. Despite contracted rates and prior authorizations, all major insurers frequently deny payment for the care we provide for our patients, forcing costly and sometimes prolonged appeal processes which consistently yield no clear and/or reasonable basis for the denial in the first place beyond some sort of clerical error. National news stories

have detailed statements by leaders of major insurers admitting to denying claims without first reviewing the medical information provided as standard operating procedure with the goal of limiting payments. We have seen how capable these corporations are of bending the existing rules (and at times acting fraudulently and breaking the rules), and eliminating any rule such as the 80th percentile rule that protects healthcare providers and patients is highly likely to worsen their actions moving forward.

Healthcare is a major employer of Alaskans and provides well-paying jobs with good benefits, and which supports a healthy economy. Repealing the 80th Percentile Rule will affect Alaska's ability to recruit and retain high quality healthcare providers, which are already in short supply and will greatly reduce patient's access to care in Alaska. Without high quality primary care and specialists that are local and accessible, patients will have to travel to the lower 48 for care – this will especially impact our most vulnerable populations who may not have the means or ability to travel.

Sean Lee, MD, FACS
Anchorage Bariatrics
(907)644-8446
sean.lee@anchoragebariatrics.com

From: [Cherie Ball](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: 80th Percentile Regulation
Date: Friday, February 10, 2023 8:05:39 AM
Attachments: [image001.jpg](#)

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I am writing to express my support for the abolishment of the 80th percentile regulation. This regulation unnecessarily makes healthcare more expensive and significantly contributes to the healthcare cost growth experienced across the state. These increased costs are typically borne by employers and consumers directly.

Our costs to provide healthcare to our employees has increased significantly over the past 10 years – and why? Alaska has the highest healthcare costs in the nation and it's put a large burden on small businesses such as ours.

While the 80th percentile regulation was originally meant to protect patients from balance billing, it has instead contributed to Alaska's soaring healthcare spending. With the implementation of the Federal No Surprises Act in 2022, which protects consumers from balance billing, the 80th percentile regulation is no longer needed.

Please – let's abolish this regulation and allow the federal regulation to take its place.

Sincerely

Cherie L. Ball
Contract Administrator/Corporate Secretary



Contracting, Inc.

351 E. Int'l Airport Road
Anchorage, AK 99518
907.561.4733

From: [Kathy Alban](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: 80th percentile regulation
Date: Thursday, February 9, 2023 10:22:46 AM

You don't often get email from kalban@rimarchitects.com. [Learn why this is important](#)

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DOI Director Lori Wing-Heier,

I am writing to express my support for the abolishment of the 80th percentile regulation. This regulation unnecessarily makes healthcare more expensive and significantly contributes to the healthcare cost growth experienced across the state. These increased costs are typically borne by employers and consumers directly.

RIM's insurance rates have increased 35% for the past two years, and we are expecting another increase at our July 2023 renewal. Our average monthly premium is \$1600 for individual subscriber, paying over \$46,000 per month. This is more than 100% higher than the premiums we pay for our locations outside of Alaska.

While the 80th percentile regulation was originally meant to protect patients from balance billing, it has instead contributed to Alaska's soaring healthcare spending. With the implementation of the Federal No Surprises Act in 2022, which protects consumers from balance billing, the 80th percentile regulation is no longer needed.

Sincerely,

[Add your signature here]

Kathy Alban SHRM-CP
HR Manager



645 G Street, Suite 400, Anchorage, Alaska 99501
907.258.7777 main | 907.644.7833 direct
kalban@rimarchitects.com
www.rimarchitects.com

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From: [Eric Meier, MD](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: 80th Percentile Repeal
Date: Thursday, March 2, 2023 8:43:33 AM

You don't often get email from emeier@allergyalaska.com. [Learn why this is important](#)

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To Whom It May Concern,

I would like to formally **OPPOSE REPEALING the 80th Percentile rule / 3 ACC 21.110(a)**.

The 80th Percentile Rule protects patients and encourages providers and insurers to work together. This is essential in order to continue to provide high quality healthcare in Alaska.

Sincerely,

Eric A Meier, MD FAAAAI FACAAI FACP
Allergy, Asthma & Immunology Center of Alaska

From: [Karl and Kari Baurick](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: 80th Percentile Rule
Date: Saturday, March 4, 2023 12:22:36 PM

[You don't often get email from thebaurick5@hotmail.com. Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification>]

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To whom it may concern,

I am Karl Baurick MD, a lifelong Alaskan and practicing since 1996. I employ 15 fellow Alaskans and depend on the 80:20 rule to enable my practice to survive. We see all patients and strive to provide excellent, local care in Fairbanks. Every time I turn around insurance companies make it harder. Contesting medical decisions; denying prescriptions. Let's not give them another way to avoid caring for their Alaskan beneficiaries.

Sincerely, Karl Baurick MD

Sent from my iPhone

From: [Dr. Arom Evans](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: 80th Percentile Rule [decrypt]
Date: Friday, March 3, 2023 8:16:12 AM

You don't often get email from evans@obhn.org. [Learn why this is important](#)

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I appreciate the opportunity for public comment regarding this issue. Our clinic services the psychiatric needs of patients across the Alaska. We are in network with most major insurances. There are a few occasional insurance plans that we are out of network with. Without the 80% rule, patients that have these insurances would end up having large patient balances because of how low some of these out of network benefits are. This would lead the patient's to either not access care, ration care or travel out of state to receive care. In the end not receiving psychiatric care will lead to higher in costs such as emergency departments and hospitalizations. Please consider extending this rule.

Thank you,

Arom Evans MD

CEO

Orion Behavioral Health Network
17025 Snowmobile Lane
Eagle River, Alaska 99577

<http://www.obhn.org>
tel: 907-696-7466
fax: 907-726-0332

*OBHN office hours are 9AM-5PM if this message is outside of these hours please note that Email correspondence with Orion Behavioral Health is not intended to be used for urgent matters or emergencies. For emergent matters and if you or your loved one is in crisis, please contact the 24 Hour Alaska Behavioral Health/Providence psychiatric or behavioral crisis line **(907) 563-3200** or 911. National suicide and crisis lifeline number is 988.*

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From: [Bruck Clift](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: 80th Percentile Rule
Date: Thursday, March 2, 2023 2:40:21 PM

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Please keep the 80th percentile rule. Thanks

From: [Scott Ebenhoeh, DO](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: 80th Percentile Rule
Date: Thursday, March 2, 2023 12:35:47 PM

[You don't often get email from sebenhoeh@alaskaheart.com. Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification>]

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Dear Ms. Bailey,

I wanted to take a minute to share my concerns over the talk of repealing the 80th percentile rule. I am concerned that if this is repealed there will be significant increased healthcare costs to the Alaskan population and increased profits for the insurance industry. I feel strongly that the 80th percentile rule should remain enforced to protect our patients and our community. Thank you for your time.

Scott Ebenhoeh, DO FACC

From: [Douglas Haghighi](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: 80th Percentile Rule
Date: Thursday, March 2, 2023 2:07:42 PM

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Ms. Bailey,

My name is Douglas Haghighi, and I'm a gastroneurologist in Anchorage, Alaska. Please support keeping the 80% tile rule in place. Its repeal would significantly adversely affect health care in Alaska.

Dr. Haghighi

Sent from my iPhone

From: [Seth Krauss, MD](#)
To: [Bailey, Sarah S \(CED\)](#)
Cc: ["alaskasenate.org/matt-claman/"](mailto:alaskasenate.org/matt-claman/)
Subject: 80th Percentile Rule input
Date: Tuesday, February 28, 2023 7:04:42 PM

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3841 Piper St.
Suite T 100
Encourage, AK, 99508

Sarah Bailey
PO Box 110805
Juneau, AK 99811
Sarah.Bailey@alaska.gov

RE: 80th percentile regulation – 3 AAC 26.110 (a)

February 28, 2023

Dear Ms. Bailey:

It has come to my attention Alaska Division of Insurance is now considering eliminating the 80th percentile rule established over 10 years ago. I see no valid reason to undo this essential support and insurance protection unless the Division of Insurance has a goal of:

1. Increasing cost to consumers insured and uninsured
2. Reducing access to care both in rural and urban Alaska.
3. Resume balance billing and surprise medical bills.
4. Strengthen the Premiera BCBS Alaska commercial insurance monopoly.
5. Reduce access of Medicare, Medicaid, VA patients to non-government practices.
6. Return Alaska to the 1970's and 1980's when most routine specialty care required travel to the lower 48.

If I didn't know better, the decision to erase the existing 80th percentile rule for Usual and Customary Service, has come from Premiera BCBS itself. Healthcare everywhere remains expensive and complex. The variables responsible for the high cost of healthcare are too numerous to enumerate but not the least include lack of commercial health insurance competition and Premiera's ongoing drive to extract more profit from its closed marketplace in Alaska. At the very least I expect the Division of Insurance to encourage commercial insurance competition.

Getting rid of the 80th percentile rule represents an ill conceived mechanism to reduce healthcare costs in Alaska. If the division of insurance, the governor's office, or the legislature had a genuine interest in reducing healthcare costs then all parties and stakeholders need to undertake an all-of-government review and analysis of cost of healthcare in Alaska. For now as a longstanding physician in private practice, I remain dedicated to serving all Alaskans and as such remain delighted to invest my time and capital in the community. Physicians based in Alaska serve Alaska first and dedicated to keeping our patients and financial investment in the community. Why would the Division of Insurance dare to support Premiera BCBS who have openly advertised out of state care to Alaskans? It is clear that Premiera BCBS wants to extract high premiums with no duty to assuring care in Alaska.

Respectfully,

Seth Krauss, M.D.

From: [Andrew Merrick](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: 80th Percentile Rule
Date: Tuesday, February 28, 2023 10:50:46 AM
Attachments: [image001.jpg](#)

You don't often get email from amerrick@alaskaheart.com. [Learn why this is important](#)

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Dear Mrs Bailey,

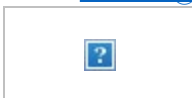
There are many reasons the 80th should not be repealed, but some brief points that could be considered are listed below:

- The 80th Percentile Rule protects patients from balance billing and out-of-pocket costs for healthcare in Alaska
- The 80th Percentile Rule encourages providers and insurers to work together in good faith for fair and transparent contracting to benefit patients
- The Federal No Surprises Act applies only to emergent care and does NOT replace the patient protections in the 80th Percentile Rule
- Repealing the 80th Percentile Rule will only benefit insurance companies, all of whom are based in the lower-48 and enjoy substantial profits
- Any claim that increasing insurance company profits will “trickle-down” to reduce the individual Alaskan’s healthcare costs is dubious at best
- Healthcare is a major employer of Alaskans and provides well-paying jobs with good benefits, which supports a healthy economy
- Repealing the 80th Percentile Rule will affect Alaska’s ability to recruit and retain high quality healthcare providers, which are already in short supply

Thank you,

Andrew Merrick PA-C

Alaska Heart and Vascular Institute
3125 Meridian Park Loop, Suite 200
Wasilla, AK 99654
Office: (907) 761-5470
Fax: (907) 761-5471
Email: amerrick@alaskaheart.com



The heart of a healthy community

From: [Jennifer Mitchell](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: 80th Percentile Rule
Date: Thursday, March 2, 2023 12:45:23 PM

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Good afternoon.

My name is Jennifer Mitchell and I am an ENT surgeon in Wasilla. I was contacted to review the 80th percentile rule and reach out to you to request it remains in place.

Insurance companies already have too much power.

Just this year several insurance companies have decided that two surgeries that I have been performing for years because it's now deemed "experimental". It's a way for them to get out of paying for elective surgeries despite the fact that they would greatly increase quality of life for patients.

It sounds like repealing this rule would be a very bad choice for Alaska. Please consider both the patients and healthcare providers and fight to keep this from happening.

Thank you for your time

Sincerely

Jennifer L. Mitchell, MD,Ph.D

Sent from my iPhone

From: [M. Jane Moore](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: 80th Percentile Rule
Date: Thursday, March 2, 2023 9:25:19 PM

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Ms. Wing-Heirer:

I am writing to express my opposition to repealing the 80th percentile rule for Alaskans.

We are already experiencing a heretofor unknown level of corporatization of medical practice, leading to worsening health outcomes across the US. We do not need to further enhance the wealth of insurance companies and their executives by saddling patients with more medical debt.

Please accept this as my sincerest public comment on the matter.

Regards,

Martha Jane Moore



From: [Jeff Simerville](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: 80th Percentile Rule
Date: Thursday, March 2, 2023 7:07:35 PM

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Getting rid of the 80% rule is a bad idea... it protects patients.. getting rid of it protects insurance companies... And their ridiculous profits

That is all

Sent from my iPhone

From: [Edwin Vyhmeister](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: 80th Percentile Rule
Date: Thursday, March 2, 2023 1:52:06 PM

You don't often get email from edwin4005@msn.com. [Learn why this is important](#)

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Ms. Lori Wing-Heirer
Division of Insurance Director

Dear Ms. Wing-Heirer:

I am the only full-time Board-Certified Hand Surgeon practicing in the Kenai Peninsula.

I brought the specialty of Hand Surgery to Central Peninsula Hospital.

This would not have been possible without the 80th Percentile rule at the time.

We need more providers, and specialists in this region. If payers get their way, our communities will suffer, and will have to travel long distances and to other states to seek care.

I request the 80th Percentile Rule is NOT repealed, so we can protect our Alaskans.

Best regards,

Edwin Vyhmeister MD
Secretary
Independence Healthcare PC
Soldotna, AK

From: [Ruth Ann Zent](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: 80th Percentile Rule
Date: Thursday, March 2, 2023 5:13:28 PM

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I am writing to offer my support to keeping the 80th Percentile Rule in AK. I am a Family Physician in rural AK (Kotzebue) and do not want our patients harmed by getting rid of this provision.

Thanks!
Ruth Ann Zent MD
P. O. Box 1105
Kotzebue, AK 99752
907-442-4330

From: [Jill Gaskill](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: 80th percentile rule
Date: Thursday, March 2, 2023 12:57:56 PM
Attachments: [Outlook-wmfada5o.png](#)

You don't often get email from jgaskill@mpfcak.com. [Learn why this is important](#)

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To the Alaska Division of Insurance,

I am writing to express opposition to the repeal of Alaska's 80th percentile rule. I am a primary care physician in Anchorage. I own my practice and my practice is in network with all major insurers. I have no direct financial benefit from the 80th percentile rule, however it impacts my patients. My business is in caring for the whole patient and economic well being is a huge factor in influencing overall health for Alaskans. Alaskans need the confidence that their health insurance plan will cover the costs of illness when they become seriously ill. When people are sick and vulnerable, they don't always have choices about finding the "in network" provider, or they may need a highly specialized provider where no one is in their insurance network. The 80th percentile rule limits the out of pocket costs to the patient in dire situations where decisions can't be made based on who is "in network." As you may recall during the height of the Covid-19 pandemic, sometimes the hospital you went to was in another town, it may have been the only place with a bed or a ventilator.

The other major concern for primary care physicians is access to specialty care. We need local resources. There are many medical specialties with very limited representation in Alaska, particularly in the area of pediatric medicine. Flying to Seattle for specialty care does not improve the health of our communities, nor does it bode well for recruiting young people to return to Alaska to start careers and raise families. The population is aging and we need families and working adults to ensure a healthy economy and healthy communities. People very definitely factor in health insurance costs, coverage and available care when they decide where to move.

Don't be short sighted and accept the argument that the 80th percentile rule is driving up Alaska's health care costs. The data being trotted out are old, and there has been no meaningful public discussion of the financial impact of most specialists in Anchorage going in-network with the health insurance companies.

Health care is changing rapidly. There is downward pressure on reimbursement for services of all kinds, including primary care. We don't want to return to an Alaska like the 1970s and 80s where people are forced to go "Outside" for medical care. I have lived my whole life here and

am committed to caring for my community, I've been in private practice for 14 years and plan to continue, but only as long as resources for providing quality care are available.

Jill Gaskill, MD

Medical Park Family Care, Inc.

jgaskill@mpfcak.com

907-279-8486



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March 3, 2023

RE: Proposed Changes to 3AAC26.110, aka the 80th Percentile Rule

Ms. Bailey,

I am writing to comment on the division's proposed changes to 3AAC26.110, specifically, the deletion of paragraphs (a)(1) and (a)(2), and the revision of paragraphs (4) and (5)(A). On behalf of Alaska Pediatric Surgery, LLC, I OPPOSE the proposed changes.

The proposed changes further unbalance the patient / provider / carrier relationship in the carrier's favor. Our practice is already in-network with the major carriers serving the pediatric Alaska market, however, we are concerned that the proposed changes will negatively impact our negotiating position with these carriers in the future. Large provider groups and facilities have power in contract negotiations with carriers but smaller practices, are often given a "take it or leave it" approach. Without this rule in place, more and more practices, specifically pediatric subspecialties, will be at risk of closing and Alaska will lose the much-needed pediatric provider community we have worked hard to build. Pediatric subspecialties are difficult to recruit for and once the services leave Alaska, getting them back will take years.

Not only would our practice suffer from this proposed change, our patients in Alaska also suffer. The Division has a responsibility to regulate the insurance industry to protect Alaskan consumers. Proceeding with these changes does the opposite of that.

Please DO NOT proceed with changes to 3AAC26.110 until you can provide additional language with assurances for small providers that better reflect conditions in this market. If you have additional questions about how this change will impact pediatric subspecialties in Alaska, please feel free to contact me anytime.

Thank you,
Kristi Davis, MBA, FACMPE
Chief Operating Officer
Alaska Pediatric Surgery
(907) 929-7337

From: jbc@cobbak.com
To: [Bailey, Sarah S \(CED\)](#)
Subject: 80th percentile
Date: Thursday, February 23, 2023 9:32:06 AM

You don't often get email from jbc@cobbak.com. [Learn why this is important](#)

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Sarah Bailey
P.O. Box 110805, Juneau, AK, 99811-0805
sarah.bailey@alaska.gov

Re: 80th percentile

I have worked as an Employee Benefit Consultant in Alaska for 32 years. As such I have dealt with all of fallout from the above regulation. It was originally designed with good intent, but as with many things in life it developed into more:

- Alaska's 80th percentile regulation unnecessarily makes health care more expensive and contributes to Alaska's highest-in-the-nation health care costs.
- The rule serves as a disincentive for providers to join insurance networks and control costs.
- Additionally, now that Congress has put in place protections against balance billing through the No Surprises Act, it is time to abolish Alaska's 80 percentile regulation.

Today, however, my letter is personal and not on behalf of my company. After nearly my entire life in Alaska I am leaving. There are many reasons why I am leaving (tired of the long flights, sick of slow internet speeds, worn down by lack of growth in our economy, following family who no longer want to live here, etc.) But healthcare is on the list of concerns, and I very much look forward to more options with better prices in the lower 48.

I have heard over the years "this is the year" we fix the 80th percentile. Each time I have been disappointed by the politics that come in to play when tough decisions are on the line. I hope this time is different.

Alaskans deserve to get good value for their healthcare spend. Alaska businesses deserve to be in a position to offer good benefits to their employees. Do the right thing and repeal this regulation.

Jennifer Bundy-Cobb



ANCHORAGE & VALLEY
**RADIATION
THERAPY**
CENTERS

March 2, 2023

Sarah Bailey
Division of Insurance
Alaska Department of Commerce &
Economic Development
PO Box 110805
Juneau, Alaska 99811-0805

Sent via email

RE: Proposed Changes to 3AAC26.110, aka the 80th Percentile Rule

Ms. Bailey,

I am writing to comment on the division's proposed changes to 3AAC26.110, specifically, the deletion of paragraphs (a)(1) and (a)(2), and the revision of paragraphs (4) and (5)(A). Anchorage & Valley Radiation Therapy Centers OPPOSES the proposed changes.

Our concern is that the proposed changes further unbalance the patient/provider/carrier relationship in the carrier's favor. Simply put, the proposed regulation changes grant more power to the carriers to force medical providers into their networks. Many of our members are small or single-practice providers. Many patients prefer this simple, personal treatment setting. Large providers, such as corporate chains, have more negotiating power with carriers. For our smaller members, it's "take it or leave it" - join our network for a drastically reduced reimbursement or treat the patient for free.

We are aware that the 80th percentile rule is seen as a cost driver by some. Your supporting materials state that the federal No Surprises Act protects consumers from "some" kinds of medical bills from out-of-network providers. As patients ourselves we applaud that, but it doesn't apply to our members and patients in this market.



We understand that you regulate insurance and not providers, but without the 80th percentile rule there will be no laws in place to ensure healthcare providers are fairly reimbursed, especially our smaller or single practice members. Absent this rule, there will be fewer medical providers to choose from and more of those who are left will be forced into cash practice. More patients are going to find it difficult to find care. The division's website lists the division's mission as: "to regulate the insurance industry to protect Alaskan consumers." How are Alaskan consumers protected under the scenario described above?

Please DO NOT proceed with changes to 3AAC26.110 until you can provide additional language with assurances for small providers that better reflect conditions in this market.

Sincerely,

A handwritten signature in black ink, appearing to be 'AZ' followed by a long horizontal flourish.

Practice Administrator

Direct: 907.792.1548 | Email: ashlyn.krause@anchorageradiationtherapy.com

3125 E. Meridian Park Loop
Suite 200
Wasilla AK, 99654

Sarah Bailey
PO Box 110805
Juneau, AK 99811

Sarah.Bailey@alaska.gov

RE: 80th percentile regulation – 3 AAC 26.110 (a)

March 2, 2023

Dear Ms. Bailey:

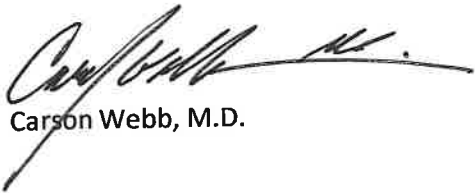
It has come to my attention that the Alaska Division of Insurance is now considering eliminating the 80th percentile rule established over 10 years ago. I see no valid reason to undo this essential support and insurance protection unless the Division of Insurance has a goal of:

1. Increasing cost to consumers insured and uninsured
2. Reducing access to care both in rural and urban Alaska.
3. Resume balance billing and surprise medical bills.
4. Strengthen the Premera BCBS Alaska commercial insurance monopoly.
5. Reduce access of Medicare, Medicaid, VA patients to non-government practices.
6. Return Alaska to the 1970's and 1980's when most routine specialty care required travel to the lower 48.

If I didn't know better, the decision to erase the existing 80th percentile rule for Usual and Customary Service, has come from Premera BCBS itself. Healthcare everywhere remains expensive and complex. The variables responsible for the high cost of healthcare are too numerous to enumerate but not the least include lack of commercial health insurance competition and Premera's ongoing drive to extract more profit from its closed marketplace in Alaska. At the very least I expect the Division of Insurance to encourage commercial insurance competition.

Abolishing the 80th percentile rule will not reduce healthcare costs in Alaska. If the division of insurance, the governor's office, or the legislature had a genuine interest in reducing healthcare costs then all parties and stakeholders need to undertake an all-of-government review and analysis of cost of healthcare in Alaska. As a longstanding physician who has been a part of bringing new medical service lines to Fairbanks Alaska and more recently the Matsu Valley through both hospital employment and private practice models I remain dedicated to serving all Alaskans and as such remain delighted to invest my time and capital in the community. Physicians based in Alaska serve Alaska first and dedicated to keeping our patients and financial investment in the community. Why would the Division of Insurance dare to support Premera BCBS who have openly advertised out of state care to Alaskans? It is clear that Premera BCBS wants to extract high premiums with no duty to assuring care in Alaska.

Respectfully,

A handwritten signature in black ink, appearing to read "Carson Webb, M.D.", with a long horizontal flourish extending to the right.

Carson Webb, M.D.

From: [Monique Fox](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: ACENT opposes 80th Percentile Repeal
Date: Thursday, March 2, 2023 11:52:59 AM

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Dear Sarah Bailey:

The Physician Owners and Employed Providers at Alaska Center for Ear Nose and Throat would like to go on record to voice our opposition to 80th Percentile Repeal for the following reasons:

- The 80th Percentile Rule protects patients from balance billing and out-of-pocket costs for healthcare in Alaska
- The 80th Percentile Rule encourages providers and insurers to work together in good faith for fair and transparent contracting to benefit patients
- The Federal No Surprises Act applies only to emergent care and does NOT replace the patient protections in the 80th Percentile Rule
- Repealing the 80th Percentile Rule will only benefit insurance companies, all of whom are based in the lower-48 and enjoy substantial profits
- Any claim that increasing insurance company profits will “trickle-down” to reduce the individual Alaskan’s healthcare costs is dubious at best
- Healthcare is a major employer of Alaskans and provides well-paying jobs with good benefits, which supports a healthy economy- we are already struggling to find and keep staff at higher staffing costs.
- Repealing the 80th Percentile Rule will affect Alaska’s ability to recruit and retain high quality healthcare providers, which are already in short supply and will greatly reduce patient’s access to care in Alaska
- Without high quality primary care and specialists that are local and accessible, patients will have to travel to the lower 48 for care – this will especially impact our most vulnerable populations who may not have the means or ability to travel

Our ACENT providers already take time out of their busy in office clinic in the Anchorage area to travel to remote locations to provide service to meet patient care needs-Our commitment to the Alaska community is strong and we strongly request you support our opposition to 80th Percentile Repeal.

Respectfully,
Monique

On behalf of Stephen Schaffer, MD; Mark Lorenz, MD; John Kokesch, MD; Chris Kowalski, MD; J David Andrews MD; Shannon Fraser, MD; Tiffany Webb, PA; Erin Norton, NP

Monique Marquis Fox, MHA, FACHE
Administrator ACENT/ MedMan
3841 Piper St., STE. T230
Anchorage, AK 99508

Cell: 715-297-6524
Office: 907-279-8800



March 2, 2023

Sarah Bailey
Division of Insurance
Alaska Department of Commerce &
Economic Development
P.O. Box 110805
Juneau, AK 99811-0805
Sarah.Bailey@alaska.gov

Sent via email

RE: Proposed Changes to 3AAC26.110, aka the 80th Percentile Rule

Ms. Bailey,

I am writing to comment on the division's proposed changes to the 80th Percentile Rule. I represent a network of general surgeons in the anchorage area that includes 9 offices and more than 19 providers all whom deliver surgical services to the people of Alaska and **WE OPPOSE the proposed changes.**


The 80th Percentile Rule encourages providers and insurers to work together in good faith for fair and transparent contracting to benefit patients and helps protect patients from balance billing and out-of-pocket costs for healthcare in Alaska. Our practice participants in all major local networks including Medicare, Medicaid, VA/Tricare, etc. Most of the providers in our region are in network and we have all seen our negotiated contractual reimbursement rates remain flat or decrease all while facing historic inflation. At the same time, as a purchaser or local Alaska based private health insurance for my providers and staff, we have faced year over year increases in our premiums and have seen deductibles increase.

The No Surprises Act (NSA) has been used to support the 80th percentile should be abolished because it offers the same protection. It doesn't; it only provides balance bill protection in cases when a patient does not have a choice in the medical provider they see. The 80th percentile "rule" for determining "usual and customary charges for healthcare services" in Alaska was and is ultimately a consumer safety mechanism.

Repealing the 80th Percentile Rule will only benefit insurance companies, all of whom are based in the lower-48 and enjoy substantial profits. Repealing the 80th Percentile Rule will affect Alaska's ability to recruit and retain high quality healthcare providers, which are already in short supply and will greatly reduce patient's access to care in Alaska.

As stated above, we respectfully OPPOSE the repeal of 3AAC26.110, aka the 80th Percentile Rule.

Sincerely,


Cinderella Tollefsen, MBA, FACMPE
Chief Executive Officer, Alaska Health Services

DOI Director Lori Wing-Heier,

I am writing to express my support for maintaining the 80th percentile regulation. This regulation protects the healthcare providers and clinics that offer services to residents and travelers to Alaska. The costs to provide healthcare have been on the rise for many years and was accelerated during COVID. The cost to employ healthcare providers/ support staff, provide a safe environment for patients, and administrative cost have increased at minimum of 15% since the pandemic. I have been an employer and recruiter for our physical therapy clinic since 2010 and it has always been a challenge for us to find qualified healthcare providers to come to Alaska, especially if salaries or compensation rates don't meet the cost of living. Without these healthcare providers, the services our community needs won't be met and that is getting even more challenging with the decrease in reimbursements from insurance companies.

Commercial Insurance companies are known to be in the business of making large profits and at the same time are continuing to make it more and more difficult for clinics and providers to get fair payment for services. They are constantly decreasing reimbursements to healthcare providers for their services (even though the cost to deliver care increases), recouping money, denying payment to healthcare providers which then puts that payment on the patient, implementing new audit procedures that require more administrative burden on the facilities providing the healthcare. All the while profiting BILLIONS every year.

Some say this 80th percentile regulation unnecessarily makes healthcare more expensive and significantly contributes to the healthcare cost growth experienced across the state of Alaska. I would argue that insurance companies themselves contribute to making healthcare more expensive by continually undercutting the facilities that provide services and increasing the administrative burden on the facilities that provide the care. Because of this, you see more facilities not taking certain insurance carriers or being "out of network", they just can't afford to take them anymore which leaves patients without the care they need.

Removing the 80th percentile regulation will only serve to allow these companies to make even more billions as they would be required to pay less in healthcare claims and thus putting more burden on the patients and healthcare providers.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lori Wing-Heier', with a stylized, flowing script.

From: [Leslie Young](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: AK 80th Percentile Abolishment
Date: Thursday, March 2, 2023 11:44:09 AM
Attachments: [image001.png](#)

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DOI Director Lori Wing-Heier,

I am writing to express my support for the abolishment of the 80th percentile regulation. This regulation unnecessarily makes healthcare more expensive and significantly contributes to the healthcare cost growth experienced across the state. These increased costs are typically borne by employers and consumers directly.

The continual increases to healthcare impact the district budget and take away the already limited educational funds used to support student and hire district staffing needs.

While the 80th percentile regulation was originally meant to protect patients from balance billing, it has instead contributed to Alaska's soaring healthcare spending. With the implementation of the Federal No Surprises Act in 2022, which protects consumers from balance billing, the 80th percentile regulation is no longer needed.

Sincerely,

Leslie Young
Business Manager
Sitka School District
300 Kostrometinoff St.
Sitka, AK 99835
907.966.1754 office | 907-966-1260 fax
youngl@sitkaschools.org



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Director Lori Wing-Heier
Alaska Division of Insurance
550 W 7th

3 March 2023

Anchorage, AK 99501

Transmitted by email: Sarah.Bailey@alaska.gov

I am writing you, Director Wing-Heier, to urge you to not abolish the regulation known as the 80th percentile rule! As you are well aware, the regulation was put in place many years ago as a consumer protection, and it has worked! Prior to the regulation, insurers, none of whom are domiciled in AK as you know, could establish their Usual Customary and Reasonable (UCR) schedule any way they wished and they did without regard for actual costs in AK. For example, a carrier from a very low-cost market would apply their local UCR schedule to claims incurred in AK drastically underpaying the claim from what the insured expected when they bought the policy. This led to patients unfairly being left with large debts from balance billing. The Division was right to implement the regulation to stop this practice. If this important protection is removed without being replaced by a different regulation with the same objective, it is highly likely insurers will revert to their previous behavior.

There is another very important reason the regulation should stay in place and that is to make certain AK residents maintain access to needed care close to home! Prior to this regulation, there were many services not available in AK, forcing residents to seek care out of State at significant personal expense. Fortunately, this regulation has made it financially feasible to offer specialized care in geographies with smaller populations resulting in a much more robust and comprehensive medical community in the State.

Let me give you a specific example from our specialty, radiation oncology. Our group of radiation oncologists practice in 5 different AK locations. Three of these five locations are in areas with smaller populations, Juneau, Soldotna and Mat-Su. It is very expensive to build and operate a radiation oncology center! The main piece of equipment, the linear accelerator, costs upwards of \$4M and has expensive annual maintenance requirements. Because of high fixed costs for equipment and diminished patient volumes in the remote areas, the higher rates than those found in centers in the Lower 48 **are required** to make a rural radiation oncology center in AK financially feasible. Without the protection of this regulation, it is absolutely certain these rural centers would close. Prior to our opening of the Southeast Alaska Radiation Oncology Center, approximately 10 years ago, patients in Southeast needing treatment had to travel to Seattle, Anchorage or elsewhere to be treated. Traveling for care is especially burdensome for patients undergoing radiation treatment as treatments are five days per week and a course of treatment could last up to 7 weeks. It is not hard to imagine the significance of this financial burden, not covered by health insurance, not to mention the emotional toll of being away from home while receiving treatment and having to leave a job instead of continuing to work.

AOAALASKA.COM





Director Wing-Heier, I trust the significant impact on consumers of abolishing this important regulation is not lost on you. Thank you for opportunity to provide comment on behalf of our collective practices. We are confident you will uphold this important consumer protection as we know you vigorously carry out the Division's mission to regulate the insurance industry and protect Alaskan consumers. Thank you for your work on behalf of all Alaskans!

Sincerely,

John Halligan, MD
Colonel, US Army, retired.

On behalf of James Blom, MD, William Magnuson, MD, Robert Sollocio, MD, Eugene Huang, MD, Steven Settle, MD and Jason Parks, MD, collectively known as Advanced Oncology Associates.

AOAALASKA.COM



Sarah Bailey
Division of Insurance
Alaska Department of Commerce &
Economic Development
PO Box 110805
Juneau, Alaska 99811-0805

Sent via email – February 21, 2023

RE: Proposed Changes to 3AAC26.110, aka the 80th Percentile Rule

Ms. Bailey,

On behalf of Alaska Oncology and Hematology, LLC, I am submitting this letter to comment on the division's proposed changes to 3AAC26.110, specifically, the deletion of paragraphs (a)(1) and (a)(2), and the revision of paragraphs (4) and (5)(A). Alaska Oncology OPPOSES the proposed changes.

Our concern is that the proposed changes further unbalance the patient / provider / carrier relationship in the carrier's favor. Simply put, the proposed regulation changes grant more power to the carriers to force medical providers into their networks. Many of our members are small or single practice providers. Many patients prefer this simple, personal treatment setting. Large providers, such as corporate chains, have negotiating power in contract negotiations with carriers. For our smaller members, it's "take it or leave it" - join our network for a drastically reduced reimbursement, or treat the patient for free, and go bankrupt.

I'm Dr. Max Rabinowitz, board certified oncologist, serving the cancer patients of Alaska since 2004 when my wife and I moved to back Alaska, and knew we were here to stay. For the patient who hears "you have cancer" for the first time, their world turns upside down with the question, what will I do now? I wanted to be the oncologist to help guide them through this scary journey mainly because cancer patients in Alaska shouldn't have to go to the "lower 48" to seek care. To travel away from home and their support system is tough at best on a cancer patient and very expensive for insurance companies to send them out of state for care. Patients should all have a choice for the medical doctors they wish to see and the place of service in their community.

We are aware that the 80th percentile rule is seen as a cost driver by some. Your supporting materials state that the federal No Surprises Act protects consumers from "some" kinds of medical bills from out-of-network providers. As patients ourselves we applaud that, but it doesn't apply to our members and patients in this market. Our average patient, with cancer treatments, doesn't receive "surprise" billings, but rather relatively low fees for regular treatment. Alaska Oncology is committed to the most efficient and effective cancer care while keeping our costs as low as possible while continuing to employ over 40 professionals who have helped us provide life changing treatments in our community and treat patients close to home and reduce hospital stays.


Studies have shown, patients who are able to obtain cancer care treatments as soon as they are diagnosed, do make a difference in the quality of life a cancer patient experiences.

We understand that you regulate insurance and not providers, but without the 80th percentile rule there will be no laws in place to ensure healthcare providers are fairly reimbursed, especially our smaller or single practice members. Absent this rule, there will be fewer medical providers to choose from and more of those who are left will be forced in to cash practice. More patients are going to find it difficult to find care. The division's website lists the division's mission as: "to regulate the insurance industry to protect Alaskan consumers." How are Alaskan consumers protected under the scenario described above?

- Repealing the 80th percentile rule will diminish our practice to keep the lifesaving chemotherapy drugs on hand. The drugs would then need to be ordered on a patient by patient basis. Milliman conducted a study and concluded oncologists will not have the ability to stay in business when reimbursement is below what cancer medications cost the community physician.
- Alaska Oncology and Hematology, LLC is in network with Premera and we have kept our prices as low as possible to alleviate huge out of pocket costs for our cancer patients. There have been offices who were outliers in charging above and beyond the usual and customary allowed and Premera came to our office to help bring the allowable charges back in line. We have worked closely with Premera for nearly 20 years and have the utmost respect for them doing the right things for their consumers.
- The impact of losing specialty cancer care doctors and their teams of professionals would be significant to the community. At Alaska Oncology and Hematology, LLC we have right sized our team and provide needed services despite lower reimbursement rates to continue serving cancer patients. Benefit packages to our employees are less robust due to cost cutting measures to continue business in Alaska.

Please DO NOT proceed with changes to 3AAC26.110 until you can provide additional language with assurances for small providers that better reflect conditions in this market.

Thank you,



Max Rabinowitz, MD
Alaska Oncology and Hematology, LLC
2925 DeBarr Road, Suite 300
Anchorage, AK 99508
907-279-3155 office

February 24, 2023

Attention: Sarah Bailey

Sarah Bailey
P.O. Box 110805
Juneau, AK 99811-0805

I am providing written comment on the 80th 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 “80th percentile” rule for determining “usual and customary” charges for healthcare services provided to Alaskan consumers.

I currently serve in two positions – Chief Administrative Officer for Alaska Radiology Associates (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 and interventional radiology. They are 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 to Alaskans from Nome to Unalaska and from the North Slope to Anchorage. Our outpatient imaging centers provide Alaskans world-class diagnostic service often not found on the west coast!

As a healthcare administrator with over 25 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 80th percentile rule. I understand the reason the 80th 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 manner.

To better serve their patients, the vast majority of specialists in Alaska entered into an in-network status with commercial payors over the past seven to ten years and did so by agreeing to a material reduction in compensation; I am confident that since then many, if not all, have not seen any increases to their compensation. Additionally, six years ago the State of Alaska orchestrated further reductions to specialist compensation bringing Medicaid payments for many in line with Medicare which represented anywhere from a 25-30% reduction in Medicaid allowable with NO inflation adjustment since! In the interim, insurance premiums for my businesses, and many others in Alaska, have gone up significantly. I am confident that the money associated with the cost increases did not go to healthcare providers, I assume it went to commercial insurance cost and profit structure.

Lori Wing-Heier Division of Insurance inadvertently misrepresented the No Surprises Act (NSA) during the Senate Labor & Commerce meeting February 20th 2023. She insinuated that removing the 80th percentile regulation would be fine now that consumers of healthcare are protected by the NSA. However, her representation is far from the truth as the NSA only provides protection for out of network emergent care. As everyone knows, the vast majority of primary and specialty care is routine and thus if the 80th percentile regulation is removed there will be nothing protecting the consumer if healthcare providers in good faith fail to negotiate with the insurance entity and thus are forced to go out of network.

I would contend that the cost of specialty care has decreased significantly over the past ten years for commercial insurance entities; however, that cost reduction has not been passed along to Alaskans. I am aware of one insurance company that has been actively messaging Alaska employers/businesses misrepresenting the real reasons why Alaska’s premiums have been dramatically increasing year over year. They blame the 80th

percentile regulation as the reason and convey that the NSA is now in place to protect the consumer making the 80th percentile regulation obsolete. Both statements are untruthful.

In my professional opinion, specialty care, primary care and services we take for granted at our beautiful Alaska hospitals will be severely degraded if this regulation was removed. Many specialty care practices would quickly decline negatively affecting both primary care and our hospital services. Specialists, given AK Medicaid reduced their compensation by 30% would stop seeing not only Medicaid but also Medicare as providing services at the Medicare reimbursement is not plausible; everyone knows that, it's been tried many times. The result would be forcing Alaskans to seek specialty care outside of Alaska. We all know keeping healthcare local is not only important to provide Alaskans timely access to specialty care but critical for urgent and emergent services, but we often forget the financial impact to the communities we serve as doing keeps Alaska's money in Alaska employing Alaskans. All of this is at stake if the 80th percentile goes away!

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. If Alaska's gubernatorial branch, and or legislative branch are careless, they could find themselves back in time when we had no access to specialty services. I am fearful that too few in both branches remember that time in our healthcare history.

In closing, given the vast majority of specialists have entered into contracts with insurance companies and that the NSA would not provide Alaska consumers of healthcare protection if a specialty was not in network, I convey strong opposition to any action aimed at repealing or amending the 80th percent rule.

I thank decision-makers in advance for considering this request and have reserved optimism that Alaska's Gubernatorial Branch will see the truth in this matter and concur with my recommendation.

Please contact me at (907) 562-1282 or via email – ward.hinger@imagingak.com if you have any questions or concerns.

Sincerely,

Ward Hinger
CAO Alaska Radiology Associates
CEO Imaging Associates LLC



Alaska Trauma & Acute Care Surgery, LLC

3220 Providence Drive, Suite E3080
Anchorage, Alaska 99508
Ph: 907.375.8785
Fax: 907.375.8788

March 2, 2023

Sarah Bailey
Division of Insurance
Alaska Department of Commerce &
Economic Development
P.O. Box 110805
Juneau, AK 99811-0805
Sarah.Bailey@alaska.gov

Sent via email

RE: Proposed Changes to 3AAC26.110, aka the 80th Percentile Rule

Ms. Bailey,

I am writing to comment on the division's proposed changes to the 80th Percentile Rule. My providers deliver trauma and acute care surgical services to the people of Alaska and **WE OPPOSE the proposed changes.**

The 80th Percentile Rule encourages providers and insurers to work together in good faith for fair and transparent contracting to benefit patients and helps protect patients from balance billing and out-of-pocket costs for healthcare in Alaska. Our practice participants in all major local networks including Medicare, Medicaid, VA/Tricare, etc. Most of the providers in our region are in network and we have all seen our negotiated contractual reimbursement rates remain flat or decrease all while facing historic inflation. At the same time, as a purchaser of local Alaska based private health insurance for my providers and staff, we have faced year over year increases in our premiums and have seen deductibles increase.

The No Surprises Act (NSA) has been used to support the 80th percentile should be abolished because it offers the same protection. It doesn't; it only provides balance bill protection in cases when a patient does not have a choice in the medical provider they see. The 80th percentile "rule" for determining "usual and customary charges for healthcare services" in Alaska was and is ultimately a consumer safety mechanism.

Repealing the 80th Percentile Rule will only benefit insurance companies, all of whom are based in the lower-48 and enjoy substantial profits. Repealing the 80th Percentile Rule will affect Alaska's ability to recruit and retain high quality healthcare providers, which are already in short supply and will greatly reduce patient's access to care in Alaska.

As stated above, we respectfully OPPOSE the repeal of 3AAC26.110, aka the 80th Percentile Rule.

Sincerely,

Cinderella Tollefsen, MBA, FACMPE
CEO

From: [Russell Biggs](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: Attached Sarah Bailey/ 80% rule testimony
Date: Thursday, February 23, 2023 1:58:46 PM

You don't often get email from russellbiggs@gmail.com. [Learn why this is important](#)

CAUTION: This email originated from outside the State of Alaska mail system. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi, my name is Russell Biggs. I have been a physician in Anchorage for almost 20 years and I am writing about the proposed changes to the 80% rule.

Alaska has strong anti-trust and consumer protection laws that can protect Alaskans without removing the 80th percentile protections afforded patients. This is about insurance companies wanting to increase their bargaining leverage and force physicians into their networks. Jim Grazko President of Premera Alaska in asking to remove the 80th percentile said, “there’s not any real reason for some of these providers to come to the table and want to negotiate if they’re going to be paid close to billed charges anyway. So I think it would provide an immediate fairly high-impact incentive for providers to want to contract with payers.”

The State should not allow consumers to be used as leverage in private party negotiations. Nor should the state act to regulate private insurance without a full and complete study of potential impacts to TRICARE, Medicare, and Medicaid beneficiaries’ access. Premera enjoys a monopoly on the market. If anything this monopoly should drive greater regulation to ensure consumers are protected.

Over the last decade, providers have made enormous investments in healthcare infrastructure across the state. It is expensive and exceedingly difficult to recruit and retain quality professionals to move to Alaska in any profession. It is even more challenging in healthcare, particularly among specialists, whose training programs often span 15 years and whose families are well rooted in their urban training centers by the time they are able to practice.

I urge you to maintain the requirement that the basis for determining UCR is the 80th percentile.

Thanks, Russell Biggs, MD

From: [Samuel Waller, M.D.](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: Attention Sarah Bailey
Date: Friday, March 3, 2023 8:39:19 PM

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I am writing to STRONGLY oppose any change to the 80th percentile rule. This rule protects patients. I am a local neurosurgeon and have noted that at times when patients seek/need emergency neurosurgical services this rule can save them from exorbitant expenses. This rule protects my patients, my family (which has been in the state since the 1950s) and ensures adequate access to high quality medical services for all Alaskans. We need the 80th percentile rule. I oppose any changes to it.

Respectfully -
Sam Waller, MD

Sent from my iPhone

From: [Brittany O'Steen](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: ATTN Sarah Bailey, 80% rule comments
Date: Thursday, March 2, 2023 2:40:39 PM
Attachments: [Outlook-2p0ejduo.jpg](#)
[In support of maintaining the 80% rule.pages](#)

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Director Lori Wing-Heirer

State of Alaska Division of Insurance,

I support the State of Alaska maintaining the requirement that the basis for determining Usual and Customary Rate (UCR) is the 80th percentile.

I oppose any proposed change that amends or removes the regulatory requirement that "Usual and Customary" charges be based on the 80th percentile of market pricing. The 80th percentile is the industry practice within the United States and is an important practice that protects Alaskans access to healthcare. The 80th Percentile Rule is an important regulation to protect Alaskan patients and consumers from predatory practices by insurance companies. Protecting Alaskan's is a critical and foundational purpose of our state government.

Repealing the 80th percentile route would severely harm Alaskans by decimating our healthcare system. We currently have a robust healthcare system where Alaskans do not need to travel out of state for routine and specialty care, which is critically important in such a geographically large and remote state. Local access to high quality health care is critically important for our patients who live remotely and are unable to travel for care due to illness, mobility, or prohibitive cost.

We already face significant challenges recruiting high quality physicians and health care providers to Alaska due to our geographically remote location. Recruiting and retaining physicians, especially subspecialty physicians, is extremely challenging and expensive because of our remote location. The 80% rule significantly helps us to retain quality providers by ensuring that insurance companies pay a fair rate for services. The elimination of the 80% rule will further severely impact the ability of providers to continue to care for these patients because government reimbursement rates are so inadequate.

The current regulation provides a transparent objective and reliable method of establishing "usual and customary" charges that protects consumers while maintaining the availability of healthcare services in Alaska. In 2004 Premera testified that this aspect of the regulation, the 80th percentile, was intended "to provide a standard for the claims payment basis that is unlikely to result in significant changes for major carriers doing business in Alaska."

Allowing individual insurance carriers to establish different standards for claims payment will make it virtually impossible for a consumer to know what they are purchasing. The no surprises act does NOT solve this problem. The current regulation with the 80% rule is working as intended providing transparency and greater consumer protections for Alaskans. The regulation was put into place because consumers were suffering from insurance companies' policies and practices to reduce reimbursements. Repealing it would return us to the dire state of health care in Alaska before the rule was implemented. It is in the best interest of Alaskans patients to preserve the 80% rule.

In summary, this is about patients, Alaskan Patients, our friends, our family, our neighbors, who should be able to rely on their insurance to pay market rates to ensure availability of high-quality primary and specialty health care here at home, in Alaska.

I implore you to advocate for Alaskans and to do what is right by maintaining and upholding the 80% rule. The healthcare of Alaskans depends upon it. Preserve the 80% rule and protect Alaskan patients.

Sincerely,

Brittany L. O'Steen, MD

Breast Imaging & Diagnostic Radiologist

Alaska Radiology Associates

Brittany O'Steen MD

Breast Imaging & Breast Interventions,

Diagnostic Radiologist

Email: osteen@alaskarad.com Mobile: 301-613-4315



<https://alaskarad.com/>

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March 1st, 2023



Attention: Sarah Bailey
Sarah Bailey
P.O. Box 110805
Juneau, AK 99811-0805
Sarah.Bailey@alaska.gov

907.561.3211
alaskaheart.com

I am providing written comment on the 80th 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 "80th percentile" rule for determining "usual and customary" charges for healthcare services provided to Alaskan consumers.

I am a cardiologist who works for Alaska Heart Institute and Alaska has been my home for the last 20 years.

The reason the 80th percentile regulation was put into effect was to provide more transparency and greater consumer protections and I would contend that this has certainly been the case.

The No Surprises Act (NSA) provides protection for out of network emergent care. Therefore, if the 80th percentile regulation is removed there will be nothing protecting the consumer if healthcare providers in good faith fail to negotiate with the insurance entity and thus are forced to go out of network.

Please accept my strong opposition to a repeal or amendment to the 80th percentile rule. Most specialists have entered into contracts with insurance companies and the NSA would not provide Alaska consumers of healthcare any protection if a specialty was not in network.

Thank you,

Mario Binder, MD FACC

Sami Abuzaid, MD,
FACP, FASE, FACC
Eric Anding, MD
Richard Anschuetz, MD, FACC
Krzysztof Balaban, MD, FACC
Mario Binder, MD, FACC
Blake Charlton, MD
Steven Gompston, MD,
FACC, FACP, FHRS
Scott Ebenhoeh, DO
Herman Feringa, MD, PhD,
MPH, RPVI, FACC
John Finley, MD, FACC, FASE
Lisa Gray, DO, FACC
Linda Ireland, DO, FACC
Jacob Kelly, MD, MHS, FACC
Thomas Kramer, MD, FACC
Seth Krauss, MD, FACC, FSCAI
Adam Mason, MD, FACC
William Mayer, MD, FACC, FACP
Jonathan McDonagh, MD
Ryan McDonough, DO, FACC
Suneet Purohit, MD
Gene Quinn, MD, MS, MPH
Brian Scully, MD, FACC
Mark Selland, MD, FACC
Alan Skolnick, MD, FACC
Hung Vo, MD
Stanley Watkins, MD, MHS, FACC
Carson Webb, MD
Mark Willcox, MD
Yiming Wu, MD, PHD

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AHVI WASILLA
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Suite 200
Wasilla, AK 99654

AHVISOLDOTNA
240 Hospital Place
Suite 202
Soldotna, AK 99669

RECEIVED

MAR 03 2023

SOA-DCCED
DIVISION OF INSURANCE
JUNEAU OFFICE

From: [Robert Pierson](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: Change in Title 3 of the Alaska Administrative Code, dealing with the basis of payment of health care services
Date: Wednesday, February 1, 2023 5:18:02 PM

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To Whom it May Concern:

There needs to be a reasonable floor to reimbursement. Read below if you care why I think so. My perspective is as both a provider and a patient.

Prior to this I was not aware of the 80th percentile rule. First of all, if the 80th percentile is removed, it should be replaced with another percentile floor. **As a consumer who was denied adequate reimbursement** for health care in regards to treatment needed due to an auto accident, I have direct experience with **the insurance company trying to use the lowest fee possible**. In this case **the federal medicare fee schedule** was used by the insurance company to base their payment of my claim. This Medicare fee was over \$110 less than I was charged. Interestingly enough, if this was due to a workers compensation injury the state of Alaska has set a fee schedule for my care that would require the insurance company to pay the full amount I was charged by my provider, (the work comp schedule actually permitted a higher fee than my provider charged). I checked and not one provider, (therapeutic massage), would have accepted the federal medicare fee! This means that if I did not have the resources to pay the difference myself, I could not have gotten the necessary care at all as no provider would accept the fee the insurance company offered.

As a managed care provider, I have declined to accept fee schedules offered by many in network plans as the fees would force me to alter the way I treat my patients and keep me from providing adequate care. In fact, **many fee schedules are so low that to even break even I would have to treat my patients like live stock and I simply would not be able to meet the standard of care that ethics and law requires.**

In 1995, I worked in the public health service on contract to the Norton Sound Health Corp. I set up the first full time dental clinic in Unalakleet Alaska. **I was tasked with setting up a fee schedule for the region, (previous to this there was no fee schedule for the area).** As a reference, I used a published fee schedule that showed fees by percentile in Anchorage Alaska. At that time, as near as I could tell the **cost of living was 25% higher in Unalakleet than Anchorage. I set the fee schedule to be 25% higher than the 50th percentile for the Anchorage Alaska.** This fee schedule was lower than that for Fairbanks, Alaska so I know my fee schedule was reasonable. Even with that fee schedule, insurance companies often said the fees were too high for the region. As there was no previous history for that region, and in light that the fees were lower than the 50th percentile for Fairbanks Alaska I believe the fee schedule I came up with was reasonable. It seems to me that the insurance companies claiming the fees were too high just made up some random fee to say we were charging too much. I am not suggesting that the floor be the 50th percentile. When I came up with that fee schedule I had only provided health care at dental school, in the Navy, and in the public health service. Now that I have a private practice, it is my strong belief that the 50th percentile fee

schedule is too low to provide quality health care, at least in dentistry.

So what have I learned. Insurance company's will just make it up and when they feel the need to show a source they will pick the lowest fee schedule they can find, (as in the auto insurance company using the Federal Medicare fee schedule as an example of an appropriate fee for the area). As for 80% being the floor, all I can say about that is my fee schedule as a dental provider does not need to be that high. Then again, I would have to change the way I practice, (no I am not spa dentistry), if the floor was the 50th or 60th percentile. For medicine, I have no clue what the floor should be but I do believe a floor is important! Without an adequate floor, many providers will not work with certain insurance companies. This was the case in my auto accident case! One of my providers refused to work with the auto insurance company because they systemically under pay time and time again so I had to pay the provider directly, get **reimbursed only 40%** from the insurance company and **I paid the other 60%** as an out of pocket expense. **Without a reasonable floor, many people will be forced to do without health care because they cannot afford to pay what the insurance refuses to pay.** Without a reasonable floor to paying claims, those patients with those insurances that trend to the lowest fee possible will find that providers will stop accepting the insurance. This can already be seen with Medicare as that fee schedule is so low that more and more providers are not accepting patients under Medicare.

I hope my perspective helps.

Sincerely,

Robert P. Pierson, DDS

Abbott Family Dentistry, LLC

907-336-8478



Lynden Incorporated
6520 Kulis Drive
Anchorage, AK 99502
Main: (907) 245-1544
Toll Free: (800) 922-7501
Fax: (907) 245-1744

VIA EMAIL: sarah.bailey@alaska.gov

March 3, 2023

Sarah Bailey
PO Box 110805
Juneau, Alaska, 99811-0805

Re: Notice of Proposed Rulemaking on 3AAC 26.110, repealing 80th Percentile Floor

Dear Ms. Bailey:

We support the repeal of Alaska's 80th Percentile Rule. Lynden and its affiliated companies provided healthcare benefits for an average of 1,374 Alaska residents during the period from 2020-2022. A majority of our healthcare plans are through a single healthcare plan network, which enables efficiency, consistency, and better control over healthcare costs. We believe the 80th Percentile Rule has resulted in less efficient and more costly healthcare for Lynden and the Alaska residents covered by our healthcare plans.

In Alaska, approximately 20% of our healthcare claim dollars are out-of-network. This compares to out-of-network claims dollars of 3% in states outside of Alaska. The 80th Percentile Rule, rather than serve its intended purpose of protecting Alaskans from unexpected high out-of-network medical bills, has instead resulted in a greater percentage of providers not willing to enter into networks and raised the cost of healthcare. Lynden's out-of-network claims cost in Alaska has been 10 times higher than our out-of-network claims cost outside of Alaska, indicating significantly higher cost of healthcare service in Alaska, in part due to the 80th Percentile Rule.

Other states where we provide healthcare coverage do not have a similar out-of-network rule as Alaska's 80th Percentile Rule. Changes to Federal legislation have already provided consumer protection for unexpectedly high out-of-network costs, so the Rule should be repealed.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Jon Burdick', with a long, sweeping flourish extending to the right.

Jon Burdick
President and CEO

From: [David Flory](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: Comment regarding 80th percentile regulation
Date: Thursday, February 16, 2023 3:13:11 PM

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DOI Sarah Bailey,

As a practicing physician in Alaska for the last 24 years, I am writing to express my full support for the abolishment of the 80th percentile regulation. This regulation unnecessarily makes healthcare more expensive and significantly contributes to the healthcare cost growth experienced across the state. These increased costs are typically borne by employers and consumers directly.

I have been a provider with all insurance companies in Alaska even though as the only anesthesia group in Fairbanks, a number of surgeons recommended we not become part of the network solely for the purpose of increasing our reimbursement. To this day, we still have a number of surgeons in this town that refuse to become a preferred provider so they can charge and collect obscenely high payments.

While the 80th percentile regulation was originally meant to protect patients from balance billing, it has instead contributed to Alaska's soaring healthcare spending. With the implementation of the Federal No Surprises Act in 2022, which protects consumers from balance billing, the 80th percentile regulation is no longer needed.

Sincerely,

David Flory M.D., Ph.D.

Medical Director of The Surgery Center of Fairbanks

907-347-6183

From: [Adam Mason, MD](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: Comments on "80th percentile" rule
Date: Wednesday, March 1, 2023 10:55:23 PM

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3/1/23

Dear Ms. Bailey:

This is to provide written comment on the 80th 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 "80th percentile" rule for determining "usual and customary" charges for healthcare services provided to Alaskan consumers.

I have been a practicing General Cardiologist at the Alaska Heart and Vascular Institute in Anchorage since 2005. I have been involved with the American College of Cardiology representing our state at national meetings, and have served in medical directorships at Providence Alaska Medical Center and with the Alaska Heart and Vascular Institute. I carry four board certifications, Internal Medicine, General Cardiology, Echocardiography, and Nuclear Cardiology. I have studied and trained in San Francisco, New York, and New Mexico, prior to moving to Anchorage. It is very difficult to find and keep highly qualified health care providers who want to work in Alaska.

It is a fact that health care across our country and in Alaska is problematic and expensive, but removing the 80th percentile regulation will help insurance companies, not patients or health care providers. **Removing 3 AAC 26.110(a) will hurt consumers and threaten availability of high quality healthcare services in Alaska.**

Please accept my strong opposition to a repeal or amendment to the 80th percentile rule.

Sincerely,

Adam Mason MD FACC

Alaska Heart and Vascular Institute

907-561-3211

February 21, 2023

Attention: Sarah Bailey
Sarah Bailey
P.O. Box 110805
Juneau, AK 99811-0805

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 certain that people purchasing insurance have coverage at least at the 80th 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. While protecting consumers, the 80% rule has also protected Alaska's physicians and assured we are on an even playing field with the monopolized private insurance industry.

It has been several years since 2017, the last time the 80% rule was hotly debated as it is being today. Once again, using now even more aged and irrelevant cost data, the 80% rule and Alaska's physicians are being blamed for the rising cost of health insurance for Alaskans. That blame was misplaced in 2017 and it's even more so today.

In fact, the regulation is working as intended, providing transparency and greater consumer protections for Alaskans.

As the leader of a large state-wide practice, tasked with reinvesting in the very best equipment, skilled technologists, and sub-specialty physicians Alaskans deserve, I am both a provider and a consumer of healthcare and healthcare insurance in Alaska. For point of reference, our practice has always valued being in network with our largest private payors AS WELL as all federal and state payors such as Medicaid, Medicare, Tricare/VA, etc.

As a healthcare provider over the last several years, I have watched nearly every major specialty group negotiate a path toward in-network status with Alaska's few insurance companies. Most are now in-network, not the other way around, as opponents of the rule would have us believe. I have also witnessed flat to declining payments year after year after year for the services we provide. That's right, for most of Alaska's providers, negotiated in-network contracts have resulted in flat to decreased reimbursements while their practices are concurrently facing truly historic inflation.

As a consumer of healthcare, as a large purchaser of local Alaska based private health insurance for my family and my staff, I have faced the same skyrocketing costs that most Alaskans concerned about the cost of care have experienced. Why is that? What has changed? Well, the cost of healthcare insurance has changed, dramatically. It has risen at a rate significantly faster than inflation. Somehow, despite an exponential rise in the number of in-network providers

and flat to decreased fee schedules negotiated with those providers, the State of Alaska has granted double digit annual increases to the cost of insurance sold to Alaskans most of the last several years. In fact, with the blessing of the division of insurance, the health insurance I buy for my family and my valued staff has increased 10-13.5% most years since 2017 while the deductibles on those plans have increased considerably, year after year. I am just as angry and discouraged by that, as is every other Alaska business owner or employer. If I were being told that was because of doctors monopolizing themselves and driving up rates, I would be angry. But as a provider, knowing what has in fact transpired these last several years, with the vast expansion of insurance networks and flat to declining rates paid to us providers, I know there is something else afoot here.

Despite that something else afoot, some want to eliminate the consumer protection that ensures the very few insurance providers operating in Alaska must at least come to the table and negotiate regionally appropriate pricing in good faith. Such a move will guarantee the progress made over these last two decades will almost immediately revert to what was once the problem the 80% rule was put in place to fix. Consumers will continue to pay exorbitant rates for insurance while their networks shrink dramatically, and the ability of the expensive insurance products they purchase to ensure quality care locally will dissolve.

It has been suggested that the national “No Surprises Act” (NSA) will protect consumers in the same way that the 80% rule does; rendering the rule outdated and irrelevant. This is a common and understandable misinterpretation of the NSA, one encouraged by misinformed media reporting on the act since before it was even passed. The NSA applies primarily to emergency and inpatient care, most healthcare consumed is neither emergency nor inpatient. As a result, its consumer protection, if at all, would be far narrower than the 80th percentile rule provides.

Further, the NSA has been so poorly implemented that it is under attack across the country. There are literally innumerable examples of insurance companies in places that do not have an 80% regulation abusing the NSA to force provider payments well below usual and customary. The payment dispute mechanism set up by the federal government is so overwhelmed that it is effectively broken. By the end of 2022, the government had processed only about 2% of the disputed claims in our specialty alone. Interestingly, last year the overwhelming majority of that 2% which were resolved were decided in the physician’s favor; that is the government agreed that the insurance companies had abused their power and ordered the insurance companies to pay the providers more.

Insurance companies know this, but they also know that most providers can’t afford to wait years for payment for their services. After all, like our families, practices have bills to pay, payroll to meet, utilities to keep on. There are many lawsuits pending related to the NSA, some filed against the government, because it is so clear that the NSA is being abused and is not functioning in line with the spirit of the law. I believe that it is likely that the Act will not survive in its current form once these lawsuits work their way through the courts.

Regardless of what happens with the NSA, the behavior of insurance companies in the wake of the NSA should be a warning to us in Alaska as we debate removing our own state's protection which has protected Alaskans for 19 years.

If the division of insurance wants to help Alaskans like my family and my employees, they should turn their attention to the data being used to justify double digit annual increases in the cost of insurance products sold in Alaska. Providers know they are not the ones driving the increases; to the contrary their payments are not even keeping up with inflation and most have declined, but that is an inconvenient truth.

Sincerely,

A handwritten signature in black ink, appearing to read "Christopher M Reed". The signature is fluid and cursive, with a large loop at the beginning and a wavy end.

Christopher M Reed MD
President, Alaska Radiology Associates
Partner, Imaging Associates

From: [Son'a Mulgrew-Truitt](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: DOL repeal
Date: Tuesday, February 28, 2023 2:53:24 PM

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To Whom It May Concern,

I am urging the DOL to repeal the 80 percent rule regulation because it hurts Alaskans Alaska has the highest health care cost in the country and this regulation adds to these high costs by disincentivizing providers to join Insurance networks or to control costs because providers are protected while consumers are harmed. It is also unnecessary now that the No Surprises Act has been enacted .

Please help Alaskans by repealing 80% rule.

Son'a Mulgrew-Truitt



From: [Laura Moore, MD](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: Don't repeal the 80% rule
Date: Thursday, March 2, 2023 12:53:36 PM

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Sarah,

I am writing to let you know that I oppose repealing the 80% rule, and hope to convince you why repealing it would be detrimental to healthcare in Alaska. As you know, there are many underserved populations in Alaska due to its size and remoteness. What you may not realize is even in Anchorage, Alaska's largest city, healthcare is difficult to access as well because there aren't enough primary care providers or specialists to manage our population. I am the Medical Director of the Allergy, Asthma and Immunology Center of Alaska, which has a proud 24-year history of providing excellent specialty care to the entire state. However, within the last few months, we have lost one full-time allergist because she moved to Georgia, will have a second full-time allergist transition to part-time April 1, and a third part-time allergist retire in the next few months. This will leave myself, a second aging allergist who will transition to part-time in the next few years, and a part-time allergist, to provide the same level of care once provided by 5 full-time allergists. We have been recruiting replacement allergists for over one year, without success. Having previously practiced in another remote, underserved state, I appreciate why it can be difficult to recruit high quality, well-trained specialists to such a remote state. However, one of the benefits Alaska providers have over the state I moved here from, is protection from insurance providers, who will always opt to pay less rather than more for services. At a time when costs of goods and services are skyrocketing, and the labor costs of skilled nurses, medical assistants and other support staff are increasing exponentially, it is increasingly difficult to make ends meet and continue to provide the same level and quality of care to our patients we have been accustomed to. Repealing the 80% rule doesn't drive down healthcare costs, it simply decreases insurance carrier's costs while deflecting the cost to providers, who will have no choice other than to deflect the cost to the patients they serve. This is bad for Alaska because those with the least ability to pay will be most affected. Alaska already has significant difficulty maintaining an adequate supply of providers; we don't need to create additional barriers to healthcare beyond those that already exist. I strongly urge you to oppose repealing the 80% rule.

Thank you for your time!

Laura M. Moore, MD
FAAAAI, FACAAI, FAAP
Medical Director and Managing Partner
Allergy, Asthma and Immunology Center of Alaska

From: [Lisa Roth](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: Fresh Ale Pubs support for abolishment of the 80th percentile regulation
Date: Thursday, February 9, 2023 9:44:45 AM

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DOI Director Lori Wing-Heier,

I am writing to express my support for the abolishment of the 80th percentile regulation. This regulation unnecessarily makes healthcare more expensive and significantly contributes to the healthcare cost growth experienced across the state. These increased costs are typically borne by employers and consumers directly.

We employ over 400 Alaskans at our restaurants & brewery in Anchorage and we are proud to offer both part time and full time employees affordable medical coverage. I myself have worked with our company for 20 years and one of the reasons I stayed working here throughout my 20's while I was in school was because I was able to have health insurance as a part time employee. Fast forward a couple decades and I find myself administering our company benefits, as well as re-negotiating our plan and premiums each year. The steady increases to the cost of healthcare these past years has been painful and impactful on our employees. We want to keep our plans with low copays (many of our cooks and dish machine operators can hardly afford to pay a \$20 copay to see a doctor); however, we've been forced to change our plans to higher deductibles and higher copays because the cost of care and subsequent premiums have increased steadily. We are also at a crossroads in determining if we can continue to offer medical benefits to those working part time due to the cost of providing coverage.

While the 80th percentile regulation was originally meant to protect patients from balance billing, it has instead contributed to Alaska's soaring healthcare spending. With the implementation of the Federal No Surprises Act in 2022, which protects consumers from balance billing, the 80th percentile regulation is no longer needed.

Sincerely,

Lisa K Roth

--

Lisa Katerina Roth (she/her), SHRM-CP

Human Resources Director

907.264.9163



From: [Thomas Showalter](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: FW: In Support of Removing the 80th Percentile Rule
Date: Monday, February 27, 2023 4:29:12 PM
Attachments: [image001.jpg](#)

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DOI Director Lori Wing-Heier:

I am writing to you wearing three hats: as a long-time consultant to AK employers on workforce matters, as an employer, and as a citizen concerned about our quality of life and healthcare in AK for myself and my children: please take this opportunity to remove the 80th percentile regulation. Evidence, economics, and common sense suggest that doing so would help to improve the cost of healthcare in AK, and because cost is a major barrier to healthcare, improve access to healthcare, as well.

First, evidence. This regulation was well-intended by seeking to reduce the severity of balance billing to the end consumer of healthcare. By compelling carriers to reimburse providers at no less than the 80th percentile, the rationale was that the balance owed by the end consumer would be more affordable. Instead, Alaska has the highest cost of healthcare in the U.S. Consulting for businesses with both AK and L48 footprints, the premiums for AK populations, with other factors such as experience and demographics controlled, is always significantly higher. For those that attribute it to our remoteness, reference Hawaii, 2,750 miles to our SE in the middle of the Pacific, which has much lower healthcare costs and better outcomes than we experience here. The much higher healthcare costs we have in AK exacerbate another problem we have: access to care. Higher costs lead to higher premiums for individuals and businesses. Businesses manage costs by reducing benefits, shifting costs to employees, or both. Employees may not be able to afford the premium, and if they can, they may not be able to afford an office visit. Especially at an out-of-network provider, which we have a disproportionately large number of because in part of this rule. The evidence is clear that this regulation has, in fact, contributed to higher healthcare costs and barriers to care for Alaskans.

Second, economics. Despite the good intentions, this 80th percentile regulation instead has provided assurances to providers that they can continue to charge dramatically higher rates for services than their counterparts in the L48, and continue to resist calls to join networks that would compel them to offer more reasonable fees. They have little economic incentive to compete on cost or join networks. They also have little incentive to pursue efficiency measures vs. high fees to achieve healthy margins. The economics are clear that this regulation has provided a disincentive for providers to join networks, pursue efficiencies or otherwise reduce the cost of healthcare.

Third, common sense. There have been at least two studies looking at the evidence and economics of our healthcare costs in AK over the last twenty years, which drew similar conclusions to what I've summarized above. But at the end of the day, it doesn't take an

economist to tell us that if a business can charge more and pay their principles higher wages, provide greater returns to their shareholders, or pocket greater profits – they will. They’ll also fight to keep regulations in place that tilt the playing field in their favor. There’s nothing wrong with that. It’s the way of capitalism and markets. However, by imposing this 80th percentile rule on the market, we have given the providers license to charge dramatically more than what would otherwise prevail in the market. They do it quite simply because they can. That’s why we see such a strong showing from some in the provider community to defend this regulation – although intended to benefit the end consumer, it’s the providers who have truly benefited at the expense of businesses and healthcare consumers. It’s common sense that a business will charge more to make more if the market will bear it.

Lastly, a common argument put forth by the providers is that they will pack up and leave if we remove the 80th percentile market distortion, thereby reducing the supply of healthcare providers in an already scarce market and depriving Alaskans of essential healthcare services. Frankly, many of these same providers already essentially “packed up and left” when it comes to providing care to Medicare and Medicaid recipients, among the most vulnerable in our state. Why? Because they can make much more money charging others at and above the 80th percentile, which carriers currently are obligated to pay. The rule also makes Alaska an attractive market for providers who are motivated more by money than mission. Perhaps some providers will leave if we remove the rule, but if we create a healthcare market that’s a fair, level playing ground for all participants – carriers, providers, employers, government, and consumers – there’s no reason why AK cannot rise to the top of the ranks for accessibility, quality and cost of healthcare. Removing the harmful 80th percentile rule would be a good start.

Sincerely,

Thomas Showalter



Thomas Showalter, SHRM SCP, CCP
Head of Client Engagement

3000 A St., Suite 400 Anchorage, AK 99503

D: 907.777.0291 | O: 907.777.0290 | M: 907.885.9695

<https://wilsonalbers.aleragroup.com> | Visit [my LinkedIn](#)

February 26, 2023

**Alaska Division of Insurance
Attention: Sarah Bailey
PO Box 110805
Juneau, AK 99811**

Dear Sarah Bailey:

As a private GI/Liver physician who has practiced in this state for 26 years and I ask if you can help with this matter.

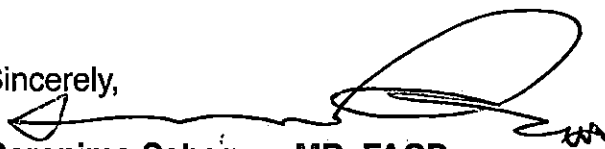
Apparently, the insurance industry (Blue Shield Cross) is asking for the insurance regulation board to repeat this insurance rule which has been standard in our state and across this country. Without this rule insurance would pay 80% of patient costs, and Alaskan would have increase out pockets for medical care. This would result in medical providers, clinics imaging, and hospitals to absorb this loss. This would result in many clinic, including our IMA, LLC future at risk due to lower reimbursements in a state that has higher health costs.

Our IMA clinic is the largest speciality clinic that serves the people of Alaska in gastrointestinal disorders, and we have clinics in Anchorage, Wasilla, and Fairbanks area.

We serve all patients regardless of insurance including, VA, Tricar, Medicaid, medicare, etc, but if this 80th regulation is repealed we most likely may have to reduce patient access because our clinic would be able to survive without this rule. It would immediately results in cost shifting to patients (consumers) who would have to pay more out-of-pocket through balanced billing, more than 20-30% would effect customers negatively. Many of these customers would not be able to afford this increase of out-pocket costs, and would defer care or procedures (like screening colonoscopies), and results in delay or care, and/or cancers.

I ask that you OPPOSE the repeat of the 80th insurance rule in our state because it would harm our Alaskan medical patient consumers.

Sincerely,



**Geronimo Sahagun, MD, FACP
CEO IMA, LLC
2841 DeBarr Road Building A
Anchorage, AK 99508
907-227-6091**

From: [Heather Tauschek](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: I OPPOSE Repealing the 80th Percent Rule
Date: Sunday, March 5, 2023 3:06:35 PM
Attachments: [Outlook-0jzjpuok.jpg](#)

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Attention:
Sarah Bailey
P.O. Box 110805
Juneau, AK 99811-0805

Dear Ms. Bailey,

A born and raised Alaskan, I returned home to serve my community as a physician.

I OPPOSE REPEALING the 80th Percentile rule / 3 ACC 21.110(a).

1. The 80th Percentile Rule protects patients from balance billing and out-of-pocket costs for healthcare in Alaska
2. The 80th Percentile Rule encourages providers and insurers to work together in good faith for fair and transparent contracting to benefit patients
3. The Federal No Surprises Act applies only to emergent care and does NOT replace the patient protections in the 80th Percentile Rule
4. Repealing the 80th Percentile Rule will only benefit insurance companies, all of whom are based in the lower-48 and enjoy substantial profits
5. Any claim that increasing insurance company profits will “trickle-down” to reduce the individual Alaskan’s healthcare costs is dubious at best
6. Healthcare is a major employer of Alaskans and provides well-paying jobs with good benefits, which supports a healthy economy
7. Repealing the 80th Percentile Rule will affect Alaska’s ability to recruit and retain high quality healthcare providers, which are already in short supply and will greatly reduce patient’s access to care in Alaska. As one of the providers in charge of recruiting for my practice, I am well aware how difficult it is to encourage physicians to relocate to Alaska. Repealing the 80th Percentile Rule will make recruiting physicians to Alaska even more challenging.
8. Without high quality primary care and specialists that are local and accessible, patients will have to travel to the lower 48 for care – this will especially impact our most vulnerable and rural populations who may not have the means or ability to travel.

Thank you for your attention to this matter,

Heather Tauschek MD

Radiologist

Email:tauschek@alaskarad.com Mobile: 907-720-3711



<https://alaskarad.com/>

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From: [Holli Tooke](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: I OPPOSE REPEALING the 80th Percentile rule / 3 ACC 21.110(a)
Date: Thursday, March 2, 2023 9:25:36 AM
Attachments: [image001.jpg](#)
[image002.png](#)
[image003.png](#)

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Count me in as someone who Opposes Repealing the 80th percentile rule!!!!

There are many reasons the 80th should not be repealed-

- The 80th Percentile Rule protects patients from balance billing and out-of-pocket costs for healthcare in Alaska
- The 80th Percentile Rule encourages providers and insurers to work together in good faith for fair and transparent contracting to benefit patients
- The Federal No Surprises Act applies only to emergent care and does NOT replace the patient protections in the 80th Percentile Rule
- Repealing the 80th Percentile Rule will only benefit insurance companies, all of whom are based in the lower-48 and enjoy substantial profits
- Any claim that increasing insurance company profits will “trickle-down” to reduce the individual Alaskan’s healthcare costs is dubious at best
- Healthcare is a major employer of Alaskans and provides well-paying jobs with good benefits, which supports a healthy economy
- Repealing the 80th Percentile Rule will affect Alaska’s ability to recruit and retain high quality healthcare providers, which are already in short supply and will greatly reduce patient’s access to care in Alaska
- Without high quality primary care and specialists that are local and accessible, patients will have to travel to the lower 48 for care – this will especially impact our most vulnerable populations who may not have the means or ability to travel



Holli Tooke

Cancer Care Coordinator
Ostomy Support
Assistant Manager
Email: holli@akcrs.com
Phone: 907-222-1401 | Fax : 907-222-1402

Providing care
since 2005



Alaska Colorectal Surgery
2751 DeBarr Rd., Ste 280
Anchorage, AK 99508
www.AKCRS.com

From: [Michelle Fritz](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: I OPPOSE REPEALING the 80th Percentile rule / 3 ACC 21.110(a)
Date: Thursday, March 2, 2023 8:40:24 AM
Attachments: [image001.jpg](#)

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Count me in as someone who Opposes Repealing the 80th percentile rule!!!!

There are many reasons the 80th should not be repealed-

- The 80th Percentile Rule protects patients from balance billing and out-of-pocket costs for healthcare in Alaska
- The 80th Percentile Rule encourages providers and insurers to work together in good faith for fair and transparent contracting to benefit patients
- The Federal No Surprises Act applies only to emergent care and does NOT replace the patient protections in the 80th Percentile Rule
- Repealing the 80th Percentile Rule will only benefit insurance companies, all of whom are based in the lower-48 and enjoy substantial profits
- Any claim that increasing insurance company profits will “trickle-down” to reduce the individual Alaskan’s healthcare costs is dubious at best
- Healthcare is a major employer of Alaskans and provides well-paying jobs with good benefits, which supports a healthy economy
- Repealing the 80th Percentile Rule will affect Alaska’s ability to recruit and retain high quality healthcare providers, which are already in short supply and will greatly reduce patient’s access to care in Alaska
- Without high quality primary care and specialists that are local and accessible, patients will have to travel to the lower 48 for care – this will especially impact our most vulnerable populations who may not have the means or ability to travel



From: [Eric Anding](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: I oppose repealing the 80th percentile rule/3ACC 21.110(a)
Date: Tuesday, February 28, 2023 10:33:31 AM

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Hi Sarah,

There are many reasons the 80th should not be repealed, but some brief points that could be considered (use or edit as you see fit):

- The 80th Percentile Rule protects patients from balance billing and out-of-pocket costs for healthcare in Alaska
- The 80th Percentile Rule encourages providers and insurers to work together in good faith for fair and transparent contracting to benefit patients
- The Federal No Surprises Act applies only to emergent care and does NOT replace the patient protections in the 80th Percentile Rule
- Repealing the 80th Percentile Rule will only benefit insurance companies, all of whom are based in the lower-48 and enjoy substantial profits
- Any claim that increasing insurance company profits will “trickle-down” to reduce the individual Alaskan’s healthcare costs is dubious at best
- Healthcare is a major employer of Alaskans and provides well-paying jobs with good benefits, which supports a healthy economy
- Repealing the 80th Percentile Rule will affect Alaska’s ability to recruit and retain high quality healthcare providers, which are already in short supply

NPR Article showing how “No Surprises Act” doesn’t adequately protect patients or replace Alaska’s Law:

<https://www.npr.org/sections/health-shots/2023/02/28/1159786893/a-surprise-billing-law-loop-hole-her-pregnancy-led-to-a-six-figure-hospital-bill>

Thank you Sarah for reading this email and thank you for all you do!

Eric Anding, MD, FACC

Alaska Heart and Vascular Soldotna Office

From: [CAROL MC NAMARA](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: I STRONGLY OPPOSE THE REPEAL OF THE 80% REGULATION
Date: Sunday, March 5, 2023 2:48:22 PM

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I feel that the 80th Percentile Rule already protects patients from balance billing and out-of-pocket costs for healthcare in Alaska. The 80th Percentile Rule encourages providers and insurers to work together in good faith for fair and transparent contracting to benefit patients. The Federal No Surprises Act applies only to emergent care and does NOT replace the patient protections in the 80th Percentile Rule. Repealing the 80th Percentile Rule will only benefit insurance companies, all of whom are based in the lower-48 and enjoy substantial profits. Any claim that increasing insurance company profits will "trickle-down" to reduce the individual Alaskan's healthcare costs is dubious at best. Healthcare is a major employer of Alaskans and provides well-paying jobs with good benefits, which supports a healthy economy. Repealing the 80th Percentile Rule will affect Alaska's ability to recruit and retain high quality healthcare providers, which are already in short supply and will greatly reduce patient's access to care in Alaska. Without high quality primary care and specialists that are local and accessible, patients will have to travel to the lower-48 for care---this will especially impact our most vulnerable populations who may not have the means or ability to travel.

Carol McNamara Clark

619-840-7945

From: [Staci Kloster](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: I strongly oppose the repeal of the 80%
Date: Sunday, March 5, 2023 7:19:06 PM

You don't often get email from staci.kloster@anchoragebariatrics.com. [Learn why this is important](#)

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Re: 80th % Regulation

To: The State of Alaska Division of Insurance

Attn: Sarah Bailey

I strongly oppose the repeal of the 80th % regulation.

I work in the healthcare industry as a registered dietitian. I feel that the 80th Percentile Rule already protects patients from balance billing and out-of-pocket costs for healthcare in Alaska. The 80th Percentile Rule encourages providers and insurers to work together in good faith for fair and transparent contracting to benefit patients. The Federal No Surprises Act applies only to emergent care and does NOT replace the patient protections in the 80th Percentile Rule. Repealing the 80th Percentile Rule will only benefit insurance companies, all of whom are based in the lower-48 and enjoy substantial profits. Any claim that increasing insurance company profits will “trickle-down” to reduce the individual Alaskan’s healthcare costs is dubious at best. Healthcare is a major employer of Alaskans and provides well-paying jobs with good benefits, which supports a healthy economy. Repealing the 80th Percentile Rule will affect Alaska’s ability to recruit and retain high quality healthcare providers, which are already in short supply and will greatly reduce patient’s access to care in Alaska. Without high quality primary care and specialists that are local and accessible, patients will have to travel to the lower 48 for care – this will especially impact our most vulnerable populations who may not have the means or ability to travel.

Thank you for your time.

From: [Erika Van Calcar](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: I strongly oppose the repeal of the 80th % regulation
Date: Sunday, March 5, 2023 4:29:22 PM

You don't often get email from erika.vancalcar@anchoragebariatrics.com. [Learn why this is important](#)

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March 5, 2023

Re: 80th % Regulation

To: The State of Alaska Division of Insurance

Attn: Sarah Bailey

I strongly oppose the repeal of the 80th % regulation.

My name is Erika Van Calcar. I work in the healthcare industry as a licensed Registered Dietitian in good standing.

I feel that the 80th Percentile Rule already protects patients from balance billing and out-of-pocket costs for healthcare in Alaska. The 80th Percentile Rule encourages providers and insurers to work together in good faith for fair and transparent contracting to benefit patients.

The Federal No Surprises Act applies only to emergent care and does NOT replace the patient protections in the 80th Percentile Rule.

Repealing the 80th Percentile Rule will only benefit insurance companies, all of whom are based outside of Alaska, in the lower-48, and enjoy substantial profits. Any claim that increasing insurance company profits will “trickle-down” to reduce the individual Alaskan’s healthcare costs is *dubious at best*.

Healthcare is a major employer of Alaskans and provides well-paying jobs with good benefits, which supports a healthy economy. Repealing the 80th Percentile Rule will affect Alaska’s ability to recruit and retain high quality healthcare providers, which are already in short supply and will greatly reduce patient’s access to care in Alaska.

Without high quality primary care and specialists that are local and accessible, patients will have to travel out of Alaska for care. This will especially impact our most vulnerable populations who may not have the means or ability to travel.

Sincerely,

Erika Van Calcar, MS, RDN, LD

Clinical Dietitian

phone: 907-644-THIN, ext. 4724

erika.vancalcar@anchoragebariatrics.com

www.anchoragebariatrics.com

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From: [Soleil Thiele](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: I strongly oppose the repeal of the 80th % regulation
Date: Saturday, March 4, 2023 3:14:31 PM

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Hello,

I work in the healthcare industry as a Registered Dietitian. I feel that the 80th Percentile Rule already protects patients from balance billing and out-of-pocket costs for healthcare in Alaska. The 80th Percentile Rule encourages providers and insurers to work together in good faith for fair and transparent contracting to benefit patients. The Federal No Surprises Act applies only to emergent care and does NOT replace the patient protections in the 80th Percentile Rule. Repealing the 80th Percentile Rule will only benefit insurance companies, all of whom are based in the lower-48 and enjoy substantial profits. Any claim that increasing insurance company profits will “trickle-down” to reduce the individual Alaskan’s healthcare costs is dubious at best. Healthcare is a major employer of Alaskans and provides well-paying jobs with good benefits, which supports a healthy economy. Repealing the 80th Percentile Rule will affect Alaska’s ability to recruit and retain high quality healthcare providers, which are already in short supply and will greatly reduce patient’s access to care in Alaska. Without high quality primary care and specialists that are local and accessible, patients will have to travel to the lower 48 for care – this will especially impact our most vulnerable populations who may not have the means or ability to travel.

Thank you for your time.

From: [Kristina Huffman](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: I strongly oppose the repeal of the 80th % regulation!
Date: Saturday, March 4, 2023 4:42:04 PM

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March 4, 2023

Re: 80th % Regulation

To: The State of Alaska Division of Insurance

Attn: Sarah Bailey

I strongly oppose the repeal of the 80th % regulation.

I work in the healthcare industry as an Administrative Assistant at the only Bariatric Clinic in the State. I feel that the 80th Percentile Rule already protects patients from balance billing and out-of-pocket costs for healthcare in Alaska.

The 80th Percentile Rule encourages providers and insurers to work together in good faith for fair and transparent contracting to benefit patients. The Federal No Surprises Act applies only to emergent care and does NOT replace the patient protections in the 80th Percentile Rule. Repealing the 80th Percentile Rule will only benefit insurance companies, all of whom are based in the lower-48 and enjoy substantial profits. Any claim that increasing insurance company profits will “trickle-down” to reduce the individual Alaskan’s healthcare costs is dubious at best.

Healthcare is a major employer of Alaskans and provides well-paying jobs with good benefits, which supports a healthy economy. Repealing the 80th Percentile Rule will affect Alaska’s ability to recruit and retain high quality healthcare providers, which are already in short supply and will greatly reduce patient’s access to care in Alaska. Without high quality primary care and specialists that are local and accessible, patients will have to travel to the lower 48 for care – this will especially impact our most vulnerable populations who may not have the means or ability to travel.

Thank you.

Kristina R. Huffman
Administrative Assistant
Phone: 907-644-THIN, EXT 4717
Fax: 907-644-8448
www.anchoragebariatrics.com

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From: [Jaimie Bussard-Kastl](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: I strongly oppose the repeal of the 80th % regulation.
Date: Sunday, March 5, 2023 8:37:18 PM

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Attn: Sarah Bailey

I strongly oppose the repeal of the 80th % regulation.

I work in the healthcare industry as a CMA. I feel that the 80th Percentile Rule already protects patients from balance billing and out-of-pocket costs for healthcare in Alaska. The 80th Percentile Rule encourages providers and insurers to work together in good faith for fair and transparent contracting to benefit patients. The Federal No Surprises Act applies only to emergent care and does NOT replace the patient protections in the 80th Percentile Rule. Repealing the 80th Percentile Rule will only benefit insurance companies, all of whom are based in the lower-48 and enjoy substantial profits. Any claim that increasing insurance company profits will “trickle-down” to reduce the individual Alaskan’s healthcare costs is dubious at best. Healthcare is a major employer of Alaskans and provides well-paying jobs with good benefits, which supports a healthy economy. Repealing the 80th Percentile Rule will affect Alaska’s ability to recruit and retain high quality healthcare providers, which are already in short supply and will greatly reduce patient’s access to care in Alaska. Without high quality primary care and specialists that are local and accessible, patients will have to travel to the lower 48 for care – this will especially impact our most vulnerable populations who may not have the means or ability to travel.

Jaimie, CMA
phone: 907-644-THIN
fax: 907-644-8448
jaimie.bussardkastl@anchoragebariatrics.com

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From: [Katlyn Cherry](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: I strongly oppose the repeal of the 80th % regulation.
Date: Saturday, March 4, 2023 3:06:28 PM

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I work in the healthcare industry as a receptionist at Anchorage Bariatrics. I feel that the 80th Percentile Rule already protects patients from balance billing and out-of-pocket costs for healthcare in Alaska. The 80th Percentile Rule encourages providers and insurers to work together in good faith for fair and transparent contracting to benefit patients. The Federal No Surprises Act applies only to emergent care and does NOT replace the patient protections in the 80th Percentile Rule. Repealing the 80th Percentile Rule will only benefit insurance companies, all of whom are based in the lower-48 and enjoy substantial profits. Any claim that increasing insurance company profits will “trickle-down” to reduce the individual Alaskan’s healthcare costs is dubious at best. Healthcare is a major employer of Alaskans and provides well-paying jobs with good benefits, which supports a healthy economy. Repealing the 80th Percentile Rule will affect Alaska’s ability to recruit and retain high quality healthcare providers, which are already in short supply and will greatly reduce patient’s access to care in Alaska. Without high quality primary care and specialists that are local and accessible, patients will have to travel to the lower 48 for care – this will especially impact our most vulnerable populations who may not have the means or ability to travel.

Katlyn Cherry
Receptionist
phone: 907-644-THIN
fax: 907-644-8448
katlyn.cherry@anchoragebariatrics.com
www.anchoragebariatrics.com

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From: [Virginia Moncion](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: I strongly oppose the repeal of the 80th % regulation
Date: Saturday, March 4, 2023 8:42:56 PM

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I work in the healthcare industry as a Receptionist. I feel that the 80th Percentile Rule already protects patients from balance billing and out-of-pocket costs for healthcare in Alaska. The 80th Percentile Rule encourages providers and insurers to work together in good faith for fair and transparent contracting to benefit patients. The Federal No Surprises Act applies only to emergent care and does NOT replace the patient protections in the 80th Percentile Rule. Repealing the 80th Percentile Rule will only benefit insurance companies, all of whom are based in the lower-48 and enjoy substantial profits. Any claim that increasing insurance company profits will “trickle-down” to reduce the individual Alaskan’s healthcare costs is dubious at best. Healthcare is a major employer of Alaskans and provides well-paying jobs with good benefits, which supports a healthy economy. Repealing the 80th Percentile Rule will affect Alaska’s ability to recruit and retain high quality healthcare providers, which are already in short supply and will greatly reduce patient’s access to care in Alaska. Without high quality primary care and specialists that are local and accessible, patients will have to travel to the lower 48 for care – this will especially impact our most vulnerable populations who may not have the means or ability to travel.

Virginia Moncion

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Gini Moncion

Phone: 907-644-THIN, Ext 4722

Fax: 907-644-8448

www.anchoragebariatrics.com

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From: [james clark](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: I STRONGLY OPPOSE THE REPEAL OF THE 80TH PERCENTILE REGULATION
Date: Sunday, March 5, 2023 8:31:19 AM

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I feel that the 80th Percentile Rule already protects patients from balance billing and out-of-pocket costs for health care in Alaska. Repealing the 80th percentile rule will only benefit insurance companies, all of which are based in the lower 48 and enjoy substantial profits.

Regards, James Clark

From: [John Seaman](#)
To: [Bailey, Sarah S \(CED\)](#)
Cc: [Julia Neumann](#); [ACE-ExecTeam](#); [Tiffany Stock](#); [Songsay Ratana](#)
Subject: In support of abolishing the 80th percentile regulation
Date: Wednesday, March 1, 2023 1:52:27 PM
Attachments: [image001.png](#)

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DOI Director,

I am writing to express my support for the abolishment of the 80th percentile regulation. This regulation unnecessarily makes healthcare more expensive and significantly contributes to the healthcare cost growth experienced across the state. These increased costs are typically borne by employers and consumers directly. While the 80th percentile regulation was originally meant to protect patients from balance billing, it has instead contributed to Alaska's soaring healthcare spending. With the implementation of the Federal No Surprises Act in 2022, which protects consumers from balance billing, the 80th percentile regulation is no longer needed. Alaska Central Express has seen significant increase in the cost of our employee insurance program over the past 10 years. The elimination of the 80th percentile regulation will surely help slow the increasing cost of health care for our employees.

Regards,

John Seaman

Vice President
Alaska Central Express Inc.
5901 Lockheed Ave
Anchorage, Alaska 99502
DD (907) 334-5105
Cell (907) 903-5934



In support of abolishment of the 80th percentile regulation

From: [Hilary Hardwick](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: letter opposing the change in regulations for 80th percentile
Date: Sunday, March 5, 2023 4:10:45 PM

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March 6, 2023

Ms. Sarah Bailey
Alaska Department of Commerce, Community, and Economic Development
Division of Insurance
P.O. Box 110805
Juneau, AK
99811-0805

RE: Regulations cutting health care claim payments

Dear Ms. Bailey:

I am writing to oppose the proposed regulations which would abolish the 80th percentile as the floor for health care claim payments. I own and operate a small speech pathology practice located in Anchorage, serving children with disabilities.

The statement that the "No Surprises Act" renders the 80th%ile regulation redundant is simply false. These two laws accomplish separate goals. "The No Surprises Act" ensures a consumer knows the cost for an out of network service and understands that they may have to pay the remainder of any balance that is not covered by their insurance company. This protects the consumer and the provider by making sure the consumer understand the cost of the service and their responsibility when paying. The 80th%ile regulation obligates insurance companies to pay a specific percentage of a bill (which is the reason people have and pay for health insurance) if no in-network providers are available. This is a common occurrence in Alaska, where consumers may have to travel 300 to 1500 miles before they can find an in-network provider or are required to wait for a provider to become available. It protects consumers from insurance companies by legally obligating them to pay for a set percentage of local services when the insurance company's preferred providers are not available, or when it requires significant travel. Alaska is unique and presents with a diverse set of opportunities and challenges. Healthcare costs can be explained simply as a supply, demand, and access difficulties. The state has experienced a shortage of healthcare workers in its various fields for over 20 years. To attract health care providers to Alaska both small and large employers need to pay some of the highest wages in the nation. That is one reason why healthcare is so expensive in the state, especially in rural areas and in the interior, and why many providers have such high operating costs.

As a small business owner, it is difficult to become an in-network provider because many commercial insurance companies are not accepting new providers or becoming an in-network provider typically results in a required reduction in payment of 30 to 50 percent for various claims. Usually with little or no appreciable benefit to the provider depending on their region of operation. With the extremely high operational costs associated with Alaska, many local and regional outpatient centers cannot maintain a practice with that reduction of income. If the 80th%ile regulation is repealed, in partnership with the "No Surprises Act", it will shift the burden of healthcare costs away from insurance companies (again- the purpose of health insurance is to cover healthcare costs), removing their obligation to pay for out of network services in various situations and where in-network providers are not available. The burden of cost will shift directly and completely onto the shoulders of individual Alaskans, stripping them of their consumer protections. It will not reduce healthcare costs; it will just change who is paying for them. This leaves little recourse for either providers, who may not be able to afford the 30-50% loss in income by becoming

network enrolled, or the consumer who will either pay out of pocket costs, or lose access to a potentially medically necessary, or even lifesaving service. It creates a legal precedent where insurance companies exercise control over Alaskan's Healthcare, dictating the physicians, services, and locations consumers are allowed to access, based not on the quality of care or availability of care, but by which provider is the least expensive or creates circumstances where insurance companies don't have to cover the insured.

The proposed cuts to health care claim payments would result in denying much needed care to Alaskans by no longer requiring health care insurers to pay out-of-network health care providers for covered services or supplies based on an amount that is equal to or greater than the 80th percentile of charges in a designated geographical area. Access to out of network health care providers will impact access to services provided by both occupational therapists and speech-language pathologists.

The lack of a minimum payment requirement will allow health plans to arbitrarily dictate a reimbursement rate with no regard for the cost required to provide the care. This will lead to a large disparity between the out-of-pocket costs for the patient and the allowable amount for their reimbursement from their health plan. These disparities will have major implications when it comes to the rules set forth in the no surprises act which was released last year to protect patients.

Thank you for considering my opposition to the proposed regulations.

Hilary Hardwick, Speech-Language Pathologist
907-223-3297
hilaryhardwick@mac.com

3300 PROVIDENCE DR., SUITE 114
ANCHORAGE, ALASKA 99508
TELEPHONE (907) 770-6200
FACSIMILIE (907)770-6202

Harbir S. Makin, M.D.

DIPLOMATE AMERICAN BOARD OF INTERNAL MEDICINE

3/6/2023

Sarah Bailey
PO Box 110805
Juneau, AK 99811-0805

RE: 80th percentile regulation 3AAC 26.110 (a)

Dear Ms. Bailey:

I am a primary care physician in solo practice in the State for the past 40 years. I **STRONGLY OPPOSE** the change in regulation proposed by the Premiera Blue Cross Blue Shield of Alaska.

For the sake of full disclosure, I have been an in-network physician with Premiera for past 30+ years and am considering leaving the practice of medicine earlier than planned due to the increasing difficulty practicing medicine in this State. There is increasing bureaucracy, increasing administrative burdens, the burden of unnecessary preauthorization for treatment, constantly changing formularies all of which delay care and benefit the insurers. The monopoly of few insurance companies in the state has significantly reduced consumer's choice of a physician.

Once again, the physicians are being blamed for the rising cost of health care. Third party administrators want us to believe that the healthcare costs are primarily due to physician fees. The issue is multifactorial, the aging population, technological innovations (as a result patients are living longer), exponential and ever rising cost of hospitalization, emergency rooms (run by hospitals), inappropriate utilization of emergency rooms, pharmaceutical innovations, cost of drugs, technically advanced procedures and diagnostics, not to mention the ever rising cost of health insurance premiums, deductibles and out of pocket costs.

Controlling the spiraling costs of healthcare is going to require a multipronged approach. Abolishing the 80th percentile regulation that **protects the patient's choice** will harm an already fragile health care system in the state. This will further discourage recruitment of physicians from the lower 48 who may see this as an opportunity to come to this remote state and still practice independently despite the remoteness, harsh living conditions and high cost of living.

Exponentially rising health insurance premiums in the state, rising year after year since introduction of ACA are not sustainable for the employers, large or small, nor the self-employed, the unemployed and those with marginal income who do not qualify for Medicaid.

The Federal "No Surprise Billing act" is applicable **ONLY** to the emergency services received at hospitals where service may be provided by the **ONLY AVAILABLE out-of-network doctor** in an in-network facility. This happens when a patient seeking **EMERGENCY CARE** is admitted to the nearest hospital that may or may not be in network and **the ONLY AVAILABLE on-call physician** providing **EMERGENCY CARE** is not in-network.

The intent of the 80th percentile rule is to ensure that the insurance companies reimburse out-of-network physicians at the same rate as an in-network physician when a patient may **KNOWINGLY** choose to get care from an out-of-network physician. This rule allows the consumer a choice of a physician or a facility. If this rule is abolished, patients will lose that choice, forcing them to see a physician they may not wish to get their care from. Premiera's contention that the 80th percentile rule is not necessary because of "No Surprises Act" is a gross misrepresentation.

Premiera monopolizes the Alaska healthcare market and abolishing 80th percentile rule will result in loss of choice, further reduction in payments, higher out of pocket expenses for the consumers and more physicians opting out of network. This rule currently provides an appropriate incentive for insurance companies to contract with the physicians fairly to keep them in the network. Abolishing this rule will cause more harm to the already fragile healthcare system in this state.

It will result in small practices to close and drive primary care physicians into early retirement, move out of state or become employed by the large hospitals or Hedge Fund owned large practices that work for larger profits and are more expensive.

Blue cross entities as we are all aware, have monopolized the markets across the nation, by systematic anti-competitive behavior by not allowing "out of region Blue Cross entities" to negotiate with the providers by their "market allocation scheme" and this led to a Multidistrict nationwide class action suit against the Blues, which is currently being litigated in Alabama.

Despite the rules and regulations insurance companies in the state have discreetly **circumvented this rule** by enforcing a **second and higher deductible and co-pay** for those who seek care out-of-network. Insurance companies are notorious for coercing physicians into joining their network with Divide and rule policy. Once in-network they **unilaterally** change contracts and ratchet down on the reimbursements.

I urge the Division of insurance to follow its "mission" of protecting the consumers. Revoking the 80th percentile rule will be detrimental to the citizens of this State.

Respectfully submitted,

Harbir Makin, MD.

February 24, 2023

DOI Director Lori Wing-Heier
c/o Sarah Bailey
PO Box 110805
Juneau, AK 99811-0805

Dear DOI Director Wing-Heier,

I am writing to express my support for the abolishment of the 80th percentile regulation. This regulation unnecessarily makes healthcare more expensive and significantly contributes to the healthcare cost growth experienced across the state. These increased costs are typically borne by employers and consumers directly.

As a small employer in Alaska for 20 years, we have always strived to help our employees offset as much healthcare cost as is possible with a limited budget. Yet, while we have always tried to "do what is right" by our employees and their families, the highest-in-the-nation healthcare costs prevent us from spending limited money in other ways to fulfill our nonprofit mission throughout the state. Because of these outrageous healthcare costs, we have resorted to increasing annual deductions, which hurts the employees the most. Unfortunately, we have had no choice due to the unrelenting increases. Small budgets simply cannot continue to absorb these hits.

When I interact with my colleagues across the nation and we discuss healthcare costs, those in the Lower 48 simply cannot wrap their minds around the high costs we are faced with. On the flip side, I am incredibly envious of their much lower healthcare costs. Alaska's employers cannot sustain this long term and something must change.

While the 80th percentile regulation was originally meant to protect patients from balance billing, it has instead contributed to the unintended consequences of Alaska's soaring healthcare spending. With the implementation of the Federal No Surprises Act in 2022, which protects consumers from balance billing, the 80th percentile regulation is no longer needed.

Sincerely,

Name Withheld for Privacy Reasons

March 3, 2023



Attention: Sarah Bailey
Sarah Bailey
P.O. Box 110805
Juneau, AK 99811-0805
Sarah.Bailey@alaska.gov

907.561.3211
alaskaheart.com

I am providing written comment on the 80th 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 “80th percentile” rule for determining “usual and customary” charges for healthcare services provided to Alaskan consumers.

I see no valid reason to undo this essential support and insurance protection unless the Division of Insurance has a goal of increasing cost to consumers insured and uninsured reducing access to care both in rural and urban Alaska, resume balance billing and surprise medical bills, support commercial insurance monopoly, reduce access of Medicare, Medicaid, VA patients to non-government practices which will affect many Alaskan with access issues and ,limit their medical care.

The reason the 80th percentile regulation was put into effect was to provide more transparency and greater consumer protections and I would contend that this has certainly been the case.

The No Surprises Act (NSA) provides protection for out of network emergent care. Therefore, if the 80th percentile regulation is removed there will be nothing protecting the consumer if healthcare providers in good faith fail to negotiate with the insurance entity and thus are forced to go out of network.

Please accept my strong opposition to a repeal or amendment to the 80th percentile rule. Most specialists have entered contracts with insurance companies and the NSA would not provide Alaska consumers of healthcare any protection if a specialty was not in network.

Thank you,

Ahmed Sami Abuzaid MD,FACP,RPVI,FASE,FESC,FACC

Sami Abuzaid, MD,
FACP, FASE, FACC
Eric Anding, MD
Richard Anschuetz, MD, FACC
Krzysztof Balaban, MD, FACC
Mario Binder, MD, FACC
Blake Charlton, MD
Steven Compton, MD,
FACC, FACP, FHRS
Scott Ebenhoeh, DO
Herman Feringa, MD, PhD,
MPH, RPVI, FACC
John Finley, MD, FACC, FASE
Lisa Gray, DO, FACC
Linda Ireland, DO, FACC
Jacob Kelly, MD, MHS, FACC
Thomas Kramer, MD, FACC
Seth Krauss, MD, FACC, FSCAI
Adam Mason, MD, FACC
William Mayer, MD, FACC, FACP
Jonathan McDonagh, MD
Ryan McDonough, DO, FACC
Suneet Purohit, MD
Gene Quinn, MD, MS, MPH
Brian Scully, MD, FACC
Mark Selland, MD, FACC
Alan Skolnick, MD, FACC
Hung Vo, MD
Stanley Watkins, MD, MHS, FACC
Carson Webb, MD
Mark Willcox, MD
Yiming Wu, MD, PHD

AHVI ANCHORAGE
3841 Piper St.
Suite T-100
Anchorage, AK 99508

ALASKA REGIONAL OFFICE
2751 DeBarr Road
Suite B-200
Anchorage, AK 99508

AHVI CATH LAB/ACSC
3220 Providence Dr.
Suite E3-083
Anchorage, AK 99508

AHVI WASILLA
3125 E Meridian Park Loop.
Suite 200
Wasilla, AK 99654

AHVI SOLDOTNA
240 Hospital Place
Suite 202
Soldotna, AK 99669

CREED MAMIKUNIAN, M.D.

2401 EAST 42ND AVENUE, SUITE 206
ANCHORAGE, ALASKA 99508
(907) 562-1860 • FAX (907) 562-1865

Otolaryngology
Head and Neck Surgery

Facial Plastic and
Reconstructive Surgery

February 21, 2023

Sarah Bailey
PO Box 110805
Juneau, AK 99811-0805

Dear Ms. Bailey,

I am writing to bring attention to the "80th Percentile regulation 3 AAC 26.110 (a)" discussion currently being considered for removal as expressed recently by Lori Wing-Heier, the Director of the Division of Insurance.

I have practiced in Anchorage as a solo practitioner, specialist in Otolaryngology, for the past 32 years. For most of that time, I was not contracted with any insurance company but was contracted with SOA Medicaid and Medicare. Since my arrival in 1990, I have seen reimbursements by SOA Medicaid decrease by over 50% for most of the surgeries I perform. Likewise, there has also been a significant reduction in reimbursement from Medicare as well. Despite these reductions, I have always agreed to see any Medicare or Medicaid patient who requests an appointment. As you are undoubtedly aware, many physician offices no longer accept Medicare or Medicaid patients because of the low reimbursements. From my perspective, being able to be reimbursed at the 80% level established many year ago has allowed me the freedom to see all comers as things tend to balance each other out.

When I ultimately joined Blue Cross as a preferred provider, mostly because of physician competition, this resulted in a decrease in payments for my surgeries from between 35-75%! As Blue Cross is the 800 pound gorilla in private health care in Alaska and as they have successfully managed to force most subspecialties into joining their network, their expenses have gone down tremendously. Unfortunately, This has not followed through with a reduction in health insurance premiums to the consumer, of which I was one. My health care premiums with Premier Blue Cross as an employer went up every year by at least 10%. When I contacted them to ask when our premiums were going to go down since now virtually all of the specialists were "in network", they said that it would take some time to work through the system. In fact, in the past 4 years, this has only continued to rise yearly. Physicians are getting paid less, access to healthcare is getting more difficult for those who need it the most and now Blue Cross wants to eliminate the 80% rule to decrease physician payments more!

Alaska is a unique place and distinctly difficult to attract talented and well-trained physicians. The 7-8 months of cold and snowy winters in Anchorage and distance from

the lower 48 make it difficult to recruit new physicians. Eliminating the 80% rule will only exacerbate this problem and will be extremely unlikely to translate to lower costs for patients. In fact, it will have a tremendously positive effect on the profits of Blue Cross and other insurance companies who do business in Alaska. What guarantees do we have that they will lower premiums if the 80% rule was eliminated?

I urge the Division of Insurance to maintain the 80% regulation to continue to protect access and affordability for all Alaskans. As an aside, one might also want to look at the extraordinary charges being billed by Providence and Alaska Regional hospitals which result in hundreds of millions of dollars in profits being sent to their corporate offices out of state. I'm sure their lobbyists are working overtime to prevent any legislation to rein in their abusive charges.

Please feel free to contact me if I can be of any assistance to you regarding these issues.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Creed Mamikunian", followed by a stylized flourish or mark.

Creed Mamikunian, MD

↑

(1 1)

MS. SARAH BAILEY
ALASKA DEPT. OF INSURANCE
PO BOX 110805
JUNEAU, AK
99811-0805

DEAR MS. BAILEY,

I WOULD LIKE TO COMMENT
ON THE PROPOSED REGULATION CHANGES
TO 3 AAC 26.110.

THE INTENT OF THE AMENDMENT IS TO
ABOLISH THE 80TH PERCENTILE AS THE
FLOOR FOR HEALTH CARE CLAIM PAYMENTS.

I SUPPORT ABOLISHING THE 80TH PERCENTILE
RULE. THE CONSUMER IS NOW
LARGELY PROTECTED BY THE
FEDERAL NO SURPRISES ACT. THE
80TH PERCENTILE RULE IS
SUBSEQUENTLY NO LONGER
NECESSARY.

I ASK THAT YOU AND DIRECTOR
WING-HEIER SUPPORT ABOLISHING
THE 80TH PERCENTILE RULE. IT NO LONGER
HAS A PLACE AND CONTRIBUTES TO MAKING
HEALTH CARE UNAFFORDABLE FOR SMALL BUSINESS.

SINCERELY, BRADLEY OLSON



02/23/2023

Sarah Bailey
P.O. Box 110805
Juneau, AK 99811-0805
Sarah.Bailey@alaska.gov

Attention: Sarah Bailey

RE: 80th percentile regulation – 3 AAC 26.110 (a)

Ms. Bailey,

It has come to our attention that Alaska is considering eliminating the consumer regulation, known as the 80th percentile regulation – 3 AAC 26.110 (a). As you may recall, this regulation was established because Alaskan's were suffering from insurance companies' policies and practices. It is our belief that the regulation is working as intended to provide transparency and consumer protection. We believe Alaskans should not have to worry about a battle that may exist between physicians and insurance companies, rather the usual and customary rules are being consistently applied so their care does not get disrupted. This regulation is proven, reliable and stable for the consumer.

While it is true that the cost of care in Alaska is higher than many places, the cost to deliver that care is in parallel. The insurance companies contend that providers could manipulate the market to get higher reimbursement, but the fact is, there is no evidence to support this. The reality is Alaska has robust anti-trust and consumer protection laws to prevent this type of behavior. Further, Premiera Blue Cross Blue Shield enjoys a monopoly across Alaska with little consumer protection.

We fear that elimination of the 80th percentile rule will also impact those covered by federal plans like Medicare, Medicaid, TRICARE and VA. If commercial payers are given an inroad to ratchet down payments, physicians may not be able to sustain their practice with the current payer mix. While this is not a direct reflection of the regulation, these are unintended consequences that should be explored before a decision is made.

We believe allowing insurance companies to reduce the basis for reimbursements for out-of-network care below the 80th percentile will not lower healthcare cost. While complicated, healthcare care costs are based on cost of providing the care, which includes high cost of recruitment and retention of physicians and their employees, high cost of living, and subsidizing government healthcare care programs. Prior to 2004 and the adoption of 3 AAC 26.110(a) Alaska experienced healthcare care cost increases. The 80th percentile regulation is not the driver of cost increases.



We fear if this regulation is changed, we will see the same behavior that led to its adoption – patients shouldering a larger percentage of healthcare care costs and patients not receiving the full value of the insurance product they believe they are purchasing. In many areas of the State insurance networks are simply inadequate to provide timely access to network healthcare care services. Forcing patients to shoulder higher costs to seek timely out-of-network care when networks are inadequate is unfair to the consumer.

Patient access to quality healthcare has vastly improved and expanded in Alaska allowing consumers to get needed specialty and sub-specialty care here at home rather than being forced to travel out of state. When patients are treated in their own communities, they are better served. Keeping care local should be a message embraced by all stakeholders. Over the last decade, providers have made enormous investments in healthcare infrastructure across the state, despite the cost and difficulty to recruit and retain high quality professionals.

Healthcare in Alaska is going in the right direction for Alaskan's. Eliminating the 80th percentile rule is not the disruption that will support those efforts. Please consider the consequences the elimination of this regulation will have on our delicate balance to continue to provide Alaskan's with high quality care throughout this great state.

Very Respectfully,

A handwritten signature in black ink, appearing to read "Eli Powell, MD".

Eli Powell, MD

President of Orthopedic Physicians Alaska

On Behalf of:

Owen Ala, MD
John Botson, MD
Cristina Copus, DO
Adam Ellison, MD
Gene Falkowski, DO
Derrick Foge, MD
Rabun Fox, MD
Jessie Janowski, MD
Chris Manion, MD
Jeff Moore, MD
Tom Paynter, MD
Alan Swenson, MD

Deryk Anderson, DO
Eugene Chang, MD
Tucker Drury, MD
James Eule, MD
Mark Flannum, MD
Patricia Fox, MD
Bryan Haughom, MD
Dann Laudermilch, MD
Curtis Mina, MD
Erik Olson, DO
Ryan Ragle, MD
Sean Taylor, MD

From: [Aaron Kusano](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: OPPOSE REPEALING the 80th Percentile rule / 3 ACC 21.110(a)
Date: Thursday, March 2, 2023 8:28:55 AM

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Good morning Ms. Bailey,

I am a radiation oncologist treating cancer patients from all parts of Alaska. I would like to voice my strong opposition to repealing the 80th percentile rule.

I have seen significant mis-representation or lack of data from the insurance industry and believe that repeal of this rule would be harmful to patients, as there would be cost shifting to them. We already face a crisis in access with large primary care clinics serving our elderly population closing down. Repealing this rule will negatively impact Alaska's ability to recruit and retain high quality providers.

As a born and raised Alaskan, I remember the days when it was the prevalent belief that if you wanted good care, you had to leave Alaska.

Thankfully, we have come a long way since that time. Repealing the 80th percentile rule would put us on a negative trajectory back to those circumstances.

Thanks for your time,

Aaron

From: [Dan Seible](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: OPPOSE REPEALING the 80th Percentile rule / 3 ACC21.110(a)
Date: Thursday, March 2, 2023 8:38:23 AM

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Hi Sarah,

I believe repealing the 80th percentile rule will decrease access and quality of health care for Alaskans, and so I oppose this measure.

Thanks,

Dan Seible, MD

Radiation Oncologist

From: [Denise Valentine](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: Oppose Repealing the 80th percentile rule
Date: Tuesday, February 28, 2023 10:51:51 AM

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Hello Sarah,

I have been a nurse practitioner working in the state of Alaska since 2005. There are many challenges to health care in general but particularly in Alaska given its remote location. Please see the reasons for my opposition to the repeal.

There are many reasons the 80th should not be repealed, but some brief points that could be considered:

- The 80th Percentile Rule protects patients from balance billing and out-of-pocket costs for healthcare in Alaska
- The 80th Percentile Rule encourages providers and insurers to work together in good faith for fair and transparent contracting to benefit patients
- The Federal No Surprises Act applies only to emergent care and does NOT replace the patient protections in the 80th Percentile Rule
- Repealing the 80th Percentile Rule will only benefit insurance companies, all of whom are based in the lower-48 and enjoy substantial profits
- Any claim that increasing insurance company profits will “trickle-down” to reduce the individual Alaskan’s healthcare costs is dubious at best
- Healthcare is a major employer of Alaskans and provides well-paying jobs with good benefits, which supports a healthy economy
- Repealing the 80th Percentile Rule will affect Alaska’s ability to recruit and retain high quality healthcare providers, which are already in short supply

Respectfully,

Denise Valentine, APRN

From: [Rebecca Rowen](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: Opposing Repealing the 80th Percentile Rule
Date: Thursday, March 2, 2023 4:45:37 PM

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Count me in as someone who Opposes Repealing the 80th percentile rule!!!!

There are many reasons the 80th should not be repealed-

1. The 80th Percentile Rule protects patients from balance billing and out-of-pocket costs for healthcare in Alaska.
2. The 80th Percentile Rule encourages providers and insurers to work together in good faith for fair and transparent contracting to benefit patients.
3. The Federal No Surprises Act applies only to emergent care and does NOT replace the patient protections in the 80th Percentile Rule
4. Repealing the 80th Percentile Rule will only benefit insurance companies, all of whom are based in the lower-48 and enjoy substantial profits.
5. Any claim that increasing insurance company profits will “trickle-down” to reduce the individual Alaskan’s healthcare costs is dubious at best.
6. Healthcare is a major employer of Alaskans and provides well-paying jobs with good benefits, which supports a healthy economy.
7. Repealing the 80th Percentile Rule will affect Alaska’s ability to recruit and retain high quality healthcare providers, which are already in short supply and will greatly reduce patient’s access to care in Alaska.
8. Without high quality primary care and specialists that are local and accessible, patients will have to travel to the lower 48 for care – this will especially impact our most vulnerable populations who may not have the means or ability to travel.

Thank you,
Dr. Rebecca Rowen
Colorectal Surgeon



Comprehensive • Minimally Invasive • Transformational

March 4, 2023

Re: 80th % Regulation

To: The State of Alaska Division of Insurance

Attn: Sarah Bailey

I strongly oppose the repeal of the 80th % regulation.

I am a surgeon in Anchorage and co-own a practice dedicated to bariatric surgery. We service patients from all over the state. Please note that we are in-network with BCBS and all other insurances and thus the 80th% rule does not apply directly to our practice as we do not balance bill. However, this does not mean it is not important to our practice.

At this time, due to low reimbursement and extensive administrative burden, we limit our medicaid patients to 20% of our practice. Should the 80th % rule be repealed and reimbursements continue to decline we will no longer be able to afford to care for our Medicaid patients. This will lead to dramatically increased costs for the State of Alaska as these patients will have to travel outside the state to receive care. The only other alternative would be to cut benefits from the Medicaid plan.

In addition, our practice has 2 surgeons when the population of the state could easily handle 5-6 bariatric surgeons. Yet, despite our best efforts we have not been able to hire nor retain even 1 more surgeon. Alaska is a challenging and remote place to live. If we further diminish the economic incentive for doctors to live here we will see a continued decline in providers and the capacity of care available in the state.

There are many benefits for repealing this rule for the insurance companies, but none for the patients or the providers. The insurance companies are making unprecedented profits and the vast majority of those are taken to the lower 48.

Justin Clark, MD, FACS

From: [Debbie Ryan](#)
To: [Bailey, Sarah S \(CED\)](#)
Cc: [Todd Curzie](#); DrKelly.RYAN@live.com; ["Dr. Joel Adkins"](#); aksportsdoctor@gmail.com; [Alison Libby](#)
Subject: Opposition to Proposed Changes to 3AAC26.110 - 80th Percentile Rule
Date: Tuesday, February 21, 2023 11:44:51 AM
Attachments: [image001.jpg](#)
Importance: High

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02/21/2023

Sarah Bailey
Division of Insurance
Alaska Department of Commerce &
Economic Development
PO Box 110805
Juneau, Alaska 99811-0805

Sent via email

RE: Proposed Changes to 3AAC26.110, aka the 80th Percentile Rule

Ms. Bailey,

I am writing to comment on the division's proposed changes to 3AAC26.110, specifically, the deletion of paragraphs (a)(1) and (a)(2), and the revision of paragraphs (4) and (5)(A). The Alaska Chiropractic Society **OPPOSES** the proposed changes.

Our concern is that the proposed changes further unbalance the patient / provider / carrier relationship in the carrier's favor. Simply put, the proposed regulation changes grant more power to the carriers to force medical providers into their networks. Many of our members are small or single practice providers. Many patients prefer this simple, personal treatment

setting. Large providers, such as corporate chains, have negotiating power in contract negotiations with carriers. For our smaller members, it's "take it or leave it" - join our network for a drastically reduced reimbursement or treat the patient for free.

We are aware that the 80th percentile rule is seen as a cost driver by some. Your supporting materials state that the federal No Surprises Act protects consumers from "some" kinds of medical bills from out-of-network providers. As patients ourselves we applaud that, but it doesn't apply to our members and patients in this market. Our average patient, with low back pain, doesn't receive "surprise" billings, but rather relatively low fees for regular treatment.

We understand that you regulate insurance and not providers, but without the 80th percentile rule there will be no laws in place to ensure healthcare providers are fairly reimbursed, especially our smaller or single practice members. Absent this rule, there will be fewer medical providers to choose from and more of those who are left will be forced in to cash practice. More patients are going to find it difficult to find care. The division's website lists the division's mission as: "to regulate the insurance industry to protect Alaskan consumers." How are Alaskan consumers protected under the scenario described above?

Please DO NOT proceed with changes to 3AAC26.110 until you can provide additional language with assurances for small providers that better reflect conditions in this market.

Thank you,

Debbie Ryan

Alaska Chiropractic Society | Chief Executive Officer
550 E. Tudor Rd., Suite 202 | Anchorage, AK 99503
Direct/Mobile: (907) 903-1350 | Fax: (907) 770-3790
dryan@akchiro.org | [Facebook](#) | [Twitter](#) | [Website](#)

Ensuring Chiropractic is the first Healthcare Choice in Alaska!



From: [Suneet N. Purohit, MD](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: Opposition to repealing the 80th percentile
Date: Wednesday, March 1, 2023 8:03:46 PM

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Sarah Bailey

PO Box 110805

Juneau, AK 99811

Sarah.Bailey@alaska.gov

RE: 80th percentile regulation – 3 AAC 26.110 (a)

3/1/23

Dear Ms. Bailey:

It has come to our attention Alaska Division of Insurance is now considering eliminating the 80th percentile. We see no valid reason to undo this essential support for the following reasons:

1. It will reduce access of Medicare, Medicaid, VA patients to non-government practices.
2. It will also return Alaska to a time when most routine specialty care required travel to the lower 48 due to inability to recruit high quality physicians to practice in Alaska.

If the division of insurance, governor's office, or the legislature wants to reduce healthcare costs, then all parties and stakeholders need to undertake a review and analysis of the cost of healthcare in Alaska. As private practitioners in Alaska, we remain dedicated to serving all Alaskans and keeping our patients and financial interests within the state. Premiera BCBS has openly advertised out of state care to Alaskans and it seems that Premiera BCBS wants to extract high premiums without serving Alaskans first.

Sincerely,

Suneet Purohit, M.D.

Alisha Skinner, M.D.

From: [Alexandra Gates-Clark](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: Opposition to the Repeal of the 80% Regulation
Date: Sunday, March 5, 2023 5:56:49 AM
Importance: High

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March 4, 2023

Re: 80th % Regulation

To: The State of Alaska Division of Insurance

Attn: Sarah Bailey

I strongly oppose the repeal of the 80th % regulation.

I work in the healthcare industry as a medical billing representative. I feel that the 80th Percentile Rule already protects patients from balance billing and out-of-pocket costs for healthcare in Alaska. The 80th Percentile Rule encourages providers and insurers to work together in good faith for fair and transparent contracting to benefit patients. The Federal No Surprises Act applies only to emergent care and does NOT replace the patient protections in the 80th Percentile Rule.

Repealing the 80th Percentile Rule will only benefit insurance companies, all of whom are based in the lower-48 and enjoy substantial profits. Any claim that increasing insurance company profits will “trickle-down” to reduce the individual Alaskan’s healthcare costs is dubious at best. Healthcare is a major employer of Alaskans and provides well-paying jobs with good benefits, which supports a healthy economy. Repealing the 80th Percentile Rule will affect Alaska’s ability to recruit and retain high quality healthcare providers, which are already in short supply and will greatly reduce patient’s access to care in Alaska. Without high quality primary care and specialists that are local and accessible, patients will have to travel to the lower 48 for care – this will especially impact our most vulnerable populations who may not have the means or ability to travel.

Alexandra Gates-Clark

Billing Consultant
Anchorage Bariatrics
P: 619-208-7250

Sent from [Mail](#) for Windows

From: [Mark Willcox, MD](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: Physician and Constituent contact
Date: Wednesday, March 1, 2023 9:20:13 AM

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Sarah,

I am taking time out of my busy surgical day today to ask you to **OPPOSE REPEALING the 80th Percentile rule / 3 ACC 21.110(a).**

I am by not means a healthcare policy expert, but I have spoken with many physicians who lived through and practiced in AK, in the time before the 80th percentile rule was implemented. They unanimously speak to the disastrous practices which were employed by the health insurance industry which hurt patients and physician practices prior to its implementation.

It would be disappointing to see your administration bear the brunt of focused articles regarding 'the surprise bills that patients receive' if this is repealed, but I foresee the future of this sort of publicity coming your way. It'd be nice to stay out of that type of trouble.

There are many reasons the 80th should not be repealed, but some brief points that could be considered:

- The 80th Percentile Rule protects patients from balance billing and out-of-pocket costs for healthcare in Alaska
- The 80th Percentile Rule encourages providers and insurers to work together in good faith for fair and transparent contracting to benefit patients
- The Federal No Surprises Act applies only to emergent care and does NOT replace the patient protections in the 80th Percentile Rule
- Repealing the 80th Percentile Rule will only benefit insurance companies, all of whom are based in the lower-48 and enjoy substantial profits
- Any claim that increasing insurance company profits will "trickle-down" to reduce the individual Alaskan's healthcare costs is dubious at best
- Healthcare is a major employer of Alaskans and provides well-paying jobs with good benefits, which supports a healthy economy
- Repealing the 80th Percentile Rule will affect Alaska's ability to recruit and retain high quality healthcare providers, which are already in short supply

All my best,

Mark E Willcox, MD
Clinical Cardiac Electrophysiologist

From: [Linda Carroll](#)
To: [Bailey, Sarah S \(CED\)](#)
Cc: [Dr. Corinna Muller, DO](#)
Subject: physician letter regarding 80th percentile evaluation
Date: Thursday, February 23, 2023 9:13:16 AM
Attachments: [image001.png](#)
[image002.jpg](#)
[80th percentile.pdf](#)

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Sarah, please see Dr. Muller's letter regarding the evaluation for potential removal of the 80th percentile rule.

It is important to note that this review of the 3 AAC 26.110 is seemingly been spurned by a commercial insurance carrier that has a majority share of AK market coverage. This is also the same carrier that has refused to allow the same rate or the same level of Evaluation & Management codes (dr. office visits) provided via telehealth. Example, their current contract rate for 99213 may be \$150.00 allowable but when an office that CPT code with the modifier indicating telehealth (which offices are required to do), telehealth 99213 would have an allowable of \$90.00. For those practices in network (contracted with) this carrier, there was no recourse and of course telehealth visits were highly recommended under the guise of patient health safety/wellbeing.

The Anchorage area medical community recognizes that the Dept. of Commerce, Community and Economic Development may be taking it's lead not only from insurance companies but also area employers who concerned about the cost of providing health insurance to its employees. Believe me, as providers but also consumers paying the same premium rates, we get it, but we feel the community may be being mislead as to why the premiums continue to go up significantly year over year. We can guarantee it is not be cause medical offices are raising prices or that we are getting paid more. We certainly have not been getting paid higher amounts year over year.

Sincerely,

Linda Carroll, CMPE

Manager
Aurora Maternal Fetal Medicine, LLC
4048 Laurel St Ste 202
Anchorage, AK 99508
P 907-677-2636





Education Committee
Membership Committee

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From: [John Yordy](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: Please maintain the 80th Percentile Rule
Date: Thursday, March 2, 2023 12:25:16 PM
Attachments: [image001.jpg](#)

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Dear Ms. Bailey,

I write to urge you to retain the 80th Percentile Rule / 3 ACC 21.110(a). This rule has been a vital part of quality health care delivery in Alaska, and needs to remain in place for the following reasons:

- 1) The 80th Percentile Rule protects patients from balance billing and out-of-pocket costs for healthcare in Alaska. This is important, because without this rule patients are likely to see an increase in out-of-pocket billing.
- 2) The 80th Percentile Rule encourages providers and insurers to work together in good faith for fair and transparent contracting to benefit patients. Without this assurance the insurance and provider landscapes will become much less predictable and will swing to protect insurance companies over patients and providers.
- 3) The Federal No Surprises Act applies only to emergent care and does NOT replace the patient protections in the 80th Percentile Rule, so patients will not be covered from surprise balance billing, see #1 above.
- 4) Repealing the 80th Percentile Rule will only benefit insurance companies, all of whom are based in the lower-48 and enjoy substantial profits. We want programs that benefit Alaskans. Furthermore, any claim that increasing insurance company profits will “trickle-down” to reduce the individual Alaskan’s healthcare costs is dubious at best.
- 5) Healthcare is a major employer of Alaskans and provides well-paying jobs with good benefits, which supports a healthy economy. We want programs, and a local economy, that benefits Alaskans.
- 6) In the medium and long term, repealing the 80th Percentile Rule will affect Alaska’s ability to recruit and retain high quality healthcare providers, which are already in short supply and will greatly reduce patient’s access to care in Alaska. Furthermore, without high quality primary care and specialists that are local and accessible, patients will have to travel to the lower 48 for care – this will especially impact our most vulnerable populations who may not have the means or ability to travel.

For the above reasons, I feel it is imperative that Alaska maintains the 80th Percentile Rule and encourage you to keep this rule intact.

Best Regards,
John Yordy, MD, PhD

Inline image 1



From: [JMS AdY](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: Please maintain the 80th Percentile Rule
Date: Thursday, March 2, 2023 12:23:39 PM

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Dear Ms. Bailey,

I write to urge you to retain the 80th Percentile Rule / 3 ACC 21.110(a). This rule has been a vital part of quality health care delivery in Alaska, and needs to remain in place for the following reasons:

- 1) The 80th Percentile Rule protects patients from balance billing and out-of-pocket costs for healthcare in Alaska. This is important, because without this rule patients are likely to see an increase in out of pocket billing.
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For the above reasons, I feel it is imperative that Alaska maintains the 80th Percentile Rule and encourage you to keep this rule intact.

Best Regards,
John Yordy, MD, PhD

--

John S. Yordy

From: [Andrea](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: Please protect the 80th percentile rule
Date: Friday, March 3, 2023 11:54:18 AM

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Good afternoon Ms Wing-Heirer,

It has come to our family's attention that this rule is going to go away. That is unfair to us as a consumer and it will hurt the public health care more than the insurance carriers. The cost of anything is higher in Alaska then the lower 48. There are fewer choices of medical providers here and even less specialists. If we don't protect the 80th percentile rule the rates commercial insurance will pay our doctors will drive them out of the state and then we as patients will not have choices of healthcare or a very long wait to see one.

Please protect the 80th percentile rule as a consumer I can't afford to pay more for my healthcare than I already do.

Thank you,
Andrea
Sent from my iPhone

From: [Scott McNair](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: Please repeal Alaska's 80th percentile regulation
Date: Tuesday, February 28, 2023 11:58:25 AM
Importance: High

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Good Day Ms. Bailey

My name is Scott McNair. I'm the CFO for Pacific Stevedoring, LLC an Alaska limited liability Company operating in and around Dutch Harbor.

Now that Congress has protected consumers from balance billing by passing the No Surprises Act, please repeal Alaska's 80th percentile regulation, as it is no longer needed, and it unnecessarily makes our health care more expensive.

Thank you for your consideration.

Scott

Scott McNair
(206) 250-0431

From: [Terry Aguilar](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: Proposed 80th Percentile Regulation Changes
Date: Saturday, March 4, 2023 4:28:18 PM
Attachments: [image001.jpg](#)
[image002.jpg](#)

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I am writing in support of removal of the 80th percentile regulation.

I have held a life and health license in Alaska since 1985 so I was working with Alaska employer clients before the 80th percentile regulation was in place and saw many situations when Alaska consumers thought they had coverage that would truly pay 80% of their costs and got balance billed. In some cases, the balances were very large because carriers used data based on charges in the lower 48 and consumers were left large balances and little to no ability to negotiate.

When the 80th percentile was first put in place Alaska consumers, employers and licensed agents and consultants were all in agreement it was needed and it did its job for many years which was to protect consumers. However, over time there was an unintended consequence of increasing costs to employers and consumers as non-network provider charges continued to increase.

The effect was to allow providers to give themselves a pay raise at least annually and, in some cases, more frequently. In addition, it reduced, if not eliminated the incentive for providers to contract with health insurance carriers to be in network. Many non-network providers offered consumers a "deal" by forgiving deductible amounts over the in-network deductible of their plan however the consumer still had to pay the higher annual out of pocket costs associated with out of network services.

Since the passage of the federal No Surprises Act consumers are protected from out of network charges in the emergency room and when air ambulance services are needed. In addition, transparency rules allow consumers the ability to truly shop for care and make an informed decision.

With these protections in place the 80th percentile regulation is no longer needed and should be removed as soon as possible to avoid further cost increases.

Thank you.

Terry



Terry (Allard) Aguilar, CEBS | Employer Services Consultant
Wilson Albers
3000 A St., Suite 400 Anchorage, AK 99503
D: 907.777-0247 | O: 907.277.1616 | M: 907 230-6289
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From: [Flourish Therapy](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: Proposed Changes to 80th percentile rule
Date: Wednesday, February 22, 2023 9:39:43 AM

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Ms. Bailey,

I am a Licensed Professional Counselor in Palmer, AK. I am opposed to any proposed change that amends or removes the regulatory requirement that “usual and customary” charges be based on the 80th percentile of the market pricing.

I support the State of Alaska maintaining the requirement under the basis for determining UCR is the 80th percentile.

Here are some reasons for my opposition:

- The 80th percentile is the industry practice within the United States.

- Most insurers who are not required to follow this regulation, ERISA and selfinsured including the State of Alaska, choose to utilize the 80th percentile for purposes of claims payment basis. They do this as it is the right thing to do and it protects their insured.

- In 2004 Premera testified that this aspect of the regulation, the 80th percentile, was intended “to provide a standard for the claims payment basis that is unlikely to result in significant changes for major carriers doing business in Alaska.”

- Allowing individual insurance carriers to establish different standards for claims payment will make it virtually impossible for a consumer to know what they are purchasing.

The Regulation is working as intended providing transparency and greater consumer protections for Alaskans.

In the end this isn't about physicians or insurance companies. It's about patients. And patients should be able to rely on their insurance to pay market rates. If a consumer purchases an insurance plan with a 70% reimbursement they should have protections that that is what they will receive.

The “usual and customary” rate used to determine out-of-network payment should reflect the market value for the services and it should be audited regularly to assure that insurance companies do not control the data which is used for its determination.

The current regulation provides a transparent objective and reliable method of establishing “usual and customary” charges that protects consumers while maintaining the availability of healthcare services in Alaska.

Lauren Berberich, MS, LPC

She/Her

Flourish Therapy

907-802-6595

www.flourishtherapy.llc

From: [Donica Nash](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: Public Comment
Date: Saturday, February 25, 2023 6:00:58 PM

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Good evening,

My name is Donica Nash and I am a teacher in Soldotna, AK. Before teaching, we were commercial fishers who worked job-to-job during the school year. As commercial fishing became less reliable as an income, we made the step to receive public services in the form of food stamps and Medicaid.

We eventually realized our setnet industry was not going to revive so we began pursuing our teaching certifications. Since then, my husband and I have both been employed in the school district and each pay for medical insurance. While our pay went up \$25k/year, our medical bills cost more than that, with insurance being about \$20k/year and then all the medical expenses on top of that. We came to find out that, while medical institutions can't upcharge the government (i.e. Medicaid users), they *can* upcharge those who are paying for their own insurance. This led to unbelievably high medical bill costs.

Last year, our son suffered from depression and headaches. We took him in to the doctor multiple times, where he was given migraine medications and antidepressants. The headaches continued and my husband finally suggested, "Maybe we should get him an MRI."

I responded with "Whoa, whoa, whoa--let's not get too hasty. MRI's are expensive." Having been so disappointed by the medical industry and their exploitation of those with self-paid insurance, I was not looking forward to an MRI bill.

Two weeks later we were forced into the ER, yet again, and the MRI was completed. We came to find our son had a golf-ball sized tumor in his head. Imagine my horror and disgust with myself for being hesitant about pursuing a scan because simply because of price tag.

My mother was one who also demonstrated doctor hesitancy because she did not want to "waste" money on pain she could "handle." My mother passed away from ovarian cancer at 53-years-old, having ignored the pain she was afflicted with for most of her life.

Medical institutions and insurance companies have long-scammed people with insurmountable bills and arbitrary billing systems. The 80-percentile rule must be repealed and medical institutions must return to respecting the livelihoods of their patients and becoming transparent in their billing procedures.

If we are to say we value human-life, it is inexcusable to deter people from accessing lifesaving preventative and emergency measures simply for the sake of making an extra buck.

Please support the repeal of the 80-percentile rule and help bring integrity back to the field.

Thank you,

Donica Nash

From: [John Finley, MD](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: Recommend against changing 80% rule
Date: Tuesday, February 28, 2023 5:30:08 PM

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- The 80th Percentile Rule protects patients from balance billing and out-of-pocket costs for healthcare in Alaska
- The 80th Percentile Rule encourages providers and insurers to work together in good faith for fair and transparent contracting to benefit patients
- The Federal No Surprises Act applies only to emergent care and does NOT replace the patient protections in the 80th Percentile Rule
- Repealing the 80th Percentile Rule will only benefit insurance companies, all of whom are based in the lower-48 and enjoy substantial profits
- Any claim that increasing insurance company profits will “trickle-down” to reduce the individual Alaskan’s healthcare costs is dubious at best
- Healthcare is a major employer of Alaskans and provides well-paying jobs with good benefits, which supports a healthy economy
- Repealing the 80th Percentile Rule will affect Alaska’s ability to recruit and retain high quality healthcare providers, which are already in short supply

John C Finley
Anchorage, AK

From: [Jennifer](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: Regulation Change of 80th Percentile
Date: Tuesday, February 14, 2023 9:33:08 AM

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Sarah,

As a Alaska medical consumer for the past 12 years, medical costs have increased significantly. As a single consumer the effects have been felt deeply. Due to the 2022 "No Surprises Act", the 80th Percentile regulation needs to be abolished.

1. The 80th Percentile regulation makes health care the most expensive in the nation and unattainable for some.
2. Providers are not encouraged to join networks because of this regulation increasing consumer and customer costs.
3. It is no longer needed with the No Surprise Act going into effect.

Please consider the effects on companies and individuals before health care costs are so expensive people cannot afford to get treated.

Thank you for your time.
Jennifer Micolichек

Sent from my iPhone

From: [Sherry Knosky](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: Regulation Changes- Title 3
Date: Tuesday, February 14, 2023 10:04:35 AM
Attachments: [image001.gif](#)
[image002.png](#)
[image003.jpg](#)

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The Alaska Division of Insurance proposes to adopt regulation changes in Title 3 of the Alaska Administrative Code, dealing with the basis of payment for health care services or supplies including the following.

As a health care provider and as an individual that has major concerns about Title 3. Feelings are that if this done away with, we are only making it easier for the Insurance carriers to force more into the patient or insured lap. This would free up all the private insurance carriers to be able to pay without specified limits, and force individuals and companies to have to pay more out of pocket.

As a company we are contracted with most carrier, this might make us want to question do we want to have the freedom to charge and bill without no limits. As a company contracted it helps us to feel that we are working with both the state, insurance carriers and the patient.

I feel that the cost that this would apply to everyone that is insured would be astronomical, this needs to stay the same (The federal No Surprises Act was implemented January 1, 2022, and protects consumers from some kinds of surprise medical bills from out-of-network providers.) Keep in mind there are some small carriers that prefer to not be contracted by their choice, therefore this help hold them accountable and limits them what they can charge off to patients.

Keep the preferred status at 80% and not give them the total freedom that will hurt patients/insured, employers forcing cost to be more.

As a state and nation, I truly feel that as consumers we are paying so much more, prices keep going up and wages do not. This in turn could potentially force more to be on state Medicaid system just to have insurance. Feelings are continue with what has been workable,

Sherry Knosky

Billing Administrator

Office: 907.743.8224 · Fax: 907.743.8283

1917 Abbott Street, Suite 200 Anchorage, Alaska 99507
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From: [LoveAnn Truitt Truitt](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: Repeal 80% regulation
Date: Tuesday, February 28, 2023 2:04:24 PM

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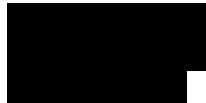
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To Whom It May Concern,

I am urging the DOL to repeal the 80 % regulation because it hurts Alaskans. As an Alaskan who has raised four children in Alaska I am concerned about the increasing cost to remaining in Alaska . Currently Alaska has the highest health care cost in the Nation and this regulation adds to these high costs by disincentivizing providers to join. Insurance networks or control costs because providers are protected while consumers are harmed. It is also unnecessary now that the No Surprises Act has been enacted .

Please help Alaskans by repealing 80% rule.

LoveAnn Truitt



Sent from my iPhone

Comments in Support of Repeal of 3 AAC 26 110

The State of Alaska Division of Insurance has proposed repeal the 80th percentile regulation (3 AAC 26 110) in recognition of the negative effect it has had on health care prices, ultimately resulting in higher prices paid by consumers, patients, health plans and insurers, and in recognition of alternative patient protection measures added to Federal law. I support the repeal of 3 AAC 26 110.

The 80th percentile regulation has increased the cost of health care.

The regulation required insurance companies to consider payment for non-contracted services at the 80th percentile of all health care provider charges for that service. As providers raised their rates, the 80th percentile point moved up with them. This resulted in the providers setting the price, and the State compelled insurers to use those inflated prices for payment. It remained a disincentive for providers to contract for discounts with insurers and payors – because they could control the rate of increase simply by raising their prices.

Once needed for adding capacity and specialty – but no more. “We find that since the early 2000’s the Alaska healthcare market has grown considerably. The number of Physician offices, for example, increased from 368 in 1998 to 569 in 2015. Those of physical therapists increased from 37 in 1998 to 134 in 2015. This increase in availability and variety of healthcare facilities has made it easier for Alaskans to obtain medical services.” (Guettabi, M., 2018 - Assistant Professor of Economics at Institute of Social and Economic Research, University of Alaska Anchorage). Mouhcine Guettabi is a recognized health care policy expert in Alaska and contributes to the study of economic forces in the State of Alaska.

Once needed for patient protection from surprise billings – but no more. The Federal No Surprises Act (NSA) sets a national standard for settling disputes about the payment of charges for out of network emergency services and services such as anesthesiology or radiology at in-network facilities. Patients now have standardized protection from surprise billing. Leaving the 80th Percentile state regulation in place unnecessarily makes Alaska an outlier in terms of pricing and data collection useful in benchmarking health expenditures in the future, by substituting the 80th Percentile regulation (State Specified Law) for the Qualified Payment Amount (QPA) or a negotiated all-payer model agreement.

Workers Compensation Rates Follow Since Workers Compensation medical services are most often delivered close to home, inflated Alaska rates for health care services help sustain Alaska Workers Compensation rates as the highest in the nation, operating as strong headwinds against workforce spending for both maintenance and development.

Please Print Legibly:

NAME:

Dennie Castillo, Administrator

ADDRESS:

Alaska Teamster-Employer Welfare Trust
520 E 34th Ave., Ste 107
Anchorage AK 99503

Phone (optional):

907-751-9700 / 907-751-9720

From: [Gerald York](#)
To: [Bailey, Sarah S \(CED\)](#); [Insurance, Insurance \(CED sponsored\)](#)
Cc: [Christopher Reed](#); [Ward Hinger](#)
Subject: Repeal of 80th Percentile Rule
Date: Saturday, March 4, 2023 11:33:19 AM
Attachments: [Outlook-d4md10xn.jpg](#)

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Dear Mrs. Bailey,

I am writing in opposition to the repeal of the 80th Percentile Rule being considered by the state of Alaska. This rule directly impacts healthcare consumer protection in our state as well as the variety and depth of primary care and specialty provider availability in-state. The following points also illustrate the real effects of repealing this rule:

1. The 80th Percentile Rule protects patients from balance billing and out-of-pocket costs for healthcare in Alaska
2. The 80th Percentile Rule encourages providers and insurers to work together in good faith for fair and transparent contracting to benefit patients
3. The Federal No Surprises Act applies only to emergent care and does NOT replace the patient protections in the 80th Percentile Rule
4. Repealing the 80th Percentile Rule will only benefit insurance companies, all of whom are based in the lower-48 and enjoy substantial profits
5. Any claim that increasing insurance company profits will “trickle-down” to reduce the individual Alaskan’s healthcare costs is dubious at best
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7. Repealing the 80th Percentile Rule will affect Alaska’s ability to recruit and retain high quality healthcare providers, which are already in short supply and will greatly reduce patient’s access to care in Alaska
8. Without high quality primary care and specialists that are local and accessible, patients will have to travel to the lower 48 for care – this will especially impact our most vulnerable populations who may not have the means or ability to travel

The following article seems to advocate for the repeal of the 80th Percentile Rule, although actually points out quite well the lack of current unbiased data to make a decision. Most of the data quoted is decades old, but does note that after the rule was enacted, there was a growth in the variety of sub-specialty providers available in-state. This is critical to the

prosperous growth of our economy and directly impacts recruiting not only healthcare providers, but also businesses that provide jobs and economic stability for the residents of Alaska.

I urge you to look at the current data critically and realize insurance companies are here to make a profit and not to support a healthy Alaska.

Sincerely,
Gerald York, MD

<https://stateofreform.com/featured/2018/06/report-shows-80th-percentile-rule-likely-driving-up-health-care-spending/>

	<h3>Report shows 80th percentile rule likely driving up health care spending - State of Reform</h3>
	<p>In May, The University of Alaska Anchorage submitted a report to the Alaska Office of Management and Budget on how the 80th percentile rule has affected Alaska's health care expenditures. The report found that it is likely the rule has increased health care expenditures,</p>
	<p>stateofreform.com</p>

Gerald York MD

Radiologist

Email: york@alaskarad.com Mobile: 907-891-3214



<https://alaskarad.com/>

From: [AA Mulgrew-Truitt](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: Repeal the 80 Percent Rule
Date: Tuesday, February 28, 2023 2:16:02 PM

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To Whom It May Concern,

I am urging the DOL to repeal the 80 percent rule regulation because it hurts Alaskans Alaska has the highest health care cost in the country and this regulation adds to these high costs by disincentivizing providers to join Insurance networks or to control costs because providers are protected while consumers are harmed. It is also unnecessary now that the No Surprises Act has been enacted .

Please help Alaskans by repealing 80% rule.

Adrell Mulgrew-Truitt



Sent from my iPhone

From: [Andyn Mulgrew-Truitt](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: Repeal the 80 percent rule
Date: Tuesday, February 28, 2023 5:01:40 PM

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Please help Alaskans by repealing 80% rule.

Andyn Mulgrew-Truitt



From: [Jill Showman](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: Repeal the 80th percentile rule
Date: Friday, February 10, 2023 6:48:41 PM

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I have lived in Alaska for 26 years and lived both on the Kenai as well as in the Mat-Su. Prior to my move I lived in Iowa. I was back visiting family in October when I came down with strep throat. And so I went in to get swabbed and tested at a local clinic. When the bill came, I expected it to be much higher as I'm used to our pricing here in Alaska.

From the research I've done, it seems to me that the 80th percentile has done more harm than good. Doctors and specialists in particular are able to name their price. They can increase rates whenever they want.

It's not affordable. I wonder how many are putting off visits because of the cost. Unfortunately there will be a greater cost to patients and our state as a whole.

Please repeal the 80th percentile rule.

Jill Showman
Wasilla, Alaska

From: [Janelle Alley, MS, LPC](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: Response to proposed changes to 80th percentile rule
Date: Wednesday, February 22, 2023 10:03:27 AM

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Dear Ms. Bailey,

I am a Licensed Professional Counselor in Palmer, AK. I am opposed to any proposed change that amends or removes the regulatory requirement that “usual and customary” charges be based on the 80th percentile of the market pricing.

I support the State of Alaska maintaining the requirement under the basis for determining UCR is the 80th percentile.

Here are some reasons for my opposition:

- The 80th percentile is the industry practice within the United States.

- Most insurers who are not required to follow this regulation, ERISA and selfinsured including the State of Alaska, choose to utilize the 80th percentile for purposes of claims payment basis. They do this as it is the right thing to do and it protects their insured.

- In 2004 Premera testified that this aspect of the regulation, the 80th percentile, was intended “to provide a standard for the claims payment basis that is unlikely to result in significant changes for major carriers doing business in Alaska.”

- Allowing individual insurance carriers to establish different standards for claims payment will make it virtually impossible for a consumer to know what they are purchasing.

The Regulation is working as intended providing transparency and greater consumer protections for Alaskans.

In the end this isn't about physicians or insurance companies. It's about patients. And patients should be able to rely on their insurance to pay market rates. If a consumer purchases an insurance plan with a 70% reimbursement they should have protections that that is what they will receive.

The “usual and customary” rate used to determine out-of-network payment should reflect the market value for the services and it should be audited regularly to assure that insurance companies do not control the data which is used for its determination.

The current regulation provides a transparent objective and reliable method of establishing “usual and customary” charges that protects consumers while maintaining the availability of healthcare services in Alaska.

Thank you,

Janelle Alley, MS, LPC

From: [Cheryl & Mark Lovegreen](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: Support for dropping the 80th percentile rule
Date: Saturday, February 11, 2023 10:51:40 AM

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I support the proposal to abolish the 80th percentile as the floor for health care claim payments. This rule has driven up Alaska health care costs. We need to do what we can to make health care affordable for everyday Alaskans.

Thanks for your time,

Cheryl Lovegreen

From: [Stacey Vinson](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: Support Repeal of 3 AAC 26 110
Date: Wednesday, February 22, 2023 9:04:23 AM
Attachments: [image001.png](#)

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Good Morning,

I support the repeal of the 80th Percentile Regulation.

Comments in Support of Repeal of 3 AAC 26 110

The State of Alaska Division of Insurance has proposed repeal the 80th percentile regulation (3 AAC 26 110) in recognition of the negative effect it has had on health care prices, ultimately resulting in higher prices paid by consumers, patients, health plans and insurers, and in recognition of alternative patient protection measures added to Federal law. I support the repeal of 3 AAC 26 110.

The 80th percentile regulation has increased the cost of health care.

The regulation required insurance companies to consider payment for non-contracted services at the 80th percentile of all health care provider charges for that service. As providers raised their rates, the 80th percentile point moved up with them. This resulted in the providers setting the price, and the State compelled insurers to use those inflated prices for payment. It remained a disincentive for providers to contract for discounts with insurers and payors – because they could control the rate of increase simply by raising their prices.

Once needed for adding capacity and specialty – but no more. “We find that since the early 2000’s the Alaska healthcare market has grown considerably. The number of Physician offices, for example, increased from 368 in 1998 to 569 in 2015. Those of physical therapists increased from 37 in 1998 to 134 in 2015. This increase in availability and variety of healthcare facilities has made it easier for Alaskans to obtain medical services.” (Guettabi, M., 2018 - Assistant Professor of Economics at Institute of Social and Economic Research, University of Alaska Anchorage). Mouhcine Guettabi is a recognized health care policy expert in Alaska and contributes to the study of economic forces in the State of Alaska.

Once needed for patient protection from surprise billings – but no more. The Federal No Surprises Act (NSA) sets a national standard for settling disputes about the payment of charges for out of network emergency services and services such as anesthesiology or radiology at in-network facilities. Patients now have standardized protection from surprise billing. Leaving the 80th Percentile state regulation in place unnecessarily makes Alaska an outlier in terms of pricing and data collection useful in benchmarking health expenditures in the future, by substituting the 80th Percentile regulation (State Specified Law) for the Qualified Payment Amount (QPA) or a negotiated all-payer model agreement.

Workers Compensation Rates Follow Since Workers Compensation medical services are most often

delivered close to home, inflated Alaska rates for health care services help sustain Alaska Workers Compensation rates as the highest in the nation, operating as strong headwinds against workforce spending for both maintenance and development.

Thank you,

Stacey Vinson

Kenai Peninsula Borough School District

Employee Benefits Manager

148 N. Binkley St. Soldotna, AK 99669

Phone: (907) 714-8879 Fax: (907) 262-9645

svinson@kpbsd.k12.ak.us

KPBSD Logo



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From: [Geronimo Sahagun](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: WE OPPOSE repeat of 80th rule
Date: Sunday, February 26, 2023 9:41:33 AM

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February 26, 2023

**Alaska Division of Insurance
Attention: Sarah Bailey
PO Box 110805
Juneau, AK 99811**

Dear Sarah Bailey:

As a private GI/Liver physician who has practiced in this state for 26 years and I ask if you can help with this matter.

Apparently, the insurance industry (Blue Shield Cross) is asking for the insurance regulation board to repeat this insurance rule which has been standard in our state and across this country. Without this rule insurance would pay 80% of patient costs, and Alaskan would have increase out pockets for medical care. This would result in medical providers, clinics imaging, and hospitals to absorb this loss. This would result in many clinic, including our IMA, LLC future at risk due to lower reimbursements in a state that has higher health costs.

Our IMA clinic is the largest speciality clinic that serves the people of Alaska in gastrointestinal disorders, and we have clinics in Anchorage, Wasilla, and Fairbanks area.

We serve all patients regardless of insurance including, VA, Tricar, Medicaid, medicare, etc, but if this 80th regulation is repealed we most likely may have to reduce patient access because our clinic would be able to survive without this rule. It would immediately results in cost shifting to patients (consumers) who would have to pay more out-of-pocket through balanced billing, more than 20-30% would effect customers negatively. Many of these customers would not be able to afford this increase of out pocket costs, and would defer care or procedures (like screening colonoscopies), and results in delay or care, and/or cancers.

I ask that you OPPOSE the repeat of the 80th insurance rule in our state because it would harm our Alaskan medical patient consumers.

Sincerely,

**Geronimo Sahagun, MD, FACP
CEO IMA, LLC
2841 DeBarr Road Building A**

Anchorage, AK 99508
907-227-6091

From: [Ryan Pardo](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: 3 AAC 26.110 - Comments on Proposed Changes
Date: Monday, March 6, 2023 10:37:36 AM

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Hi Sarah,

Thank you for an opportunity to provide comment on the proposed changes to 3 AAC 26.110. As a health care organization that has served Alaska for many years, both in Anchorage and outlying communities across the state, we have seen the importance of the current version of 3 AAC 26.110 in ensuring continued access to health care resources across the state for Alaskans.

Geography, population dispersion and weather create substantial barriers to delivering services to Alaskans, particularly so in the case of health care. It is extremely challenging to recruit new providers to the state and keep them once they arrive. These challenges have only be exacerbated in the last three years due to inflation and the loss of many health care providers across the country due to burn out – there are fewer providers available now and they have more options than ever before.

In addition, supply cost, labor costs, (especially healthcare workers), and construction costs in Alaska are also significantly higher than other parts of the United State, placing a further burden on delivering care.

Outside of Anchorage, the population is small and spread out geographically, making it challenging to establish and maintain care delivery in outlying communities of Alaska.

Policy makers in Alaska recognized these challenges when they adopted 3 AAC 26.110. It ensures that insurance companies have the incentive to recognize the burden of providing care in the state and reimburse for services at a sustainable level to ensure that patients are not left with expensive balances. This policy also protects access to providers by supporting a predictable and viable level of reimbursement to serve people across the state – allowing people to treat in their communities and avoiding expensive trips outside of the state to receive care. This approach allows insurance to play its appropriate role of spreading the cost of providing services to the people of the state across a broad base, minimizing individual costs while ensuring access to vital services.

The Federal No Surprise Act does not provide adequate protections for patients and access to care in market like Alaska that face unique challenges. The experience of providers early in the system have shown the burden of the mandated arbitration process and the ease with which insurers are able to manipulate prevailing rates to effectively force down unsustainable reimbursement on providers. Rather than providing an effective safeguard for patients and providers, the rules have allowed large insurers to continue to put pressure on small providers, particularly those who cannot afford the costs and delays associated with the arbitration process. The deterioration of this “safety net”, will

ultimately lead to more loss of accessible care.

Insurance companies exercise extraordinary market power relative to small providers. Unfettered, the companies have minimal incentives to negotiate sustainable rates that allow providers to continue to offer care across the state. The largest insurer in the market covers a majority of the covered lives in the state and, absent a well thought out regulatory framework, is able to force down rates on providers that may benefit the company's short-term profitability but leaves patients in the state holding the bag as care disappears across the state over the medium to long term.

It is important that Alaska maintain the historic safety net provided by 3 AAC 26.110. It has ensured that sustainable health care services are maintained in the state and can reach our outlying communities. This safety net is more important than ever given the significant headwinds facing health care providers in the country in the wake of the pandemic.

Sincerely,
U.S. Renal Care, Inc.

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March 6, 2023

Ms. Sarah Bailey
Alaska Department of Commerce, Community, and Economic Development
Division of Insurance
P.O. Box 110805
Juneau, AK
99811-0805

RE: Regulations cutting health care claim payments

Dear Ms. Bailey:

We are writing to oppose the proposed regulations which would abolish the 80th percentile as the floor for health care claim payments. We are small speech pathology and occupational therapy practices located in Anchorage, serving children with disabilities.

The statement that the "No Surprises Act" renders the 80th%ile regulation redundant is simply false. These two laws accomplish separate goals. "The No Surprises Act" ensures a consumer knows the cost for an out of network service and understands that they may have to pay the remainder of any balance that is not covered by their insurance company. This protects the consumer from the provider by making sure they understand the cost of the service, and their responsibility when paying. The 80th%ile regulation obligates insurance companies to pay a specific percentage of a bill, if no in-network providers are available. This is a common occurrence in Alaska, where consumers may have to travel 300 to 1500 miles before they can find an in-network provider or are required to wait for a provider to become available. It protects consumers from insurance companies by legally obligating them to pay for a set percentage of local services when the insurance company's preferred providers are not available, or when it requires significant travel. Alaska is unique and presents with a diverse set of opportunities and challenges. Healthcare costs can be explained simply as a supply, demand, and access difficulties. The state has experienced a shortage of healthcare workers in its various fields for over 20 years. To get attract health care providers to Alaska both small and large employers need to pay some of the highest wages in the nation. That is why healthcare is so expensive in the state, especially in rural areas and in the interior, and why many providers have such high operating costs.

As small business owners, it is difficult to become an in network provider because many commercial insurance companies are not accepting new providers or becoming an in network provider typically results in a required reduction in payment of 30 to 50 percent for various claims. Usually with little or no appreciable benefit to the provider depending on their region of operation. With the extremely high operational costs associated with Alaska, many local and regional outpatient centers cannot maintain a practice with that reduction of income. If the 80th%ile regulation is repealed, in partnership with the "No Surprises Act", it will shift the burden of healthcare costs away from insurance companies, removing their obligation to pay for out of network services in various situations. The burden of cost will shift directly and completely onto the shoulders of individual Alaskans, stripping them of their consumer protections. It will not reduce healthcare costs; it will just change who is paying for them. This leaves little recourse for either providers, who may not be able to afford the 30-50% loss in income by becoming network enrolled, or the consumer who will either pay out of pocket costs, or lose access to a

potentially medically necessary, or even lifesaving service. It creates a legal precedent where insurance companies exercise control over Alaskans, dictating the physicians, services, and locations consumers are allowed to access, based not on the quality of care, but by which provider is the least expensive.

The proposed cuts to health care claim payments would result in denying much needed care to Alaskans by no longer requiring health care insurers to pay out-of-network health care providers for covered services or supplies based on an amount that is equal to or greater than the 80th percentile of charges in a designated geographical area. Access to out of network health care providers will impact access to services provided by both occupational therapists and speech-language pathologists.

The lack of a minimum payment requirement will allow health plans to arbitrarily dictate a reimbursement rate with no regard for the cost required to provide the care. This will lead to a large disparity between the out-of-pocket costs for the patient and the allowable amount for their reimbursement from their health plan. These disparities will have implications when it comes to the rules set forth in the no surprises act which was released last year to protect patients.

Thank you for considering our opposition to the proposed regulations.

Nancy Lovering, Speech-Language Pathologist *Nancy C. Lovering, M.S., CCC-SLP*
Anna Spilker, Speech-Language Pathologist *Anna Spilker, CCC-SLP*
Cara Leekwold, Speech-Language Pathologist *Cara Leekwold, M.A., CCC-SLP*
Molly Thompson, Speech-Language Pathologist *Molly Thompson, CCC-SLP*
Kathie Morgan, Speech-Language Pathologist *Kathie Morgan, Med CCC-SLP*
Maureen Johnson, Occupational Therapist *Maureen Johnson, OTR*

4325 Laurel Street, Suites 100,103,104

Anchorage, AK 99508



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March 5, 2023

Re: 80th % Regulation

To: The State of Alaska Division of Insurance

Attn: Sarah Bailey

I strongly oppose the repeal of the 80th % regulation.

I work in the healthcare industry as a medical assistant. I feel that the 80th Percentile Rule already protects patients from balance billing and out-of-pocket costs for healthcare in Alaska. The 80th Percentile Rule encourages providers and insurers to work together in good faith for fair and transparent contracting to benefit patients.

The Federal No Surprises Act applies only to emergent care and does NOT replace the patient protections in the 80th Percentile Rule. Repealing the 80th Percentile Rule will only benefit insurance companies, all of whom are based in the lower-48 and enjoy substantial profits. Any claim that increasing insurance company profits will “trickle-down” to reduce the individual Alaskan’s healthcare costs is dubious at best.

Healthcare is a major employer of Alaskans and provides well-paying jobs with good benefits, which supports a healthy economy. Repealing the 80th Percentile Rule will affect Alaska’s ability to recruit and retain high quality healthcare providers, which are already in short supply and will greatly reduce patient’s access to care in Alaska. Without high quality primary care and specialists that are local and accessible, patients will have to travel to the lower 48 for care – this will especially impact our most vulnerable populations who may not have the means or ability to travel.

Amanda Hall, CMA

March 6, 2023

Director Lori Wing-Heier,

I am writing in support of the Alaska Division of Insurance proposal to remove the 80th percentile rule.

I have worked as an Employee Benefits professional for seven years at Alaskan insurance brokerage, RISQ Consulting. During my time as an Executive Account Manager, Employee Benefits Consultant, and Employee Benefits Analyst, I have worked with our local clients in their efforts to provide high quality and affordable insurance coverage for their employees.

I support the removal of the 80th percentile rule because this regulation drives costs up for small businesses. The 80th Percentile rule is only applicable to fully-insured employers, which are usually small employers. Large employers are able to create self-funded health plans, which are Federally regulated, and not subject to the State of Alaska's 80th Percentile rule. Most small employers do not have the cash flow or employee population to create a sustainable self-funded health plan, and therefore must participate in small group fully-insured metallic coverage market and be subject to the 80th Percentile for out of network payments.

It is well studied and documented that the implementation of the 80th Percentile rule has led to an increase of costs in Alaska. Employers, specifically small employers, bear the costs. With the implementation of the federal No Surprises Act, there are now patient protections for all health plans, making the 80th percentile unnecessary.

I support the removal of the 80th Percentile rule.

Sincerely,

Ashley Snodgrass

Employee Benefits Analyst
RISQ Consulting
asnodgrass@risqconsulting.com
(907) 561-7477

From: [Kristen Lee](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: 80th Percentile
Date: Monday, March 6, 2023 1:05:37 PM

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I oppose repealing the 80th percentile rule. Physicians in Alaska still practice independently of government and hospital control, and we have the capability to flex services to meet patient needs. If the 80th percentile rule is repealed then many of our private practices will be unable to remain independent because the insurance companies will have even more leeway to refuse fair payment for services. The 80th percentile rule protects Alaskan families and supports Alaskan medical practices.

Kristen Lee, MD
327 Crows Nest Ct
Soldotna, AK 99669
Owner/Physician at Upstream Family Medicine

02/23/2023

Sarah Bailey
P.O. Box 110805
Juneau, AK 99811-0805
Sarah.Bailey@alaska.gov

Attention: Sarah Bailey

RE: 80th percentile regulation – 3 AAC 26.110 (a)

Ms. Bailey,

It has come to our attention that Alaska is considering eliminating the consumer regulation, known as the 80th percentile regulation – 3 AAC 26.110 (a). As you may recall, this regulation was established because Alaskans were suffering from insurance companies' policies and practices. It is our belief that the regulation is working as intended to provide transparency and consumer protection. We believe Alaskans should not have to worry about a battle that may exist between physicians and insurance companies, rather the usual and customary rules are being consistently applied so their care does not get disrupted. This regulation is proven, reliable and stable for the consumer.

While it is true that the cost of care in Alaska is higher than many places, the cost to deliver that care is in parallel. The insurance companies contend that providers could manipulate the market to get higher reimbursement, but the fact is, there is no evidence to support this. The reality is Alaska has robust anti-trust and consumer protection laws to prevent this type of behavior. Further, Premier Blue Cross Blue Shield enjoys a monopoly across Alaska with little consumer protection.

We fear that elimination of the 80th percentile rule will also impact those covered by federal plans like Medicare, Medicaid, TRICARE and VA. If commercial payers are given an inroad to ratchet down payments, physicians may not be able to sustain their practice with the current payer mix. While this is not a direct reflection of the regulation, these are unintended consequences that should be explored before a decision is made.

We believe allowing insurance companies to reduce the basis for reimbursements for out-of-network care below the 80th percentile will not lower healthcare cost. While complicated, healthcare care costs are based on cost of providing the care, which includes high cost of recruitment and retention of physicians and their employees, high cost of living, and subsidizing government healthcare care programs. Prior to 2004 and the adoption of 3 AAC 26.110(a) Alaska experienced healthcare care cost increases. The 80th percentile regulation is not the driver of cost increases.

We fear if this regulation is changed, we will see the same behavior that led to its adoption – patients shouldering a larger percentage of healthcare care costs and patients not receiving the full value of the insurance product they believe they are purchasing. In many areas of the State insurance networks are simply inadequate to provide timely access to network healthcare care services. Forcing patients to shoulder higher costs to seek timely out-of-network care when networks are inadequate is unfair to the consumer.

Patient access to quality healthcare has vastly improved and expanded in Alaska allowing consumers to get needed specialty and sub-specialty care here at home rather than being forced to travel out of state. When patients are treated in their own communities, they are better served. Keeping care local should be a message embraced by all stakeholders. Over the last decade, providers have made enormous investments in healthcare infrastructure across the state, despite the cost and difficulty to recruit and retain high quality professionals.

Healthcare in Alaska is going in the right direction for Alaskan s. Eliminating the 80th percentile rule is not the disruption that will support those efforts. Please consider the consequences the elimination of this regulation will have on our delicate balance to continue to provide Alaskan s with high quality care throughout this great state.

Very Respectfully,



Eric Miknich, MD

Medical Director of Primary Care Associates

On Behalf of:

Jeffrey Copeland, MD
Mary Ann Foland, MD
Mari Hately, MD
Shawna Hickel, DO
Ealum Howe, PA-C
Bruce Kiessling, MD
Hale Loofbourrow, MD
Wezzie Munthali, FNP-C
Parin Seakit, DO
Eric Souja, PA-C
Leo Bustad, MD

Ashleigh Farris, PA-C
Christi Froiland, PA-C
Josh Hedburg, PA-C
Sarah Bigelow-Hood, PA-C
Kevin Isakson, MD
Leslie Langum, PA-C
Johan Lundebye, MD
Mary Perez, PA-C
Jane Simono, MD
Karrie Young, PA-C

Sarah Bailey
Division of Insurance
Alaska Department of Commerce &
Economic Development
PO Box 110805
Juneau, Alaska 99811-0805

Sent via email

RE: Proposed Changes to 3AAC26.110, aka the 80th Percentile Rule

Ms. Bailey,

I am writing to comment on the division's proposed changes to 3AAC26.110, specifically, the deletion of paragraphs (a)(1) and (a)(2), and the revision of paragraphs (4) and (5)(A). I, Jamie Casassa, Practice Manager on behalf of Hillside Family Medicine, LLC OPPOSE the proposed changes.

Our concern is that the proposed changes further unbalance the patient / provider / carrier relationship in the carrier's favor. Simply put, the proposed regulation changes grant more power to the carriers to force medical providers into their networks. Many of our members are small or single practice providers. Many patients prefer this simple, personal treatment setting. Large providers, such as corporate chains, have negotiating power in contract negotiations with carriers. For our smaller members, it's "take it or leave it" - join our network for a drastically reduced reimbursement or treat the patient for free.

We are aware that the 80th percentile rule is seen as a cost driver by some. Your supporting materials state that the federal No Surprises Act protects consumers from "some" kinds of medical bills from out-of-network providers. As patients ourselves we applaud that, but it doesn't apply to our members and patients in this market. Our average patient, with low back pain, doesn't receive "surprise" billings, but rather relatively low fees for regular treatment.

We understand that you regulate insurance and not providers, but without the 80th percentile rule there will be no laws in place to ensure healthcare providers are fairly reimbursed, especially our smaller or single practice members. Absent this rule, there will be fewer medical providers to choose from and more of those who are left will be forced in to cash practice. More patients are going to find it difficult to find care. The division's website lists the division's mission as: "to regulate the insurance industry to protect Alaskan consumers." How are Alaskan consumers protected under the scenario described above?

The 80th percentile rule is a safety mechanism protecting consumers and Alaska's physicians assuring that a transparent objective and reliable method of establishing "usual and customary" charges is provided.

Please DO NOT proceed with changes to 3AAC26.110 until you can provide additional language with assurances for small providers that better reflect conditions in this market.

Thank you,

Jamie Casassa
Practice Manager
Hillside Family Medicine, LLC

From: [Alan Gross](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: 80th Percentile Rule
Date: Monday, March 6, 2023 10:06:22 AM

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Dear Ms. Bailey,

I was informed by the Alaska State Medical Association that I could submit testimony to you by email regarding the upcoming review of the 80th percentile insurance regulation.

Can you please see that Ms. Wing-Heier and other concerned parties see this?

Thank you very much

Best,

Al

Dear Ms. Wing-Heier, the Division of Insurance, and the Alaska State Legislature,

The 80th percentile health insurance regulation is once again being reviewed for repeal and again I recommend you repeal this destructive regulation. Recent federal legislation restricting surprise medical billing has made the insurance commission's justification for the 80th percentile regulation's existence obsolete, unnecessary, and the 80th is now doing more harm than good. And once again, those opposed to repeal of the regulation are trying to convince you, the legislature and the Division of Insurance that the sky will fall down if it is repealed. It won't. But in fact, in so many ways, it already has.

Advocating for the repeal of the 80th percentile regulation was the very first issue that I became publicly outspoken about when it was last reviewed for repeal in 2017, because as a physician and understanding our state's economy, I've seen just how much damage this regulation has done to our state. Outmigration and jobs are clearly Alaska's biggest current issues. We've been hearing so much about Alaska's decade long decline in more metrics than most like to admit, and nearly all of us agree that something has to significantly change to reverse this process. People won't even come here to look, no matter how many degrees our University offers or how high our BSA is if there isn't a job. Job creation requires an economic environment that is favorable, or at least competitive with other markets and Alaska is not even close, primarily because of health care costs.

As you know, Alaska has the highest health care prices in the world. How did we get there?

The 80th percentile regulation sure helped. Providers in Alaska certainly didn't design our insurance payment system and shouldn't be faulted for it, and indeed many have done very well economically (including myself) merely for being busy and good physicians. That's capitalism and that's good, but the pricing economics have been too far out of balance, without real market competition, for too long. Our health care payment structure has to change if Alaska is to get well. And sadly, you may have recently noted that our State Senate's

proposed new defined benefit retirement plan, which we need so very badly to help with recruitment and retention of employees, is missing one critical item for success-healthcare. Why? Because of cost.

The 80th percentile rule has been, by far, the single biggest reason as to how health care prices got disproportionately high in Alaska. Enacted in 2004 with the intent to protect consumers from surprise bills, the 80th percentile regulation has forced insurance companies to keep raising the “usual and customary” payment bar higher and higher at the whim of non-participating providers, (which in 2004 included virtually every provider in the state). Now, however, most urban providers have become “preferred providers” of most Alaska health insurance companies meaning they have accepted negotiated payment agreements. However, those negotiated numbers are based upon the super inflated numbers which the 80th percentile rule enabled. And, there are still a number of outlying non participating providers who qualify for this regulation who continue to raise prices.

The Federal No Surprises Act of 2022 protects consumers from surprise bills in such a way that the 80th percentile regulation is no longer needed and is only doing harm. Repeal of the 80th percentile would be the first and easiest step toward stopping the upward trend of health care prices but for prices to start coming down significantly we need true market competition and I believe that should include a public option, administered by the state or less likely, the federal government.

I care very much about important issues confronting the state and its future, and hope that you, the Division of Insurance and the Legislature consider these words and finally repeal the 80th percentile regulation as a first step towards getting Alaska back on course. Thank you.

Sincerely,

Al Gross MD MPH
907-957-1429
al13gross@gmail.com

From: [Ellen Izer](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: 80th Percentile Rule
Date: Monday, March 6, 2023 2:51:57 PM

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Director Lori Wing-Heier,

The 80th Percentile regulation was a well-intentioned rule put in place in 2004. It was intended to protect consumers from balance billing. Over time it has done the opposite in allowing costs to increase beyond anywhere else in the U.S. and we, not surprisingly, are the only state with such a rule. We need to abolish the 80th percentile and allow equilibrium back into the market.

Providers are quick to assure us that no new providers will come to our fine state. But I ask you, how many patients have had to travel to the L48 when they are in pain and not feeling well because they can't afford the 20% they pay under the 80th Percentile? Are those providers truly worried about new providers or protecting what they have? Are they only here because of the 80th rule? If so, they are not who I want to see for my healthcare.

Transparency in Coverage and the Federal No Surprises Act have plenty of protection for all of us. Please let the 80th go away.

Respectfully,
Ellen Izer
Alaska resident since 1990
Sent from my iPad

From: [Jonathan McDonagh, MD](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: 80th percentile rule and access to care in Alaska
Date: Monday, March 6, 2023 4:24:54 PM

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Dear Ms. Bailey and other leaders in the Alaska Division of Insurance

I write in opposition to current efforts to repeal the '80th Percentile Rule' with respect to the responsibilities of health insurance companies in the State of Alaska.

Repealing the '80th percentile rule' would effectively give monopoly control of the health care economy in Alaska to two large Outside entities and would unnecessarily destabilize our already tenuous health care workforce. It's nearly impossible to find a primary care physician, let alone a lung specialist or a rheumatologist. Allowing insurance companies, who continue to enjoy record profits, determine reimbursement rates risks further collapse of our health care system.

Additionally:

- The 80th Percentile Rule protects patients from balance billing and out-of-pocket costs for healthcare in Alaska
- The 80th Percentile Rule encourages providers and insurers to work together in good faith for fair and transparent contracting to benefit patients
- The Federal No Surprises Act applies only to emergent care and does NOT replace the patient protections in the 80th Percentile Rule
- Repealing the 80th Percentile Rule will only benefit insurance companies, all of whom are based in the lower-48

and enjoy substantial profits

- Any claim that increasing insurance company profits will “trickle-down” to reduce the individual Alaskan’s healthcare costs is dubious at best
- Healthcare is a major employer of Alaskans and provides well-paying jobs with good benefits, which supports a healthy economy
- Repealing the 80th Percentile Rule will affect Alaska’s ability to recruit and retain high quality healthcare providers, which are already in short supply

Also note: NPR Article showing how “No Surprises Act” doesn’t adequately protect patients or replace Alaska’s Law:

<https://www.npr.org/sections/health-shots/2023/02/28/1159786893/a-surprise-billing-law-loophole-her-pregnancy-led-to-a-six-figure-hospital-bill>

The ADN op-ed makes it clear: The Washington-based division of Blue Cross Blue Shield clearly is pushing this effort. The idea that giving them more control will lower health care costs in Alaska is short-sighted and would simply lead to higher margins for their investors while taxing an already fragile system.

Sincerely

Jon McDonagh

Jonathan R. McDonagh, MD
Interventional Cardiologist
Alaska Heart and Vascular Institute
Anchorage, Alaska

From: [carolyn V V Brown](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: 80th Percentile Rule
Date: Monday, March 6, 2023 11:10:43 AM

You don't often get email from cvbrown1937@yahoo.com. [Learn why this is important](#)

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Sent from [Mail](#) for Windows

To: Division of Insurance. Director Lori Wing-Heirer

I wish to register my support to keep and maintain the 80th Percentile Rule that has been operational in Alaska since 2004.

I came to Alaska in 1965 and have practiced in the areas of obstetrics-gynecology as well as preventive medicine and public health with board certification in each of those specialties since that time. My health and medical career has been involved in the areas of medical practice for private practice, Public Health Service, 501(c)3 health entities, academic medicine, rural health care, hospital health care, volunteer health care, school health care and health education in many areas over the years.

The current move to consider removal of the 80th Percentile Rule, in my view, will place this burden of health care cost on patients. Of major significance is the burden on our aging populations, those in rural areas away from access to health care, and those most vulnerable for adverse health conditions. I believe this issue has not been adequately presented to the public. I believe that the general public is woefully uninformed about what this means. I believe private insurance companies will capitalize egregiously on this removal of the 80th Percentile Rule at the expense and detriment to Alaskans who no longer have ways to pay for their health care – either directly or by way of increased co-pays and/or increased premiums.

I ask that the Division of Insurance provide widespread and extensive education to health care providers and the general public before serious consideration is given to changing the 80th Percentile Rule. Transparency is critical here if we are to have a sustainable health platform in Alaska.

Thank you for this consideration.

From: [Katherine Kelly](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: 80th Percentile Rule
Date: Monday, March 6, 2023 9:04:46 AM

You don't often get email from kkelly@alaskaheart.com. [Learn why this is important](#)

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Dear Sarah Bailey,

I was notified that the Alaska Division of Insurance is evaluating the 80th percentile rule. This rule was put in to place to help protect patients from balance billing and out-of-pocket costs for healthcare in Alaska. It also motivates healthcare providers and insurers to work together for fair contracting that will benefit patients. I am concerned because repealing the 80th percentile rule only benefits insurance companies based outside of Alaska. It is challenging to get high quality healthcare providers to Alaska and repealing this rule would exacerbate this problem. Finally, the No Surprises Act only applies to emergent care and does not replace the patient protections in the 80th Percentile Rule.

I oppose repealing the 80th Percentile Rule.

Thank you for listening to my concerns.

Katie

Katherine Kelly, FNP
Executive Director
Alaska Cardiovascular Research Foundation
Phone: 907-550-2283
Fax: 907-771-6717
In Office on Tue and Wed. Available via email Mon, Thur, Fri



From: [Wendy Smith](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: 80th Percentile Rule
Date: Monday, March 6, 2023 12:30:12 PM

[You don't often get email from wendysmithpac@gmail.com. Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification>]

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Please vote to preserve the 80% rule! Physicians, PAs and NPs will leave healthcare in Alaskan if not protected

Wendy Smith, PA-C
Juneau, AK

Sent from my iPhone

From: [Micah Robert](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: 80th Percentile Rule
Date: Monday, March 6, 2023 7:30:21 AM

You don't often get email from mrobert@alaskaheart.com. [Learn why this is important](#)

CAUTION: This email originated from outside the State of Alaska mail system. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Mrs. Bailey,

Repealing the 80th Percentile Rule would be a mistake, it would harm all Alaskans by removing protections from balance billing and out-of-pocket costs for healthcare in Alaska, it will only benefit insurance companies (none of which are based in Alaska), and it will harm healthcare enterprises which employ over 43,000 Alaskans. Further, repealing the 80th Percentile Rule will negatively affect Alaska's ability to recruit and retain high quality healthcare providers, which is already difficult and will only become more difficult as demographic factors create more demand from a smaller workforce.

The Federal No Surprises Act only applies to emergent care and does NOT replace the patient protections in the 80th Percentile Rule. In short, repealing the 80th Percentile Rule is to say that the State of Alaska prefers to take money from Alaskans and give it as welfare to businesses in the lower-48.

Kind regards,

Micah Robert, APRN
Alaska Heart & Vascular Institute
Soldotna Clinic
Cell: (501) 548-7716
Email: mrobert@alaskaheart.com

March 6, 2023

Dear Ms. Sarah Bailey,

We are writing on behalf of the state's 80th percentile regulation and our opposition in removing the regulatory requirement that "usual and customary" charges be based on the 80th percentile of market pricing.

Alaska has limited services for healthcare options, and if the insurance rates are modified it is a hindrance to deliver good quality healthcare. Therefore, the 80th percentile should remain in place.

Repealing this regulation will cause the patients to have a higher cost for healthcare when many struggle to pay for this as it is. It would prevent patients from having procedures or seeking care for fear of receiving a large bill. This regulation was in place to prevent patients from having unreasonable costs passed on with balance billing.

Please do not allow this to be repealed and pass the cost to Alaskans.

Sincerely,

Alfred Lonser, MD

Willy Gama, MD

Alaska State Medical Association

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

March 6, 2023

Ms. Lori Wing-Heier, Director
Division of Insurance
Department of Commerce, Community
and Economic Development
550 West 7th Ave., Suite 1560
Anchorage, AK 99501

Via email: Sarah.bailey@alaska.gov

Dear Director Wing-Heier:

The Alaska State Medical Association (ASMA) opposes the proposed elimination of the 80th percentile regulation, 3 AAC 26.110(a), without having a replacement for this important consumer protection. It is important to note, as you have on several occasions, that the 80th Percentile Rule was adopted because Insurance Company practices were hurting Alaskans. The Division of Insurance at the time met its statutory charge and protected Alaskans with strong consumer protections. The removal of this regulation without a replacement protection is nothing short of endorsing insurance practices of the past. There will be no regulatory standard for determining usual, customary and reasonable charges. An insurance company could choose to use Medicare reimbursement rates or charges from Alabama as the UCR. There will simply be no protection for Alaskans who will be left paying even more for health care as they pay the difference between the insurance companies' "new" self-defined UCR and the charge from the provider.

While we do not have access to hard data it is well accepted that in-network participation has gone up since the 80th percentile was adopted with most providers in Alaska participating in-network. These agreements, *required by insurance companies to be confidential*, have resulted in significant decreases in provider charges. Insurance companies could, if truly interested in Alaskans' health, work with the Division to file these agreements with you so that you have accurate data. Given one insurance company has an almost absolute monopoly in this market it would be easy to ensure the Division has accurate information.

Make no mistake, ASMA has never taken an all or nothing approach to the 80th percentile. In June of 2018 you requested constructive comments and suggestions on possible reforms to the 80th percentile. We submitted the following:

On behalf of the Alaska State Medical Association (ASMA) and its over 500 physician members, I am submitting this letter in response to your solicitation for proposals of amendments or alternatives to state regulation 3AAC 26.110.

ASMA has consistently supported and engaged in efforts to work with the State and interested stake holders on improving 3AAC 26.110 to address concerns, real or perceived, related to its current application. To be clear, ASMA supports efforts to identify and define issues around the

regulation and work on those specific issues to improve the protections afforded to Alaskans within the current regulation.

Your Notice of Public Scoping for Possible Changes was specific in seeking alternatives that dually address potential impacts on the cost of care and protecting consumers from surprise balance bills from out of network providers. This past May ASMA adopted a framework to propose changes to the current regulation. While ASMA adopted this framework, we continue to be willing to engage constructively on other proposals that protect patients and ensure fair reimbursements. It is important to note that while some insurance companies admittedly are only concerned with their insured, ASMA's concern is with access to quality care of all patients regardless of whether they are Medicare, Medicaid, privately insured or self-insured. The impacts of one group can and often do impact access to others. Impacts of cost shifting must be included in any discussion around reimbursements, especially if we want to preserve access to patients on plans such as Medicaid and Medicare that pay well below market rates. ASMA proposes two changes:

- 1) The State should adopt regulations that ensure it has accurate and timely data. Basing significant policy decisions on old and inaccurate data increases the risks that those decisions will have unintentional consequences that impact patient access. As an example, we know generally that the vast majority of specialists in Alaska are now in-network and yet we continue to see policy discussions based on stale data that does not incorporate this importation. Accurate and timely data is critical to building the foundation of good policy. ASMA supports a State run all-claims-database or contracting with an independent entity such as Fair Health to access such data.
- 2) The concern most often expressed over 3AAC 26.110 is that a physician or group with a market share of 20% could theoretically "set the rate" of reimbursement. While we have seen no evidence to support this has occurred, we recognize the math would allow it and clearly the 80th percentile was meant to exclude the top 20th percentile outliers while still representing a market rate. We believe the protections of the regulation can be preserved while addressing this issue by creating a tiered system that expands the geographic area to ensure competition removes the theoretic ability for a single office to "set the rate." This system is similar to one employed by insurance companies working in Alaska. In concept:
 - a. CPT codes with five or more claims within each geographical area of the state would be reimbursed at the 80th percentile of billed charges in the region or the providers' billed charges, whichever is lower.
 - b. If a CPT code has fewer than five claims within the geographical area of the state it would be reimbursed at the 80th percentile of billed charges in the state or the providers' billed charges, whichever is lower.
 - c. If a CPT code has fewer than five claims within the State the CPT code would be reimbursed at the 80th percentile of billed charges within the state or the providers billed charges, whichever is lower. However, the recognition of such a CPT code would trigger an investigation on the CPT code to analyze whether the reimbursement level is artificial or necessary for ensuring access to the service. We recognize this third tier may be cumbersome however we believe these codes would be few and we would welcome exploring other ideas.

We appreciate your efforts to protect patients' access to care, your willingness to engage and listen to our input, and look forward to continuing to be a constructive participant in future discussions. (emphasis added)

ASMA made good faith suggestions for improvements and good faith offers to continue discussions, as did many of the 65 comments received from your effort in 2017 to review the 80th percentile. These offers to continue discussions were not acted upon. ASMA reaffirms this commitment to work on new ideas and be a constructive participant in discussions. Below we will address specific issues and concerns:

All Payor Claims Database

As noted in the 2018 comment above ASMA was an early supporter of developing an All Payor Claims Database. It is incredible that health care policy continues today to be debated using source data, developed by a single insurance company, from as far back as 2014. As noted above, it is generally accepted that in-network participation has increased since the 80th percentile rule was adopted. It is also a fact that Alaska has built and developed a significantly more robust health care system since the 80th percentile was adopted. However, none of us have good relevant data to use as the basis of informed decisions on health policy and we won't until the All Payor Claims Database is running and populated. ASMA believes strongly that the 80th percentile should not be eliminated until the state has relevant recent data to inform their decisions. Our health care system is too fragile to be making such decisions without reliable data.

No Surprise Billing Act

First and foremost, the No Surprise Billing act does not impact the majority of care and only applies to emergent care. The act has been mired in controversy since passage and is being heavily litigated throughout the country. Most recently a federal District Court in Texas found rulemaking under the act unlawful as being too favorable to the insurance companies. Additionally, the act recognized state regulatory authority and allowed states to preempt the no surprise billing act if they had consumer protections, such as the 80th percentile rule, in place. It is simply too early to determine whether the No Surprise Billing Act is even constitutional. Again, even if in the future the No Surprise Billing Act is working and protecting the consumer it only impacts emergent care. It does nothing to protect Alaskans seeking any other care.

Network Adequacy

The 80th percentile rule should not be eliminated without regulatory protections being adopted simultaneously that ensure network adequacy. One of the easiest ways for an insurance company to make more money, and most harmful ways for Alaskan patients is the use of narrow networks. Our understanding is insurance plans in the private market are already using narrow networks limiting networks to only Alaska or Washington. Any Alaskan traveling outside of these two states cannot find in-network care. The 80th percentile is the only protection these Alaskans have as you have determined previously that the 80th percentile protects Alaskans out of state. Remove it and Alaskans needing care outside of these two states will pay more out of pocket. What is to prevent the sole insurance company in this market from only allowing one major practice to be in-network? Or only a small percentage of primary care? Of course, a provider could lower charges by increasing their private payor mix and decreasing their Medicare and Medicaid patients. How does that help Alaskans? What does that do to other providers' payor mixes? With a narrow network what is the impact to access for Alaskans? Where is the consumer protection that ensures network adequacy and protects access to care? Eliminating the 80th percentile without having the consumer protections will negatively impact Alaskans seeking care.

Usual Customary and Reasonable

Again, the 80th percentile provides a transparent mechanism for defining the UCR. What are the protections for patients without this regulation? The proponents of elimination often pontificate that if a single practice, assumedly a specialty, has greater than 20% of the market then that practice can set the charge at any price they so desire. All evidence is to the contrary as most specialists are now in-network but even if you accept this argument, the ASMA suggestions from 2017 or something similar could be used to address those unique situations. Eliminating the protections afforded patients by the regulation in all situations because a few providers may have greater than a 20% market share seems illogical. And to be clear there is no evidence to back this argument by proponents of insurance companies, only dubious speculation. Of course, an All Payors Claim Database would tell us where the pressures are and aren't on health care costs and we could develop solutions for any anomalies or outliers in the data.

Conclusion

We implore you to maintain the strong consumer protections afforded to Alaskans by the 80th percentile rule and not push the balance away from patients and to the single insurance company based out-of-state. Work with us in a constructive manner to get reliable recent data and address issues that are identified, if any.

Lastly, there is no evidence and frankly it sounds like little confidence from the state that elimination of the 80th percentile will result in any significant savings. As Dr. Ann Zink said in 2017 when commenting on elimination of the 80th percentile, "This is cost shifting NOT a cost saving measure." ASMA requests you don't allow insurance companies to cost shift to Alaskans and do maintain protections for Alaskan consumers.

Sincerely,

Pam Ventgen

Pam Ventgen, Executive Director
Alaska State Medical Association

Please also incorporate all comments from 2017 found at [80th-percentile-rule-comments.pdf \(alaska.gov\)](https://alaska.gov/80th-percentile-rule-comments.pdf) as a part of our comment.

Golden Heart Emergency Physicians

3875 Geist Road, Ste. E 381

Fairbanks, Alaska 99709

(907) 458-6943

Arthur Strauss, MD	Director
Michael Burton, MD	Chief Operating Officer
William McIntyre, MD	Medical Director
Terry Conklin, MD	President
Isaac Siegfried, MD	Director

Maria Mandich, MD	Director
Mark Simon, MD	Director
Stanley Robinson, MD	Director
Brian Tansky, MD	Director

March 4, 2023

Dear Ms. Bailey,

Golden Heart Emergency Physicians is a partnership of nine Board Certified Emergency Physicians that provide care exclusively in the Fairbanks Memorial Hospital Emergency Department. We also employ two full-time physicians and eight part-time physicians as well as six physician assistants. While most of our patients come from the surrounding Fairbanks area, we see a significant number of patients brought in from northern rural areas as we are the only hospital in central Alaska.

We understand that most people do not plan to use the Emergency Department and when they need to do so they are then subject to any number of unanticipated charges for their visit. As mandated by EMTALA, we will always evaluate and treat patients appropriately no matter their financial status. We do our best to work with our patients on any outstanding balances. Out of over 34,000 patients whom we saw in 2022, we waived most if not all, of more than 5,200 accounts. This largesse is made possible by the 80th percentile rule.

The 80th percentile rule has long served to protect patients, ensuring that the larger portion of the payment due is made by the insurance company and not billed to the patient. While there is no perfect solution, this law has functioned as it was intended and saved countless Alaskans from a tremendous financial burden, while improving health care in Alaska. The 80th percentile remains the norm in the insurance industry in other states where it is applied, such as New York and Connecticut.

Our group opposes changing the regulatory requirement that usual and customary charges be based on the 80th percentile of market pricing for the following reasons:

- The 80th percentile is the industry practice within the United States.
- Most insurers who are not required to follow this regulation, ERISA and self-insured, including the State of Alaska, choose to utilize the 80th percentile for purposes of claims payment basis. They do this as it is the right thing to do, and it protects their insured.
- Allowing individual insurance carriers to establish different standards for claims payment will make it virtually impossible for a consumer to know what they are purchasing.

We believe that the regulation is working as intended by providing transparency and greater consumer protections for Alaskans. In the end this isn't about physicians or insurance companies. It's about patients. And patients should be able to rely on their insurance to pay

market rates. If a consumer purchases an insurance plan with a 80% reimbursement, they should have protections that that is what they will receive.

The regulation was put into place because consumers were suffering from insurance companies' policies and practices to reduce reimbursements. We know this is the intent of the insurance companies and we know this will have significant negative impacts on patients. Alaska has unique issues that drive high cost. One major challenge is the recruitment and retention of quality clinicians as it's difficult and costly in Alaska. Most of the complaints with the 80th percentile regulation focus on specialties, with the accusation that in some markets specialists control more than 20% of the market and thus can set whatever rate they wish. While we recognize that if a single market participant has more than 20% of the market they could set rates, there has been no data demonstrating this is actually the case. Additionally, Alaska has strong anti-trust and consumer protection laws that can protect Alaskans without removing the 80th percentile protections afforded patients. This is about insurance companies wanting to increase their bargaining leverage and force physicians into their networks to increase their profits. Premiera enjoys a monopoly on the market. If anything, this monopoly should drive greater regulation to ensure consumers are protected.

Furthermore, we do not believe that changing the rule will reduce health care costs in Alaska. Alaska healthcare, like the lower 48, is built on the premise of cost shifting. Medicare, Medicaid, TRICARE and VA pay well below market rates with physicians increasing charges on private payors to subsidize government care. Insurance companies are not required to be concerned about these patients – only their own insured. However, physicians do care and work to find ways to provide government healthcare recipients access to appropriate care. Reducing insurance reimbursements will reduce the number of physicians that are able to accept Medicare, Medicaid, TRICARE and VA patients. Allowing Insurance companies to reduce the basis for reimbursements for out-of-network care below the 80th percentile will not lower healthcare cost, it will simply shift more of it onto patients. While complicated, healthcare care costs are based on cost of providing the care, which includes high cost of recruitment and retention of physicians and their employees, high cost of living, and subsidizing government healthcare care programs. Prior to 2004 and the adoption of 3 AAC 26.110(a) Alaska experienced healthcare care cost increases. The 80th percentile regulation is not the driver of cost increases. If this regulation is changed, we will see the same behavior that led to its adoption – patients shouldering a larger percentage of healthcare care costs and patients not receiving the full value of the insurance product they believe they are purchasing. In many areas of the State insurance networks are simply inadequate to provide timely access to network healthcare care services. Forcing patients to shoulder higher costs to seek timely out-of-network care when networks are inadequate is unfair to the consumer.

Thanks to the 80th percentile rule, patient access to quality healthcare has vastly improved and expanded in Alaska allowing consumers to get needed specialty and sub-specialty care here at home rather than being forced to travel out of state. TRICARE, AK VA, Alaska Native Tribal Health Consortium, Medicare and Medicaid beneficiaries all have reaped tremendous benefits from the 80th percentile regulation. Prior to the positive impacts of this regulation, government entities (as aforementioned) found it difficult to obtain timely access to specialty care often requiring their beneficiaries to travel outside the state of Alaska resulting in a significant cost associated with travel, per diem, lodging, etc, to the government entity administering the benefit and patients and their family members who accompanied them. 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. Today, due to the positive impact of the 80th percentile regulation, those deficiencies have for the most part been fully resolved, eliminating a significant cost to the government, and enhancing the quality of life for the beneficiary and arguably providing better quality of care. When patients are treated in their own communities, they are better served! Keep care local should be a message embraced by all stakeholders. Over the last decade, clinicians have made enormous investments in healthcare infrastructure across the state. If this rule were to be eliminated it would greatly impact the ability of clinicians to continue to care for these patients because government reimbursement rates are so inadequate. All considered, we are extremely fortunate to have such a robust network of primary care and specialty physicians in Alaska. It was not always so. There is little that one must travel out of state for today, and that improves the quality of life for all Alaskans.

Thank you for considering our position regarding the 80th percentile rule. We believe that the rule is working as intended and has improved access to health care in the state while lowering out of pocket expenses to patients. We oppose any change to the regulation.

Sincerely,

A handwritten signature in dark ink, appearing to read "Michael Burton". The signature is fluid and cursive, with a large loop at the end.

Michael Burton, MD
Chief Operating Officer
Golden Heart Emergency Physicians

Alaska Locations:
Fairbanks
Homer
Kenai
Soldotna

Washington Location:
Seattle

Mail: PO Box 72376
Fairbanks, AK 99707-2376

815 2nd Avenue, Suite 122
Fairbanks, Alaska



info@ndsystems.org
www.ndsystems.org

Appointments: (907) 374-0852
Secure Fax: (907) 374-0854

March 4, 2023

To: STATE OF ALASKA
Department of Commerce, Community, and Economic Development
Division of Insurance
Insurance Alaska Gov.

RE: Public Comment regarding the proposal to rescind the 80th Percentile

Statement: As a Healthcare Provider and Business Owner of a Healthcare Practice employing 14 individuals in Fairbanks and Kenai, Alaska, I object to Premera's request that the 80th Percentile requirement be rescinded. The rates for services at ND Systems have remained constant with less than a 5% increase since 2012.

Reviewing Premera's documentation provided to the Chambers of Commerce and fed to the Division of Insurance, it is clear that the premise is to reduce Premera's cost and reduce access to services for those using the Premera Insurance products. The studies cited have been misrepresented. The argument that the newest legislation through the "No Surprise Act" makes the 80th Percentile rule obsolete is inaccurate.

A full 25% of overhead for my practice is spent wrangling the insurance industry to attempt to secure payment for services provided. We continue to write off as much as 40% of our billings. Should the Division of Insurance decide to support Premera's request, ND Systems will consider the option to become a cash-based practice only and reduce outpatient access further for children, teens, adults, and elders struggling with mental health issues in the Interior and on the Peninsula.

I am far more supportive of a single payer system to support delivery of healthcare services. I respectfully request that the Division of Insurance retain the 80th Percentile Rule for the State of Alaska.



Teresa Lyons, APRN, PMHNP
CEO ND Systems Inc.
Pronouns she/her/hers

*You are Braver than you Believe
Stronger than you Know
A.A. Milen*

CC: Senator Scott Kawasaki, Rep Maxine Dibert, Senator Jesse Bjorkman, Rep. Justine Ruffridge, Senator Cathy Giesle, Rep. Mike Prax,, Rep. Ashley Carrick, Sen. David Wilson, Sen. Elvey Gray-Jackson, Rep. Will Stapp



March 6, 2023

Ms. Sarah Bailey
Division of Insurance, State of Alaska
P.O. Box 110805
Juneau, AK 99811

Delivered via email at sarah.bailey@alaska.gov

Re: Notice of repeal for 80th Percentile Rule

Dear Ms. Bailey,

The Alaska Chamber (the Chamber) writes in support of the repeal of the 80th Percentile Rule (3AAC 26.110).

The Alaska Chamber was founded in 1953 and is Alaska's largest statewide business advocacy organization. Our mission is to promote a healthy business environment in Alaska. Our members are from every industry and business size across the state. The Chamber has more than 700 members, representing 58,000 Alaskan workers and \$4.6b in annual wages.

Each year, the Chamber membership researches, debates, and ultimately votes on what our policy positions and priorities will be moving forward. Repeal or reform of the 80th percentile rule has been a policy position of the Chamber's for more than six years. The reason the Chamber adopted this position is directly tied to the soaring costs of healthcare in Alaska. The economic instability caused by out-of-control healthcare costs has negatively impacted not only Chamber membership, but nearly all businesses and organizations that offer or would like to offer health insurance.

The Chamber recognizes that the high cost of care in Alaska is a multi-faceted issue, and there is no one specific cause that can be attributed to the crisis. However, research shows that the 80th percentile rule is unequivocally one of the contributing factors to the high costs of care. The 80th percentile rule was originally put in place for good reason; to protect consumers from surprise billing. Unfortunately, the rule, which only exists in Alaska, has resulted in unintended consequences that have been damaging to businesses and consumers.

According to a 2018 study by Institute of Social and Economic Research, commissioned by the Division of Insurance, the 80th percentile rule accounted for anywhere between 8-25% of the annual increase in healthcare spending between the years from 2005-2014. This has had a direct impact on the business community and has prevented businesses from growing and being competitive. Our small and medium-sized businesses cannot afford to keep up with soaring healthcare costs, among the many other high costs associated with doing business in Alaska. While many of the costs associated with doing business in Alaska are out of the State's control, the repeal of the 80th Percentile Rule is a cost-controlling piece that is within the State's control. At a time when workforce shortages are impacting virtually every industry in the state, it is prudent to take steps that will bring costs under control for our businesses and allow them to compete for workers.



471 West 36th Avenue, Suite 200
Anchorage, AK 99503

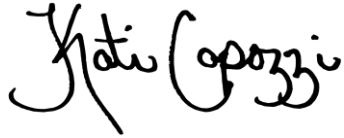


Office (907) 278-2722
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www.alaskachamber.com
info@alaskachamber.com

In closing, the Chamber urges repeal of the 80th percentile rule and thanks the Division of Insurance for allowing ample opportunity for Alaskans to weigh in on this important issue.

A handwritten signature in black ink, reading "Kati Capozzi". The signature is written in a cursive, flowing style. The first name "Kati" is written with a large, stylized 'K' and 'a'. The last name "Capozzi" is written with a large, stylized 'C' and 'a', followed by 'p', 'o', 'z', 'z', and 'i'.

Kati Capozzi
President & CEO | Alaska Chamber

March 6, 2023

Ms. Sarah Bailey
Alaska Department of Commerce, Community, and Economic Development
Division of Insurance
P.O. Box 110805
Juneau, AK
99811-0805

RE: Regulations cutting health care claim payments

Dear Ms. Bailey:

This is a very important topic for Alaska Businesses. Please consider!

We are writing to oppose the proposed regulations which would abolish the 80th percentile as the floor for health care claim payments. We are small speech pathology and occupational therapy practices located in Anchorage, serving children with disabilities.

The statement that the "No Surprises Act" renders the 80th%ile regulation redundant is simply false. These two laws accomplish separate goals. "The No Surprises Act" ensures a consumer knows the cost for an out of network service and understands that they may have to pay the remainder of any balance that is not covered by their insurance company. This protects the consumer from the provider by making sure they understand the cost of the service, and their responsibility when paying. The 80th%ile regulation obligates insurance companies to pay a specific percentage of a bill, if no in-network providers are available. This is a common occurrence in Alaska, where consumers may have to travel 300 to 1500 miles before they can find an in-network provider or are required to wait for a provider to become available. It protects consumers from insurance companies by legally obligating them to pay for a set percentage of local services when the insurance company's preferred providers are not available, or when it requires significant travel. Alaska is unique and presents with a diverse set of opportunities and challenges. Healthcare costs can be explained simply as a supply, demand, and access difficulties. The state has experienced a shortage of healthcare workers in its various fields for over 20 years. To get attract health care providers to Alaska both small and large employers need to pay some of the highest wages in the nation. That is why healthcare is so expensive in the state, especially in rural areas and in the interior, and why many providers have such high operating costs.

As small business owners, it is difficult to become an in network provider because many commercial insurance companies are not accepting new providers or becoming an in network provider typically results in a required reduction in payment of 30 to 50 percent for various claims. Usually with little or no appreciable benefit to the provider depending on their region of operation. With the extremely high operational costs associated with Alaska, many local and regional outpatient centers cannot maintain a practice with that reduction of income. If the 80th%ile regulation is repealed, in partnership with the "No Surprises Act", it will shift the burden of healthcare costs away from insurance companies, removing their obligation to pay for out of network services in various situations. The burden of cost will shift directly and completely onto the shoulders of individual Alaskans, stripping them of their consumer protections. It will not reduce healthcare costs; it will just change who is paying for them. This leaves little recourse for either providers, who may not be able to afford the 30-50% loss in income by becoming network enrolled, or the consumer who will either pay out of pocket costs, or lose access to a

potentially medically necessary, or even lifesaving service. It creates a legal precedent where insurance companies exercise control over Alaskans, dictating the physicians, services, and locations consumers are allowed to access, based not on the quality of care, but by which provider is the least expensive.

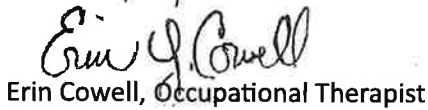
The proposed cuts to health care claim payments would result in denying much needed care to Alaskans by no longer requiring health care insurers to pay out-of-network health care providers for covered services or supplies based on an amount that is equal to or greater than the 80th percentile of charges in a designated geographical area. Access to out of network health care providers will impact access to services provided by both occupational therapists and speech-language pathologists.

The lack of a minimum payment requirement will allow health plans to arbitrarily dictate a reimbursement rate with no regard for the cost required to provide the care. This will lead to a large disparity between the out-of-pocket costs for the patient and the allowable amount for their reimbursement from their health plan. These disparities will have implications when it comes to the rules set forth in the no surprises act which was released last year to protect patients.

Thank you for considering our opposition to the proposed regulations.



Tracey Keaton, Speech-Language Pathologist



Erin Cowell, Occupational Therapist

All For Kids

6927 Old Seward Hwy Ste 100

Anchorage Ak 99518

907-345-0050



VIA EMAIL: sarah.bailey@alaska.gov

March 6, 2023

Sarah Bailey
PO Box 110805
Juneau, Alaska, 99811-0805

RE: Notice of Proposed Rulemaking on 3AAC 26.110, repealing the 80th Percentile Rule

Dear Director Wing Heier and Ms. Bailey,

Aetna strongly supports repealing the 80th Percentile Rule (the Rule) and the proposed changes to 3AAC 26.110. The need to protect consumers from unexpected out of network costs has not waned since the adoption of the Rule in 2004, however public policy solutions to surprise billing have evolved and all Alaskans will now benefit from the Rule's repeal. By moving forward with the repeal, Alaska will see a rare win-win-win in healthcare:

- Consumers will remain protected from surprise bills under the federal No Surprises Act
- Upward pressure on healthcare costs will be mitigated by severing the link between out of network reimbursement and lopsided billed charges
- Consumer cost sharing will decrease while provider reimbursement remains strong and tied to market-based forces.

The Rule protects consumers from out of network surprise bills by essentially creating a payment floor that is high enough that providers have no need to bill patients any remaining balance. This floor, the 80th percentile of billed charges for the given geographic area, has successfully kept balance billing at bay throughout the state. However, the floor has had dire consequences on healthcare costs and network negotiations. The Rule requires insurers to pay full billed charges approximately 80% of the time; meanwhile, providers unilaterally control billed charges. The sharp increase in billed charges is not a surprise to anyone and the Rule's impacts on Alaskan healthcare costs are well documented. It is clear that while the original intent of the rule has been accomplished (surprise billing protections), the detrimental side effects are long past due for a change of course. Fortunately, that course already exists.

In late 2020, Congress passed the No Surprises Act (the Act), which outlaws surprise billing in nearly every instance not already addressed by an existing state protection. Furthermore, the Act strikes a fair balance by ensuring out of network providers are adequately reimbursed by insurers and self-funded payers. Payers have to directly reimburse out of network providers at least the median contracted rate in the geographic area for the given healthcare service. This guarantees that all out of network providers in emergency and facility-based settings have no financial penalty for being out of network. Furthermore, if a provider feels that the initial payment does not adequately capture the complexity or circumstances of the care provided, an independent dispute resolution process may be triggered, and a neutral arbiter may award further reimbursement to the provider when warranted.

Aetna's experience with the No Surprises Act shows that the public policy is working. First and foremost, consumers are not being surprise billed. Additionally, providers are being directly reimbursed



by payers in a timely fashion (less than thirty days). Also, the independent dispute resolution process is being utilized at rates that far exceeded expectations, showing providers are fully taking advantage of opportunities to collect additional reimbursement. Arbitration decisions have been largely split between providers and payers, showing the general intent of the policy is succeeding. As such, the policy limitations and impacts of the 80th Percentile Rule are clear, just as the benefits of moving consumer protections to the No Surprises Act are self-evident. The Department can move forward with repealing the Rule confidently and without worry about significant consumer consequences. The alternative, leaving the Rule in place, asks individuals and employers to continue bearing the brunt of a policy protection that is no longer necessary.

Every Alaskan, even those not covered by a health plan subject to the Rule, feels its negative impacts in a number of ways every time they need healthcare. Alaskans are 500% more likely to pay for out of network care. Our data shows that nearly twenty five percent of all provider spending in the state is out of network, compared to roughly five percent nationally. In short, the Rule strongly incentivizes emergency and facility-based providers to remain out of network where reimbursement under the Rule remains tied to billed charges that they completely control. The five-fold impact on out of network spending is built back into premiums for fully insured and self-funded employer coverage alike given it limits payers' ability to control costs through network arrangements.

Second, in addition to the overall volume of out of network costs, the Rule significantly impacts in network contracts. Our data suggests that median contracted rates in Alaska are 190% higher than national averages for similar services. The Rule guarantees such significant out of network reimbursement, that it has completely distorted payers' ability to sign contracts reflecting market-based rates. These high in network costs are the backbone of individual and employer premiums, regardless of whether the plan is subject to the Rule.

Finally, while all Alaskans feel the impact of the Rule, individual consumers needing care feel the most acute negative consequences. Cost sharing reflects payer reimbursement obligations. The reimbursement floor required under the Rule means the artificially high billed charges and subsequent payments have a significant out of pocket impact. For example, a common plan design may require an individual to cover 20% of the costs of an emergency room visit. In Juneau, the 80th percentile of charges for an emergency room visit is approximately \$2,500, meaning the individual would owe \$500 in cost sharing. If cost sharing were tied to the median contracted rate in Juneau (approximately \$450), cost sharing would go down to \$90. The stark difference in cost sharing explicitly shows how the Rule, which was designed to protect consumers, is actually causing significant financial harm even when no surprise bill is sent.

The negative impacts of the Rule are clear, as shown above. However, many myths persist about what will happen if the Rule is repealed. Three common concerns raised by the provider community are as follows: the Rule should not be repealed until more data about claims is in hand; payers will stop contracting with providers and the median contracted rate will therefore plummet, and providers will leave Alaska altogether. Each of these concerns is understandable from a provider perspective, but all are false and ignore key public policy considerations.

First, the data showing the Rule's impact on costs and contracting is irrefutable after nearly twenty years of experience. Waiting on "more data" is not justified at this point, and even a robust all payer claims database (APCD) will not fundamentally change the single biggest problem with the rule: billed-charged based reimbursement. Aetna works with several state APCDs and is a strong proponent of price



transparency. Based on our experience, it takes at least three to four years to establish a fully functioning APCD with credible and usable data. However, and more importantly, having a robust APCD will do nothing to change the fact that billed charges are unilaterally controlled by providers, even if the data shows variance in how much any one provider is paid for any given service.

Second, payers will not suddenly drop all providers from networks if the Rule is repealed. State and federal network adequacy standards ensure that payers are still required to keep providers contracted, in addition to seeking contracts for specialists that have long remained out of network because of the Rule. Even if payers could somehow shrink networks (which again, network adequacy prevents), the median contracted rate payment requirements under the No Surprises Act are designed to protect providers. The Act benchmarks median contracted rates to 2019, and then inflates rates on an annual basis from there forward. As such, the Act's benchmark reimbursement is tied to a year in which Alaska was subject to the Rule, and as mentioned, contracts are approximately 190% higher than national averages. Therefore, Alaska payments under the Act will continue to far outpace national averages and payers cannot unilaterally change that based on terminating contracts.

Lastly, workforce concerns are warranted, but cannot be solely tied to the Rule. Provider shortages are, unfortunately, plaguing every corner of the country including the most densely populated cities and the most sparsely populated rural areas. Arguing that 80th Percentile Rule payments are the only thing keeping providers in Alaska ignores two facts. First, as mentioned previously, Alaska's in network rates still far exceed national averages and there are no more lucrative reimbursement opportunities in the lower forty-eight. Second, several provider-types practice all over the state without the ability to leverage the Rule into higher out of network reimbursement. If the 80th Percentile Rule was the only thing keeping providers in Alaska today, then there should be no primary care, pediatric, or any patient-facing specialist in the state given that such practices cannot take advantage of the Rule in the same manner as emergency and facility-based providers. We recognize that workforce constraints are real, and Aetna is committed to working with policy makers on finding long-term solutions. However, such constraints should not be used as a reason to keep the Rule in place.

Aetna strongly supports the repeal of the 80th Percentile Rule and commends the Department's efforts to move Alaska's consumer protections forward. Billed charges are arbitrary at best, and Alaskans should not continue bearing the brunt of the Rule's impact. Repealing the Rule allows consumers to be protected under the No Surprises Act, mitigates upward pressure on costs, and allows market-based forces to determine reimbursement. Thank you for considering our comments and we would be happy to answer any questions you may have.

Sincerely,

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

Marc Reece

Director, Public Policy, CVS Health
reecem@cvshealth.com

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

Catherine Gaffigan

Market President, AETNA
gaffiganca@aetna.com

March 4, 2023

Sarah Bailey CIE, MCM
Life and Health Supervisor
Alaska Division of Insurance
PO Box 110805
Juneau, AK 99811-0805
P: 907-465-4608
F: 907-465-3422
sarah.bailey@alaska.gov
VIA ELECTRONIC TRANSMISSION

**COMMENTS, ANALYSIS AND RECOMMENDATIONS FROM EMERGENCY 911 AIR AND GROUND
AMBULANCE OPERATORS SERVING THE STATE OF ALASKA ADDRESSING PROPOSED RULE
CHANGE TO TITLE 3 OF THE ADMINISTRATIVE CODE, SECTION 3 AAC 26.110, WITH INTENT TO
ABOLISH THE 80TH PERCENTILE AS THE FLOOR FOR HEALTH CARE CLAIM PAYMENTS**

SECTION-BY-SECTION COMMENTS AND RECOMMENDATIONS

3 AAC 26.110 (a)(1)

(a) A person that provides coverage in this state for health care services or supplies on an expense incurred basis for which benefits are based on an amount that is less than the actual amount billed for the health care services or supplies shall

(1) maintain or use a statistically credible profile of covered health care services and supplies on which to base payment; the profile must

(A) be updated at least every six months;

(B) contain billed charges for services performed not more than one year before the date of the most recent profile; and

(C) contain billed charges for each geographical area in which a claimant might receive treatment or, if statistically credible data for a particular service or supply item in a certain geographical area is unavailable, contain a sufficient number of billed charges for that service or supply item from another geographical area so that a reliable basis is established;

Proposed Action: Deletion

This section provides protections to both patients and providers from the systemic practice by commercial insurers of denying coverage, offering unrealistic in-network rates, reimbursing below costs for services, and placing the patient in the middle. This section does not increase the cost of health care, it ensures that commercial insurers adequately reimburse providers for the services rendered and that they meet their contractual obligation to the insured.

What's more, deletion of this section will not lower health care costs in Alaska, it will simply shift the financial burden onto providers that have been devastated by COVID-19 and are already struggling to maintain operations in the state while commercial insurers continue to experience record profits. Ultimately, this will result in less access to emergency air and ground transport services in the State of Alaska, a state where approximately 350,000 residents have no ground access to a hospital in an emergency.

We recommend keeping 3 AAC 26.110 (a)(1) unchanged.

3 AAC 26.110 (a)(2)

(a) A person that provides coverage in this state for health care services or supplies on an expense incurred basis for which benefits are based on an amount that is less than the actual amount billed for the health care services or supplies shall
(2) except as provided in (3) of this subsection, determine the final payment for a covered service or supply based on an amount that
(A) reflects the general cost differences between the geographical area where the service was performed and the other geographical areas used in establishing the statistically credible profile under (1) of this subsection; and
(B) is equal to or greater than the 80th percentile of charges under (1) of this subsection for the health care services or supplies;

Proposed Action: Deletion

As stated in the Notice, "The 80th percentile has long served as a mechanism for consumer protection at the state level." Not only does the 80th percentile requirement protect patients, but it also prevents commercial insurers from reimbursing below cost for services rendered and avoids costly litigation, all of which drive up costs for emergency air and ground transport services. Deleting this section will result in many of our claims going to dispute resolution or collections, which will result in less access to patients. For almost 350,000 Alaskans, their only way to be transported to a hospital is by air, and without this section, access to our services will be impacted.

We recommend keeping 3 AAC 26.110 (a)(2) unchanged.

3 AAC 26.110 (a)(4)

(a) A person that provides coverage in this state for health care services or supplies on an expense incurred basis for which benefits are based on an amount that is less than the actual amount billed for the health care services or supplies shall
(4) provide with any claim payment an explanation of the basis of payments in clear and simple terms, including explanation of any adjustments made under (2)(A) of this subsection, and document the explanation provided in the claim file; and

Proposed Action: Revision

This section provides clarity to the patient and explains the methodology the insurer utilized to determine payment amount. Without this information, the insured lacks valuable information if there is a dispute in coverage or under payment that places them in the middle of the provider and insurer. Revision of this section would allow insurers greater ability to avoid covering for services, and in turn impact Alaskan's access to emergency air and ground services.

We recommend keeping 3 AAC 26.110 (a)(4) unchanged.

3 AAC 26.110 (a)(5)

(a) A person that provides coverage in this state for health care services or supplies on an expense incurred basis for which benefits are based on an amount that is less than the actual amount billed for the health care services or supplies shall

(5) provide an explanation in the health insurance policy of the basis of payments, including any payments for which a covered individual may be responsible and include on any schedule or summary of benefits page accompanying the policy

(A) the percentile used to determine final payment under (2)(B) of this subsection; and

(B) a statement regarding whether the covered individual is responsible for any amount billed for a health care service or supply item that exceeds the amount of final payment.

Proposed Action: Revision

This section provides clarifies benefit coverage to the patient and explains the methodology the insurer will utilized to determine payment amount. Without this information, the insured lacks valuable information if there is a dispute in coverage or under payment that places them in the middle of the provider and insurer. Revision of this section would allow insurers greater ability to avoid covering for services, and in turn impact Alaskan's access to emergency air and ground services.

We recommend keeping 3 AAC 26.110 (a)(5) unchanged.

CLOSING

Sections 3 AAC 26.110(a)(1), 3 AAC 26.110(a)(2), 3 AAC 26.110(a)(4), and 3 AAC 26.110(a)(5), provide protections to both patients and providers from insurers that seek to avoid their contractual obligations to their customers. These sections also provide the specified state law that allows out of network air ambulance claims to stay out of the federal No Surprises Act. If the payment provisions are deleted, all out of network air ambulance claims will flow through the No Surprises Act which will lead to delayed payments to providers and payment uncertainty for both parties.

Recent third quarter profits listed by Becker's Healthcare, show insurers made record profits in 2023. UnitedHealth experienced a profit increase of over 28%, totaling \$5.3 billion, and Cigna had a 70% increase, totaling \$2.8 billion. The revisions in the proposed rule change would only allow insurers to decrease payments to providers and increase insurer profits.

While health insurers are bringing in billions in historical profits, health care providers are still facing record losses with no end in sight as we continue to deal with staffing shortages. There is no question that these proposed changes will impact access to emergency air and ground services in Alaska, and we respectfully request that this proposed regulatory change not move forward.

Respectfully Submitted,

Jared Sherman COO, Guardian Flight

Kip Fanning President, Medevac Alaska

Marc Kilman-Burnham Director Governmental Affairs, Global Medical Response

Scott Kirby Director of Operations, Medevac Alaska



March 5, 2023

Attention: Sarah Bailey

Sarah Bailey
PO Box 110805
Juneau, AK 99811-0805

Dear Members of the Alaska Legislature,

I am writing to express my support for Alaska's 80th percentile rule (3 AAC 26.110(a)) and to urge you to keep it in effect as written. I understand that the rule has been under review and may be up for potential repeal or amendment, but I believe that it is of great benefit to Alaskan consumers and healthcare providers.

As we all know, the cost of living in Alaska has risen significantly, especially after the COVID-19 pandemic. This increase in the cost of living has affected healthcare costs too, with insurance premiums going up for consumers. What's alarming is that while insurance premiums have gone up, the profit margin and revenue of insurance companies have also increased. This trend suggests that insurance companies are prioritizing their financial interests over the welfare of their customers and medical providers.

In the light of these circumstances, repealing or amending the 80th percentile rule in Alaska will be a serious blow to consumers and healthcare providers. This critical consumer protection measure prevents insurers from setting unreasonably low reimbursement rates for out-of-network care, helping to rein in healthcare costs. By ensuring that consumers are not subject to exorbitant out-of-pocket costs, the rule provides much-needed financial security for Alaskan families. Any increased costs of medical care to consumers could place a significant hardship on Alaska residents, particularly those who are already struggling to make ends meet.

Repealing or amending the 80th percentile rule in Alaska will have dire consequences for the provision of high-quality care by medical providers, who may be forced to discontinue serving Alaska's Medicare and Medicaid patient populations. This would leave many Alaskans without access to the medical care they need, which could result in serious health consequences.

Alaska's seniors are already facing challenges finding essential primary care services needed because many practices are either no longer accepting new Medicare patients due to caps placed on the number of Medicare patients, they are willing to see, or because they are closing their doors for other reasons such as staffing, as is the case for Alaska Regional Senior Healthcare Clinic, who closed their doors on February 28, 2023. A recent article published in the March edition of Senior Voice (Volume 47, Number 3) describes these challenges based on feedback from Alaskan senior, Deborah Bear, who stated that she and her husband are considering drastic options to find the healthcare services they need. Those drastic options include moving out of state, or traveling out of state periodically to get the necessary healthcare they need. These drastic measures will be very difficult for seniors who are on a fixed income, as you can imagine.

Furthermore, repealing or amending the rule will quite likely make Alaska less attractive to physician recruits, limiting the number of high-quality medical specialists available in the state. This would exacerbate the existing shortage of healthcare professionals in Alaska, which is already a significant concern.

Without access to high-quality medical care, many Alaskans, not just seniors, may be forced to leave the state to seek treatment elsewhere, which could have negative economic and social consequences for Alaska. The loss of these patients would also have a significant impact on Alaska's healthcare system, which could struggle to provide care to the remaining patient population.

It is my belief that instead of repealing or amending Alaska's 80th percentile rule, Alaska's leaders should focus on reducing healthcare costs by addressing overutilization by Hospital Organizations. Many hospitals are performing

unnecessary tests and extensive therapies to drive their own financial interests, with little to no oversight, while increasing healthcare costs to the state and to Alaskan residents.

In conclusion, I strongly urge you to keep Alaska's 80th percentile rule in effect as written. It is a critical consumer protection measure that helps to keep healthcare costs in check and supports physician practices in Alaska. Alaska's leaders need to protect our local citizens and physicians, instead of acting in the interests of the insurance companies, their lobbyists and selective data that paints an inaccurate picture of impacts this change would have.

Your consideration of these important matters is appreciated.

Sincerely,

A handwritten signature in black ink, appearing to be 'D. Crane', with a stylized, flowing script.

Daniel Crane



Dr. Ankita M. Ambasht
3300 Providence Drive Suite 114
Anchorage, AK 99508
Phone: 907.770.6200
Fax: 877.669.0236
www.akfamilymedicine.com

March 5, 2023

Alaska Division of Insurance
ATTN: Sarah Bailey
P.O. Box 110805
Juneau, AK 99811

Dear Mrs. Bailey:

I am writing on behalf of my practice in support of **protecting the "80th Percentile Rule"**.

The 80th percentile rule provides medical clinics with the necessary protections which allow me to practice medicine independently in Alaska. Abolishing the 80th percentile rule will lead to a mass reduction in independently-owned, smaller practices. This will greatly reduce the medical community's capacity to handle the state's medical needs.

Heavy investments by the state's medical providers in the latest technologies, modern medical equipment, and state-of-the-art facilities means that now patients have more options, more access, and more power. Removing the rule will rapidly slow down medical investment in the state as the floor on investment returns will fall away completely.

I fell in love with Alaska when I first visited family in 2011, and I visited every year until I eventually moved up here after training. I chose to move to Alaska because I did not want to practice corporate medicine. I work collaboratively with my patients to help them achieve their best health. While it may be true that Alaska is the only state with anything like the 80th percentile rule, it is also the only state where I could open a brand-new primary care facility with a chance of surviving. Abolishing the 80th percentile rule will devastate small, independently-run practices and their employees.

The 80th percentile rule gave equity to my voice and allowed discussions to flow both ways when I was considering contracting with insurance companies. These conversations enabled my clinic to become in-network with numerous insurance companies, allowing widespread ability to treat Alaskans in need. Regardless of the claims made by those against the regulation, I cannot simply raise my fees at will. Many patients have high deductibles regardless of network participation, and ultimately patients are left with the bill as insurance covers less and less.

As a business owner, I too have dealt with rising costs in medical and office supplies, payroll expenses, and insurance premiums. The cost of healthcare is high in this state BECAUSE the cost to provide healthcare is higher than ever before. Many in-network providers can be on fixed-price contracts, meaning we end up absorbing these increasing costs. Additional insurance hurdles, even when in-network, add to administrative commitments for doctors and our staff. The effects of these increasing costs are especially burdensome on smaller practices, and it also means I must allocate less time to patient care.

We have witnessed several high-profile clinics shut down over the last few years due to rising costs and administrative burden. As each of these clinics close, the local medical community's capacity to absorb these patients decreases exponentially. Many of my patients came from providers who have retired, moved, or shut down. Many local practices are already at full capacity and are not accepting new patients.

We do not have enough training resources to provide the state with adequate qualified homegrown talent. There is no medical school in Alaska, and there is only one residency program. The lure of Alaska alone is not enough to supply this state with enough permanent medical personnel. If we continue to raise barriers to practice medicine, the state will face a disastrous medical care shortage far worse than we have now.

We must keep the 80th percentile regulation in place to help us continue to improve patients' access to quality medical care.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ankita M. Ambasht'.

Ankita M. Ambasht, MD
Physician/Owner
Ambasht Family Medicine

March 6, 2023

Alaska Division of Insurance
ATTN: Sarah Bailey
P.O. Box 110805
Juneau, AK 99811

Dear Mrs. Bailey:

I am writing in strong support of retaining and protecting the 80th percentile rule. I am concerned not only as an employee in a medical practice, but as an insurance subscriber for myself and my family.

Testimonies provided by fellow Alaskans such as freshman State Senator Jesse Bjorkman are quite alarming. For a rookie state legislator to testify so passionately against a regulation he does not understand, quite frankly I worry about how many more Alaskans out there are being misled. Abolishing this regulation will lead to reduced healthcare access, increased patient cost, and no guarantee of lower insurance premiums.

The majority of arguments to abolish the regulation point to a five-year old ISER study based on **ten-year old data. Quite simply, the research is incomplete and outdated, and the conclusions are superficial and inaccurate.** The 80th percentile regulation provides the backbone which allows smaller, independently-owned medical practices to survive in this state. The consequences of risking medical accessibility in this state are far too great to be using a decade-old study.

The argument against the regulation is that physicians and clinics can set their own prices, which is true. However, the argument that this is the root cause of increased healthcare expenditure (in conjunction with the 80th percentile rule) is simply not true. The numbers do not add up. According to the Division of Insurance, this is the only data available upon which to make this decision. Here are the facts relevant to the study:

1. The study included medical care costs Alaskans incurred outside of the state.
2. In 2014 (most recent data of the study), 30.45% of Alaskans' health expenditures went towards physician and clinical visits. The remaining expenditures went to hospital care, prescriptions, dental services, nursing home care, durable medical products, and other professional services.
3. According to the Division of Insurance, removing this regulation will only directly affect 15-20% of all insured Alaskans.
4. 20% of 30.45% means that only 6.09% of total physician and clinical expenditures are directly affected by this regulation.

How can we point to physicians and the 80th percentile rule when it only accounts for SIX PERCENT of total healthcare costs in this state? How does that equate to the 10-20% annual increase in insurance premiums? The numbers do not match the story. A single medical provider cannot just simply raise the rate to improve the 80th percentile. That is not how percentiles work. The 80th percentile will increase over time either with widespread collusion (which is not happening) or as the cost to provide medical care increases.

Healthcare costs are rising because the cost to PROVIDE medical care has increased. The cost of medical and office supplies have certainly increased, but administrative costs have skyrocketed as insurance companies have complicated the billing process by adding administrative hurdles, additional paperwork, and longer wait times to resolve issues. This takes time away from doctors and directly affects their capacity to treat more patients.

The purpose of abolishing the regulation is to force all providers to go in-network on fixed-price contracts and eliminate their ability to negotiate fair reimbursement rates. If this is the case, Alaskans need to hear from their State Senators and insurance companies a GUARANTEED and SIGNIFICANT reduction in insurance premiums. We should also then be entitled to indefinitely fixed-price insurance premiums.

Health care expenditure has increased in this state because Alaskans have **BETTER** access to healthcare. Patients are seeking their doctors and providers more, and the 80th percentile regulation has allowed a significant investment to increase Alaska's medical capacity in this state. I have a hard time justifying why more access to medical care is a bad thing, especially when we truly have a medical shortage here. Without the 80th percentile rule, Alaskans will have fewer medical providers, longer ER wait times, and higher medical costs (insurance will cover less). Employers will ultimately lose out too as sicker employees will lead to more sick time, and insurance premiums will continue to rise.

The 80th percentile rule allowed many doctors to go in-network. Removing this rule will lead to fewer in-network doctors, higher costs, and inferior medical care for Alaskans.

Sincerely,

Anurag Ambasht

From: [alaskacares](#)
To: [Bailey, Sarah S \(CED\)](#); [Wing-Heier, Lori K \(CED\)](#)
Subject: Blue cross contract/80 percentile rule
Date: Monday, March 6, 2023 7:31:01 AM
Attachments: [AKProvider2020CORE.pdf](#)

CAUTION: This email originated from outside the State of Alaska mail system. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Please keep the 80 percentile rule. I recently received my new Blue Cross contract and there are many provisions that make it impossible for me to sign. I do not have the funds as a solo practice Family Medicine MD to indemnify an insurance company. They have not sent me the fee schedule, If my contract is not renewed I am still to see their insured with no guarantee of payment and keep records for 10 years. We have struggled the last few years as a business to stay solvent in spite of doubling our patient population (to 2700), because of inflation with increased overhead, and some of our rates of reimbursement from insurance have actually decreased.

I have saved countless lives with the use of Ivermectin with only 1 death out of 2000 treated, by someone who could not get this medicine. I have also helped people recover from severe Covid vaccine injuries with the use of ivermectin and have used it myself to treat my long Covid symptoms. Blue Cross sent me a picture of a horse and told me to stop using the world's safest medicine dispensed for humans over 4 billion times! In this new contract, they want me to only treat according to generalized standards of care who determines what this is? Will I be able to save lives in the future from other plagues with the use of safe FDA-approved off-label medicines or are the insurance companies going to block us from using our talents as MDs to save lives? There are many other troubling things in the contract but these are the worst. I have served on advisory boards for Blue Cross in the past and have been a provider for them for over 30 years, their insured make up about 70 percent of my practice so this is not an easy decision. Eliminating the 80 percentile rule could make it impossible for me to stay in business!

I was not told the contract was confidential so am enclosing a copy they sent me for your review.

Ilona Farr MD
9077483264
9075624045

3/6/23

Attention: Sarah Bailey
Sarah Bailey
P.O. Box 110805
Juneau, AK 99811-0805
Sarah.Bailey@alaska.gov



907.561.3211
alaskaheart.com

I write to provide written comment on the 80th 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 "80th percentile" rule for determining "usual and customary" charges for healthcare services provided to Alaskan consumers.

I currently serve as an interventional cardiologist at the Alaska Heart and Vascular Institute. I earned my BA from Yale University, an MD from the Stanford University School of Medicine, and completed my post graduate training at the University of California San Francisco. I am a fellow of the American College of Cardiology and a fellow for the Society for Cardiovascular Angiography and Interventions.

The 80th percentile regulation was put into effect to provide more transparency and greater consumer protections, and I can attest that this has certainly been the case.

The No Surprises Act (NSA) provides protection for out of network emergent care. Therefore, if the 80th percentile regulation is removed there will be nothing protecting the consumer if healthcare providers in good faith fail to negotiate with the insurance entity and thus are forced to go out of network.

Please accept my strong opposition to a repeal or amendment to the 80th percentile rule. Most specialists have entered into contracts with insurance companies and the NSA would not provide Alaska consumers of healthcare any protection if a specialty was not in network.

Thank you,

Blake Charlton, MD, FACC, FSCAI

Sami Abuzaid, MD,
FACP, FASE, FACC
Eric Anding, MD
Richard Anschuetz, MD, FACC
Krzysztof Balaban, MD, FACC
Mario Binder, MD, FACC
Blake Charlton, MD
Steven Compton, MD,
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Scott Ebenhoeh, DO
Herman Feringa, MD, PhD,
MPH, RPVI, FACC
John Finley, MD, FACC, FASE
Lisa Gray, DO, FACC
Linda Ireland, DO, FACC
Jacob Kelly, MD, MHS, FACC
Thomas Kramer, MD, FACC
Seth Krauss, MD, FACC, FSCAI
Adam Mason, MD, FACC
William Mayer, MD, FACC, FACP
Jonathan McDonagh, MD
Ryan McDonough, DO, FACC
Suneet Purohit, MD
Gene Quinn, MD, MS, MPH
Brian Scully, MD, FACC
Mark Selland, MD, FACC
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Suite 200
Wasilla, AK 99654

AHVI SOLDOTNA
240 Hospital Place
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Soldotna, AK 99669

Comments in Support of Repeal of 3 AAC 26 110

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NAME:

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Phone (optional):

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NAME:

Diana Ruhl

ADDRESS:

Phone (optional):

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Terra Colegrove

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Jane Erickson

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John Carlson

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NAME:

Tyler Watson

ADDRESS:

3321 Shamrock St, Anchorage, AK 99504

Phone (optional):

Comments in Support of Repeal of 3 AAC 26 110

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Please Print Legibly:

NAME:

CHARLES STEWART

ADDRESS:

10122 SKIFF CIR ANCHORAGE, AK 99515

Phone (optional):

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Please Print Legibly: *Jill A. Dumesnil*

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Jill A Dumesnil

ADDRESS: *1008 Bonnie Doon Dr.
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Phone (optional):

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Jody Morris

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907-529-6377

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Please Print Legibly:

NAME:

Sara Massmann

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Brittany Mackey

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(907) 350-7232

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Please Print Legibly:

NAME:

DUSTIN EVERY

ADDRESS:

2720 SetNet Ct. Kenai, AK 99611

Phone (optional):

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NAME:

Mark S. Hickey Mark S. Hickey

ADDRESS:

15655 Glacier Hwy
Juneau, AK 99801

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Please Print Legibly:

NAME:

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3305 Monticello^{ct} Anchorage AK 99503

Phone (optional):

(907) 360-9932

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NAME:

Silvana Tirban

ADDRESS:

2874 Janel Ave., North Pole, AK 99705

Phone (optional):

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FRANK MUTCHE

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ANCHORAGE, AK 99516

Phone (optional):

(907) 748-6834

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Jesse Slone

ADDRESS:

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Michael Williams

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Phone (optional):

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Marta Mueller

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Phone (optional): (907)590-7678

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Please Print Legibly:

NAME:

SUSAN REILLY

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Phone (optional):

Comments in Support of Repeal of 3 AAC 26 110

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NAME:

Jan Carolyn Hardy

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Phone (optional):

907.301.4685

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ADDRESS:

4217 Tokum Blvd, JNU AK 99801

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NAME:

Mike Andrews

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Phone (optional):

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Randy Golding

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Phone (optional):

907-570-1832

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NAME:

EUGENE WHITE

ADDRESS:

137 W 12TH
ANCHORAGE, AK 99501

Phone (optional):

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NAME:

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ADDRESS:

3523 Forest Grove Drive, Juneau

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NAME: Evan Denty
3246 Adams Dr Unit #1 Fairbanks, AK 99709

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NAME:

Kimberly Hays

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Phone (optional):

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Skye Kushner

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Phone (optional):

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NAME: *Pete Deh!*

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Anch, AK 99575*

Phone (optional):

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ADDRESS:

12975 Rossier Dr. E.R., AK 99577

Phone (optional):

907 360 4953

Comments in Support of Repeal of 3 AAC 26 110

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Please Print Legibly:

NAME:

Augustine J. Merrick

ADDRESS:

19205 Mt. Maguire Circle, Eagle River AK

Phone (optional):

907-301-4707

99577

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Please Print Legibly:

NAME:

Kyle Perry

ADDRESS:

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North Pole, AK 99705

Phone (optional):

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Please Print Legibly:

NAME: Brandon McGuire
3710 Perenosa Cir. Anchorage, AK 99515

ADDRESS:

Phone (optional):

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Please Print Legibly:

NAME:

Patrick Fitzgerald

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Phone (optional):

907-230-8809

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Please Print Legibly:

NAME:

Miguel Rohrbacher

ADDRESS:

[REDACTED ADDRESS]

706 West 10
Street, Juneau
AK, 99801

Phone (optional):

907-321-5064

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Please Print Legibly:

NAME:

DON ETTHERIDGE

ADDRESS:

8459 KIMBELY ST JUNEAU AK 99801

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Please Print Legibly:

NAME:

GEORGE MCGUAN

ADDRESS:

811 Bounty Dr. Anchorage, AK 99515

Phone (optional):

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Please Print Legibly:

NAME:

MARCIE OBREMSKI

ADDRESS:

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PALMER AK 99645

Phone (optional):

907-354-8375

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Dennis Inabral

ADDRESS:

3211 West 32nd Ave. ANCH AK 99517

Phone (optional):

907-351-1146

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NAME:

TIM BRANNAN

ADDRESS:

1603 SUNCHA CIR. FAIRBANKS AK 99709

Phone (optional):

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NAME:

SEAN PATZER

ADDRESS:

510 DUNBAR AVE, FAIRBANKS AK, 99701

Phone (optional):

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Please Print Legibly:

NAME:

Joelle Hall

ADDRESS:

P.O. Box 770246
Eagle River AK 99577

Phone (optional):

907 258-6284

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Once needed for patient protection from surprise billings – but no more. The Federal No Surprises Act (NSA) sets a national standard for settling disputes about the payment of charges for out of network emergency services and services such as anesthesiology or radiology at in-network facilities. Patients now have standardized protection from surprise billing. Leaving the 80th Percentile state regulation in place unnecessarily makes Alaska an outlier in terms of pricing and data collection useful in benchmarking health expenditures in the future, by substituting the 80th Percentile regulation (State Specified Law) for the Qualified Payment Amount (QPA) or a negotiated all-payer model agreement.

Workers Compensation Rates Follow Since Workers Compensation medical services are most often delivered close to home, inflated Alaska rates for health care services help sustain Alaska Workers Compensation rates as the highest in the nation, operating as strong headwinds against workforce spending for both maintenance and development.

Please Print Legibly:

NAME:

Heidi Drygas Heidi Drygas

ADDRESS:

3026 Mountainwood Circle Juneau, AK 99801

Phone (optional):

907-350-7982

From: [Steve Springer](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: Comments on Proposed Changes (3 AAC 26.110)
Date: Monday, March 6, 2023 10:42:24 AM

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CAUTION: This email originated from outside the State of Alaska mail system. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Sarah,

Thank you for an opportunity to provide comment on the proposed changes to 3 AAC 26.110. As a health care organization that has served Alaska for many years, both in Anchorage and outlying communities across the state, we have seen the importance of the current version of 3 AAC 26.110 in ensuring continued access to health care resources across the state for Alaskans.

Geography, population dispersion and weather create substantial barriers to delivering services to Alaskans, particularly so in the case of health care. It is extremely challenging to recruit new providers to the state and keep them once they arrive. These challenges have only be exacerbated in the last three years due to inflation and the loss of many health care providers across the country due to burn out – there are fewer providers available now and they have more options than ever before.

In addition, supply cost, labor costs, (especially healthcare workers), and construction costs in Alaska are also significantly higher than other parts of the United State, placing a further burden on delivering care.

Outside of Anchorage, the population is small and spread out geographically, making it challenging to establish and maintain care delivery in outlying communities of Alaska.

Policy makers in Alaska recognized these challenges when they adopted 3 AAC 26.110. It ensures that insurance companies have the incentive to recognize the burden of providing care in the state and reimburse for services at a sustainable level to ensure that patients are not left with expensive balances. This policy also protects access to providers by supporting a predictable and viable level of reimbursement to serve people across the state – allowing people to treat in their communities and avoiding expensive trips outside of the state to receive care. This approach allows insurance to play its appropriate role of spreading the cost of providing services to the people of the state across a broad base, minimizing individual costs while ensuring access to vital services.

The Federal No Surprise Act does not provide adequate protections for patients and access to care in market like Alaska that face unique challenges. The experience of providers early in the system have shown the burden of the mandated arbitration process and the ease with which insurers are able to manipulate prevailing rates to effectively force down unsustainable reimbursement on providers. Rather than providing an effective safeguard for patients and providers, the rules have allowed large insurers to continue to put pressure on small providers, particularly those who cannot afford the

costs and delays associated with the arbitration process. The deterioration of this “safety net”, will ultimately lead to more loss of accessible care.

Insurance companies exercise extraordinary market power relative to small providers. Unfettered, the companies have minimal incentives to negotiate sustainable rates that allow providers to continue to offer care across the state. The largest insurer in the market covers a majority of the covered lives in the state and, absent a well thought out regulatory framework, is able to force down rates on providers that may benefit the company’s short term profitability but leaves patients in the state holding the bag as care disappears across the state over the medium to long term.

It is important that Alaska maintain the historic safety net provided by 3 AAC 26.110. It has ensured that sustainable health care services are maintained in the state and can reach our outlying communities. This safety net is more important than ever given the significant headwinds facing health care providers in the country in the wake of the pandemic.

Sincerely,
Alaska and Hypertension Clinic of Alaska



March 6, 2023

The State of Alaska Division of Insurance
Attention Sarah Bailey
sarah.bailey@alaska.gov

RE: Proposed Repeal of 80th Percentile Rule
OPPOSED

Dear Division Director:

We are writing to respectfully oppose any proposed change that amends or removes the regulatory requirement under 3 ACC 21.110(a) that "Usual and Customary" charges be based on the 80th percentile of market pricing.

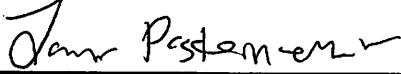
Our patient mix includes 27% Medicaid patients by patient volume, and we see many other patients who are Medicare, Tricare, and VA patients. Therefore, we understand the needs of Alaska's vulnerable populations of patients. We see all our patients without discrimination based on type of insurance plan, public or private.

We oppose this rule change because it will adversely affect the fees that many Alaskans pay, driving up costs for out-of-pocket and balance billing payments. Under the proposed change, healthcare consumers will pay more due to higher balanced billing. There is no reason to make the change. The regulation is working as intended, encouraging providers and payers to work together in good faith and transparent contracting. The proposed change is supported by payers who routinely see their profits increase while holding down their contracted rates with providers. Increasing their leveraging power in negotiations with providers will not trickle down to consumers because these payers have a near monopoly in the state.

Not only will eliminating the rule drive up costs for patients, it will adversely impact providers who are currently seeing Alaska's vulnerable populations, encouraging providers to stop participating in these critically important government programs. Thus, the proposed change will not only drive up costs for out-of-network patients, it will decrease patient access to providers overall in Alaska.

We respectfully urge the Division of Insurance to retain the current rule.

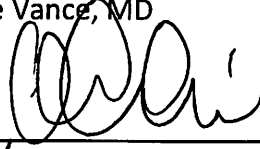
Thank you.



Tanya Pasternack, MD
President



Maude Vance, MD



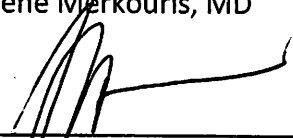
Omaira Colon, MD



Matthew Lindemann, MD



Rhene Merkouris, MD



Natalia Korneeva, MD

From: [Dann Laudermilch M.D.](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: comments regarding the 80th percentile rule
Date: Sunday, March 5, 2023 1:25:30 PM

You don't often get email from dlaudermilch@opaak.com. [Learn why this is important](#)

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Dear Director Lori Wing-Heirer:

Thanks for your time reading my email.

I am emailing to voice my support to preserve the 80th percentile rule. I assume you and your office have heard arguments based on recent law changes/policies/numbers/financials/etc. I just wanted to let you know about my personal experience, my commitment to Alaskans and visitors who come into our state.

As I stand here, I am waiting for a surgery to start at Matsu Regional Hospital. I've been waiting for hours, as I don't know the NPO time for my patient, so we decided to do the safe thing and wait until we know it is safe. I missed church and my family today. I am on call today for the hospital, an unpaid call as we don't get paid to do it. The only way we get paid is through insurance reimbursement. Many ER visits are low paying/no paying due to government or no insurance. I still take call though, as it is the right thing for my community. I do not need to take call, no law/rule requires me to. I don't need the extra business. I do it as it is good for my neighbors and fellow Alaskans.

During 2 of the last 3 weekends, I wasn't on call, but I left my family, my hobbies, etc, to take care of my fellow Alaskans. I did so, not knowing if they could pay me, but because two Alaskans needed a skilled hand surgeon and that was me. My wife asked me not to, but I would want the same if it was me, so I went. One day required a 6 hr surgery and I missed multiple family events. The other required an all night surgery and left me tired and weary for the following day, a full day of work. It took me multiple days to physically recover, making me a bad dad and husband as I was too tired to interact.

Let me ask you, of the two sides in this debate, insurance and physicians, who do you think is most committed to serving the healthcare needs of Alaskans and visitors to Alaska, both now in the future? I guarantee my commitment cannot be outdone. We need to preserve the 80th percentile rule. We need it to preserve healthcare in Alaska. Please take our advice.

Respectfully

-Dann Laudermilch, MD

Orthopedic Physicians Alaska



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From: [Wendy Rogacki](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: Comments Supporting the Removal of the 80th Percentile Rule
Date: Monday, March 6, 2023 3:07:55 PM
Attachments: [image001.jpg](#)

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Dear Director Wing-Heier

I would like to voice my support of ending the 80th Percentile Rule as both a consumer in the Alaska healthcare market and a broker working with employers and individuals enrolled in group and individual medical insurance in Alaska.

This rule was implemented prior to the ACA and a lot has changed in Alaska since then.

- ACA compliant coverage if offered by insurance carriers committed to the Alaska market for both group and individual coverage.
- Networks have been greatly expanded by these carriers, making the rule apply to fewer and fewer out-of-network providers each year.
- Transparency rules are in place at both a state and federal level to assist members in shopping for services and that provide balance billing protections for some situations.

When I moved to Alaska in 2012, I couldn't find an in-network cardiologist who had experience with my genetic heart condition in Anchorage. For several years I flew out of state to for my annual appointment and echocardiogram because it was cheaper than visiting an out-of-network provider in Alaska, even with the cost of the flight. How does this benefit providers working in the state? Today, I am able to have appointments in Anchorage because my large heart clinic has joined most networks. This has happened for many other specialty clinics as well.

The 80th percentile rule only protects out-of-network providers and it is not incenting them to join networks. While the providers reimbursements are kept whole at the 80th percentile level:

- members who are enrolled in the coverage are forced to pay more with higher and often separate deductible and out-of-pocket limits and higher coinsurance percentages once the OON deductible is met.
- Escalating charges due to the design of the rule, allow providers to keep increasing their charges which then increases where the 80th percentile falls, leaving the carriers and members to pay the price.

My employer clients are mostly under 50 employees and not subject to the ACA employer mandate requiring them to offer affordable medical coverage. However, to remain competitive in offering a compensation & benefits package to their employees that will retain current workers and help recruit new ones, medical coverage is extremely important.

- Due to the high cost of monthly premiums, many small Alaskan employers struggle to manage the cost of providing these benefits compared to national firms or self-funded large employers – especially if they have an older workforce.
- Over the last 5 years, I have had several clients stop offering medical coverage to employees

because they just couldn't afford the cost. Two of these groups were even medical clinics who are now advocating to keep this rule in place but send their employees to the ACA marketplace to buy their own coverage. (These rates went up over 20% last year for one of the two carriers.)

- Small employers often manage the increasing costs by passing a larger percentage of the monthly premium on to their employees or moving to a higher deductible plan option. None of this helps the Alaskan residents enrolled in the coverage.
- Something needs to be done to control medical costs for individuals, providers and insurance carriers in Alaska. The 80th percentile rule is only protecting providers.

The future of Alaska's economy depends on controlling the high cost of healthcare so that we can promote business and retain/attract workers to our state. The 80th percentile rule is no longer serving its original purpose and should be eliminated. It gives providers no reason to join networks and thus hurts consumers of healthcare in the state.

Thank you,
Wendy



Wendy Rogacki | Consultant, Employee Benefits Services
Wilson Albers
3000 A St., Suite 400 Anchorage, AK 99503
D: 907.777.0226 | O: 907.277.1616 | M: 907.306.5239
wendyr@wilsonalbers.com
www.wilsonalbers.com | [Visit my LinkedIn!](#)

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From: [Mathew Cannava](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: Concerning repealing the 80th percentile rule
Date: Monday, March 6, 2023 7:07:35 AM

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My name is Mathew Cannava, MD. I've been a practicing physician in Soldotna since 2005. Below is a letter I wrote to Senator Bjorkman concerning my opposition to repealing the 80th percentile rule. This would not lower the cost of "health care," rather it would save insurance companies money, so they wouldn't then pass the cost on to all of us...and their executives could continue making millions every year.

Hi Jesse:

Reading through your recent update I noticed your paragraph concerning the high cost of healthcare, and your support of repealing the "80th percentile rule." This rule states that insurers must pay out-of-network providers an amount that is equal to or greater than the 80th percentile of charges in the geographical area. Your stated goal in supporting this repeal is to lower the cost of healthcare. There are several problems with your position that I'd like to address. The high cost of healthcare is a huge concern of mine, both as a physician and as a patient and I'd like to point out areas that would have a MUCH greater effect on the "cost of healthcare" vs. what you're supporting.

I am a physician on the "front line" as it were of healthcare. I am in private practice, seeing patients daily and caring for them. Unlike a hospital I don't pass along "facility fees" to patients or insurers...I can't pass along costs of sutures, Steri-strips, etc...I regularly audit out-of-state practices to make sure my charges are in-line with what's being charged elsewhere in the country (even though it is more expensive to deliver care in Alaska)...and I don't have a bureaucracy to support (like a hospital) who's officers frequently make MUCH more than the physicians actually providing "health care." We are the folks actually providing care...the physicians actually sitting down with patients, making health decisions with them, and caring for them. We should be prioritized if one truly cares about "health care."

In ruminating over this proposal...my first thought was...who proposed this...who supported it? Who provided data showing that this repeal "may lower the cost of health care?" Given the nature of politics...my assumption is it's the insurance companies as it would lessen their costs. If this is the case, it's truly disappointing that anyone would support this. Insurance companies don't provide "health care." They make a HUGE profit by DENYING care...that's how they make money. My office and my patients deal with this every day. They are not in the business of providing health care. While those of us actually caring for patients make salaries on par with what a slope worker makes...insurance company executives make millions in compensation and are the LAST people you should be trying to assist if you're truly interested in the cost of "health care." To wit: The CEO's of six major national insurers earned nearly \$115 million combined in total compensation in 2021, according to SEC filings. Michael Neidorff, former chief of Centene, earned \$20.6 million in compensation in 2021. Given this...trying to rein in health care costs by targeting what those of us on the front-line make is truly misguided.

Fully 80% of my practice is Medicare/Medicaid. Of the remaining 20%....most folks have BCBS,

the remainder have Aetna. Insurance companies pay “usual and customary,” which is what THEY determine to be customary....not what actual market numbers support. They rarely if EVER pay 80%. And...to cut a skin cancer out then repair the defect (put stitches in)...they pay for the removal, but NEVER pay 80% on the repair...to put stitches in. Can you imagine...having coverage to put a large hole in your face...but NOT to repair the defect?? We hear discontent regarding this “cost of healthcare” daily. This is not even touching on the fact that we have to beg and plead, and spend hours of man-hours...trying to get an insurance company to pay for certain medications. THIS drives up the cost of health care. Why do we have to do this? Because it is in the insurance company’s financial interest to simply deny all charges. They are legally beholden to their shareholders...NOT their clients. THIS drives up the cost of health care.

Ways in which you could TRULY address the cost of healthcare:

- [if !supportLists]-->1. <!--[endif]-->I got 3 blood tests yesterday using MedPhysicals Lab here in Soldotna...total cost: \$120. I called CPGH and asked what it would cost there...\$561. This is a no-brainer. How could you not support this? I was asked by a parent for a quote to remove a cyst over their child’s neck...approximately \$1600 here in my office. Cost to have Dr. Lattin at CPGH do it? \$14,000. This is cut and dry. How could you ignore this if you were truly interested in the “cost of health-care?”
- [if !supportLists]-->2. <!--[endif]-->KPBSD is a large employer with bargaining power. My sister went to a “provider” (NOT an MD) for a physical and was charged upwards of \$400. This is TWICE what I, as an actual MD would charge. Leverage this...negotiate lower costs with local doctors (preferably not PA’s/NP’s). I wrote to the school board pointing this out and got no response.
- [if !supportLists]-->3. <!--[endif]-->When you talk about the cost of “health care,” you include the cost of insurance companies. As noted...they do NOT provide “health care.” They are a middle-man. Get them out of the picture. Should we denigrate the lowly doctor actually providing care when the insurance company’s CEO is making upwards of 20 million dollars each year???? No. This is a misguided approach.
- [if !supportLists]-->4. <!--[endif]-->Look at the cost of medications. I can purchase many drugs OTC with a GoodRX coupon cheaper than I could if I ran it through insurance. This is a day-to-day cost that we all deal with. Address that.
- [if !supportLists]-->5. <!--[endif]-->If someone pays thousands in insurance premiums..and doesn’t use any of it..consider having those reimbursed instead of a tax credit. THIS would truly lower the cost of “health care.” Of course, insurance companies would have none of it...but...they don’t actually provide any health care right?

I would welcome the opportunity to discuss this with you further. This matters to me-

Sincerely,

Mat Cannava, MD

February 28, 2023

Senator Jesse Bjorkman

Hi Jesse:

Reading through your recent update I noticed your paragraph concerning the high cost of healthcare, and your support of repealing the "80th percentile rule." This rule states that insurers must pay out-of-network providers an amount that is equal to or greater than the 80th percentile of charges in the geographical area. Your stated goal in supporting this repeal is to lower the cost of healthcare. There are several problems with your position that I'd like to address. The high cost of healthcare is a huge concern of mine, both as a physician and as a patient and I'd like to point out areas that would have a MUCH greater effect on the "cost of healthcare" vs. what you're supporting.

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3. When you talk about the cost of "health care," you include the cost of insurance companies. As noted...they do NOT provide "health care." They are a middle-man. Get them out of the picture. Should we denigrate the lowly doctor actually providing care when the insurance company's CEO is making upwards of 20 million dollars each year???? No. This is a misguided approach.
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5. If someone pays thousands in insurance premiums..and doesn't use any of it..consider having those reimbursed instead of a tax credit. THIS would truly lower the cost of "health care." Of course, insurance companies would have none of it...but...they don't actually provide any health care right?

I would welcome the opportunity to discuss this with you further. This matters to me-

Sincerely,

Mat Cannava, MD

March 5, 2023

Attention: Sarah Bailey

Sarah Bailey
PO Box 110805
Juneau, AK 99811-0805

Dear Members of the Alaska State Legislature,

I am writing to you today as both a healthcare provider and a consumer of healthcare insurance in Alaska. As you may know, the 80th percentile "rule" for determining "usual and customary charges for healthcare services" in Alaska has been a strongly debated topic in recent years, with some calling for its elimination. However, I urge you to consider the importance of this rule in protecting consumers and healthcare providers in Alaska.

The 80% rule is ultimately a consumer safety mechanism, designed to ensure that people purchasing insurance have coverage at least at the 80th percentile of the regionally determined out-of-network costs. This not only protects consumers' wallets but also encourages physician recruitment in Alaska, ensuring that residents can receive life-saving diagnostic and treatment services right here at home.

As a healthcare provider, I have witnessed nearly every major specialty group negotiate a path toward in-network status with Alaska's few insurance companies. Most are now in-network, not the other way around, as opponents of the rule would have us believe. I have also witnessed flat to declining payments year after year for the services we provide. Despite an exponential rise in the number of in-network providers and flat to decreased fee schedules negotiated with those providers, the cost of healthcare insurance has risen at a rate significantly faster than inflation.

As a consumer of healthcare, I have faced the same skyrocketing costs that most Alaskans concerned about the cost of care have experienced. The health insurance I buy for my family and staff has increased 10-23% most years since 2017 while the deductibles on those plans have increased considerably, year after year. I am just as angry and discouraged by that, as is every other Alaska business owner or employer. However, I know that the blame for this cannot be placed on physicians or the 80% rule.

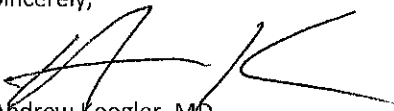
Eliminating the consumer protection that ensures insurance providers operating in Alaska must negotiate regionally appropriate pricing in good faith would be a mistake. It would guarantee that the progress made over these last two decades will almost immediately revert to what was once the problem the 80% rule was put in place to fix. Consumers will continue to pay exorbitant rates for insurance while their networks shrink dramatically, and the ability of the expensive insurance products they purchase to ensure quality care locally will dissolve.

It has been suggested that the national "No Surprises Act" (NSA) will protect consumers in the same way that the 80% rule does, rendering the rule outdated and irrelevant. However, the NSA applies primarily to emergency and inpatient care, and most healthcare consumed is neither emergency nor inpatient. Its consumer protection, if at all, would be far narrower than the 80th percentile rule provides.

I urge you to consider the importance of the 80th percentile rule in protecting consumers and healthcare providers in Alaska. Eliminating this rule would have negative consequences for both groups and would undo the progress made in improving healthcare access and affordability in our state.

Thank you for your time and consideration.

Sincerely,



Andrew Koogler, MD
Andrew.koogler@gmail.com
Medical Group of Alaska, LLC



3890 University Lake Dr.
Anchorage, Alaska 99508
www.envoyintegrated.com

March 6, 2023

Dear Director Wing-Heier,

I am writing this letter on behalf of Envoy Integrated Health, a clinically integrated network (CIN) of 31 high-performing independent Alaskan practices representing over 300 Alaskan physicians. Our members work together towards shared goals of coordinating patient care, improving health care quality, and bringing cost-effective and value-based care to the Alaskan healthcare system. Political advocacy is not part of Envoy's mission; however, because the Division of Insurance's proposed repeal of patient protection regulations threatens our core mission of improving healthcare in Alaska, our Board feels obligated to **urge you to preserve the 80th Percentile Rule**. Failing to do so would not only directly harm Alaskan consumers, but erase years of progress in building the infrastructure to deliver quality healthcare in Alaska.

To be clear, the 80th percentile rule protects the patients and consumers of Alaska - and it works. Before the 80th percentile rule was enacted, insurance companies outside of Alaska could unfairly pay for only part of needed medical care and leave the patient with the remainder of the bill. Medical debt is a leading cause of personal bankruptcy, even in consumers who thought they were well-insured until they experienced an unexpected illness. The federal No Surprises Act is much more narrow in its scope and does NOT replace the patient protections in the 80th Percentile Rule. Furthermore, the No Surprises Act remains new and untested, with national reports of failures and exploited loop-holes already surfacing. It would be irresponsible to rely on federal legislation to protect our unique State. Alaska should be proud of its strong patient protection legislation, not trying to get rid of it.

Repealing the 80th percentile will certainly decrease Alaskans access to high quality and local healthcare, particularly for those without the means to fly to the lower 48 or those too sick and frail to travel. Alaska has an excellent in-state healthcare system with talented physicians and a broad range of services. Healthcare is a major employer in our State, providing well-paying jobs with good benefits that support a strong Alaskan economy. This infrastructure has been hard-won over decades, and will be critical for any growth in the Alaskan population and economy in the future. Repealing the 80th percentile erodes this critical infrastructure and puts the future of our State in jeopardy.

Anchorage, our largest city, is currently facing a crisis in access to care - especially among its citizens over age 65. The proposed repeal of the 80th percentile will worsen this crisis and leave our seniors and vulnerable populations without access to primary and specialty care. Like virtually all other industries and services in Alaska, delivering healthcare is expensive. Most private clinics in Alaska who accept Medicare, Medicaid, and uninsured patients do so at a financial loss, but make up for it with financial gains on private insurance services. Though this "cost shifting" may seem unusual to those outside of healthcare, it is a well-known and essential part of an accessible healthcare system. Repealing the 80th percentile rule will upset this balance and force clinics to choose between seeing less seniors or closing

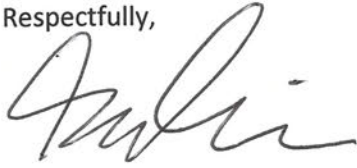
their doors. Key indicators of Alaskan's health tracked by the State of Alaska include the number of patients who report having a regular source of medical care and the number of patients who report not being able to afford to see a doctor in the last 12 months. Repealing the 80th percentile rule will demonstrably reduce these metrics of health and potentially undermine other State of Alaska efforts including Healthy Alaskans 2030. We urge the Division of Insurance to consider the measurably counterproductive effect of their proposed regulation on the public health of Alaska.

The central argument against the preservation of Alaska's key patient protection rule is fundamentally flawed. A repeal of the 80th percentile rule is designed to increase the negotiating power of lower 48 based insurance companies against local Alaskan healthcare providers. Any benefit to Alaskans therefore depends on insurance company profits to "trickle down" and be passed on to individual Alaskans consumers. Not only is this a dubious claim at face value, it has not been true historically: insurers have continued to increase individual premiums despite record profits during the COVID-19 pandemic and ballooning profits for their lower-48 based parent companies. A review of public filings for proposed premium increases and annual net profits of insurance companies will confirm this. As there are no Alaska-based insurers, repealing the 80th percentile would effectively remove money from the Alaskan economy to give to Seattle. Envoy Integrated Health is committed to a comprehensive solution to reduce healthcare costs for Alaskan consumers, but a strategy including repealing the 80th percentile rule is unlikely to be helpful, and much more likely to be harmful.

In fact, repealing the 80th percentile rule may serve to INCREASE healthcare costs in the form of emergency transportation. If specialty care is not available locally, patients must be flown to locations with those services at great expense. Without the 80th percentile rule in place the number of Alaskans required to be flown out of State will increase, stranding them away from their families during a serious illness. It should be noted that one of the largest single expenses for Alaskan health plans is emergency patient air transport. We encourage the Division of Insurance to discuss this with their State of Alaska Medicaid and AlaskaCare colleagues prior to considering repeal of the 80th percentile.

The attempt to repeal the 80th Percentile Rule is disappointing on many levels, not the least of which is that it distracts us from real solutions for Alaska. Any educated conversation about healthcare reform at either the State or National level focuses on the shift from fee-for-service medicine towards value-based care models - that is, not incentivizing the quantity of healthcare, but instead the quality of the care delivered. The primary purpose of Envoy Integrated Health, which is 100% physician led and owned, is for physicians to lead the way on value-based care. The money and effort spent on divisive issues like repealing the 80th percentile to reinforce the antiquated fee-for-service system could have been spent trying to cooperate and build consensus on evidence-based solutions such as value-based care. We should be working together to solve the complex problem of access to high quality healthcare at an affordable cost, not trying to influence unknowing consumers with marketing campaigns and quietly changing regulations that will only benefit insurers. There are no simple solutions to complex problems. The 80th percentile rule and its downstream implications are more complex than a simple regulation change does justice. Protecting the public from special interests that obfuscate and mislead is part of the State government's duty to its citizens. We urge the Division of Insurance to focus on policies that unite payers and providers towards improving the health of Alaskans *together* rather than pitting them against each other. The physician community is ready and willing to collaborate for a better Alaska.

Respectfully,



Gene R. Quinn, MD, MPH
Chief Medical Officer
Envoy Integrated Health
Medical Director of Quality and Population Health
Alaska Heart and Vascular Institute

Sincerely,



Robert T. Craig, III
Chief Executive Officer
Envoy Integrated Health
Alaska Heart and Vascular Institute



Alaska Division of Insurance
C/O Sarah Bailey
PO Box 110805
Juneau, AK 99811-0805

March 6, 2023

Subject: FHP Oppose Repeal of 80th Percentile Rule

Dear Ms. Bailey,

Foundation Health Partners opposes changes to the 80th Percentile Rule regulation in health care insurance payments. This regulation has been an effective tool to ensure that consumer's medical bills are paid according to their insurance plan. It helps consumers avoid an outstanding bill, also known as a balance bill, on top of their normal co-pay.

The Rule was implemented to prevent this balance billing. If the Rule is eliminated the people of Alaska can expect to be paying more than they bargained for when they bought their insurance. The idea that the State of Alaska would let insurance companies dictate medical care pricing is outrageous. If this 'floor' is removed, where is the bottom? Insurance companies will be in complete control of healthcare pricing.

Insurance companies already use a variety of tools to deny and delay payments to healthcare providers. This proposed repeal puts even more pressure on consumers and increases administrative cost to healthcare. Shifting more power to the insurance companies in this manner is short sighted. It will obviously result in a substantial number of consumer complaints. It would also let the insurance companies determine access to care in Alaska. That is bad public policy.

It will be a shift of power to insurance companies when negotiating contracts with health care providers. Elimination of the 80th Percentile Rule will have a negative effect on the people of Alaska and the availability of healthcare services in Alaska. It will lead to greater medical tourism. Insurers will be able to force patients to go out of State for their healthcare.

Repealing this regulation will have an extremely negative affect on recruitment and retention of health care professionals, particularly specialists. Alaska already has a challenged healthcare workforce. Repealing this regulation will only increase that challenge.

Sincerely,

A handwritten signature in black ink, appearing to read "Shelley Ebenal".

Shelley Ebenal, CEO

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Bell".

Scott Bell, President

From: [CED INS Consumer Services \(CED sponsored\)](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: FW: Repeal the 80th percentile regulation
Date: Monday, March 6, 2023 12:16:22 PM

I can add this as an inquiry. It does not ask question but rather asserts dissatisfaction. Not sure what the response needs to be at this time. Thoughts?

Thanks,

Shauna Nickel

Consumer Services Supervisor
(907) 269-7914

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From: Insurance, Insurance (CED sponsored) <insurance@alaska.gov>
Sent: Wednesday, March 1, 2023 10:51 AM
To: CED INS Consumer Services (CED sponsored) <consumerservices@alaska.gov>
Subject: FW: Repeal the 80th percentile regulation

Marnellie Rembulat

Office Assistant 1
Alaska Division of Insurance
PO Box 110805
Juneau, Ak 99811
Main Phone: (907)-465-4614 / Fax (907) 465-3422

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From: Karin Woofter <karinclu@yahoo.com>
Sent: Wednesday, March 1, 2023 10:35 AM
To: Insurance, Insurance (CED sponsored) <insurance@alaska.gov>

Subject: Repeal the 80th percentile regulation

You don't often get email from karinclu@yahoo.com. [Learn why this is important](#)

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Dear AKDOI,

With the federal regulation No Surprises Act, it is high time to repeal the 80th percentile regulation, which has been perversely twisted to allow health providers in Alaska to charge whatever they are able to get away with for health care services.

In October 2022, I had a small bump on my knee. It was sore and hadn't gotten any better after 6 weeks. I was concerned, so I went to the Alaska Center for Dermatology here in Anchorage. During approx. a 15 minute office visit, a nurse practitioner excised the little bump and sent it to the lab.

My insurance company was billed \$600. In addition to that, I just received a lab bill out of California charging me another \$89.99 for lab services, which turned out negative for cancer. My share of this **\$689.99** was \$375.73, all for a little bump smaller than a pencil eraser on my knee.

I am due for a routine colonoscopy, but am hesitant because I've heard colonoscopies are extremely expensive here. I may wait and have it done Outside.

Please repeal the 80th percentile rule as soon as possible.

Sincerely,

Katharina M. Woofter

907-201-3607

karinclu@yahoo.com

Sent from [Mail](#) for Windows

From: [Alexandria Beiergrohslein](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: I strongly oppose the repeal of the 80th % regulation.
Date: Monday, March 6, 2023 7:53:59 AM

You don't often get email from alexandria.bgslein@anchoragebariatrics.com. [Learn why this is important](#)

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Hello,

I work in the healthcare industry as an Administrative Coordinator at a Bariatric clinic. I feel that the 80th Percentile Rule already protects patients from balance billing and out-of-pocket costs for healthcare in Alaska. The 80th Percentile Rule encourages providers and insurers to work together in good faith for fair and transparent contracting to benefit patients. The Federal No Surprises Act applies only to emergent care and does NOT replace the patient protections in the 80th Percentile Rule. Repealing the 80th Percentile Rule will only benefit insurance companies, all of whom are based in the lower-48 and enjoy substantial profits. Any claim that increasing insurance company profits will “trickle-down” to reduce the individual Alaskan’s healthcare costs is dubious at best. Healthcare is a major employer of Alaskans and provides well-paying jobs with good benefits, which supports a healthy economy. Repealing the 80th Percentile Rule will affect Alaska’s ability to recruit and retain high quality healthcare providers, which are already in short supply and will greatly reduce patient’s access to care in Alaska. Without high quality primary care and specialists that are local and accessible, patients will have to travel to the lower 48 for care – this will especially impact our most vulnerable populations who may not have the means or ability to travel.

--

Alexandria Beiergrohslein
Administrative Coordinator
Phone: 907-644-THIN, ext 4718
Fax: 907-644-8448
alexandria.bgslein@anchoragebariatrics.com
www.anchoragebariatrics.com

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From: [Katelyn Stearns](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: I strongly oppose the repeal of the 80th % regulation
Date: Monday, March 6, 2023 9:09:32 AM

You don't often get email from katelyn.stearns@anchoragebariatrics.com. [Learn why this is important](#)

CAUTION: This email originated from outside the State of Alaska mail system. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I work in the healthcare industry as a Physician Assistant. I feel that the 80th Percentile Rule already protects patients from balance billing and out-of-pocket costs for healthcare in Alaska. The 80th Percentile Rule encourages providers and insurers to work together in good faith for fair and transparent contracting to benefit patients. The Federal No Surprises Act applies only to emergent care and does NOT replace the patient protections in the 80th Percentile Rule. Repealing the 80th Percentile Rule will only benefit insurance companies, all of whom are based in the lower-48 and enjoy substantial profits. Any claim that increasing insurance company profits will “trickle-down” to reduce the individual Alaskan’s healthcare costs is dubious at best. Healthcare is a major employer of Alaskans and provides well-paying jobs with good benefits, which supports a healthy economy. Repealing the 80th Percentile Rule will affect Alaska’s ability to recruit and retain high quality healthcare providers, which are already in short supply and will greatly reduce patient’s access to care in Alaska. Without high quality primary care and specialists that are local and accessible, patients will have to travel to the lower 48 for care – this will especially impact our most vulnerable populations who may not have the means or ability to travel.

Thank you for your time.

Sincerely,

Katelyn Stearns, PA-C

Anchorage Bariatrics
P: (907)644-8446
F: (907)644-8448
www.anchoragebariatrics.com



ASHA
American
Speech-Language-Hearing
Association

March 6, 2023

Ms. Sarah Bailey
Alaska Department of Commerce, Community, and Economic Development
Division of Insurance
P.O. Box 110805
Juneau, AK 99811-0805

RE: Regulations Cutting Health Care Claim Payments

Dear Ms. Bailey:

On behalf of the American Speech-Language-Hearing Association and the Alaska Speech-Language-Hearing Association (AKSHA), we write to oppose the proposed regulations that would abolish the 80th percentile as the floor for health care claim payments.

The American Speech-Language-Hearing Association (ASHA) is the national professional, scientific, and credentialing association for 228,000 members and affiliates who are audiologists; speech-language pathologists; speech, language, and hearing scientists; audiology and speech-language pathology support personnel; and students. Over 400 ASHA members reside in Alaska.¹

The proposed cuts to health care claim payments would result in denying much needed care to Alaskans by no longer requiring health care insurers to pay out-of-network health care providers for covered services or supplies based on an amount that is equal to or greater than the 80th percentile of charges in a designated geographical area. This proposed change in coverage for out-of-network health care providers will limit patient access to services provided by both audiologists and speech-language pathologists.

The proposed regulations raise concern with ASHA and AKSHA regarding the implications to the rules set forth in the No Surprises Act, which was released last year to protect patients from unforeseen medical expenses. Removing a minimum payment requirement will allow health plans to arbitrarily dictate a reimbursement rate with no regard for the actual cost required to provide care. This will lead to a large disparity between the out-of-pocket costs for the patient and the allowable amount for reimbursement from their health plan.

Audiologists possess a clinical doctoral degree enabling them to conduct comprehensive assessments that determine hearing loss, auditory function, balance and related systems, and evaluate, select, and dispense hearing aids. Audiologists also assess the candidacy of individuals with hearing loss for cochlear implants and work with medical teams to provide fitting, mapping, and audiological rehabilitation to optimize the use of these devices.

Speech-language pathologists possess a master's or doctoral degree with 75 semester credit hours in a course of study addressing the knowledge and skills pertinent to the field of speech-language pathology, as determined, validated, and systematically updated using a skills validation process along with completing a clinical practicum experience. This educational background makes them uniquely qualified to assess and treat speech, language, swallowing, and cognitive communication disorders in children and adults. These services help children acquire language and enable people to recover essential skills to communicate about their health and safety, to swallow adequate nutrition safely, and to have sufficient attention, memory,

and organizational skills to function in their environment. It is critical that Alaskans maintain the opportunity to access these services via their health insurance coverage when using out-of-network providers.

Thank you for considering ASHA's and AKSHA's opposition to the proposed regulations. If you or your staff have any questions, please contact Eileen Crowe, ASHA's director, state association relations, at ecrowe@asha.org.

Sincerely,



Robert M. Augustine, PhD, CCC-SLP
2023 ASHA President



Andrea Toth, CCC-SLP
2023 AKSHA President

¹ American Speech-Language-Hearing Association. (2022). *Alaska* [Quick Facts].
<https://www.asha.org/siteassets/advocacy/state-fliers/alaska-state-flyer.pdf>



Daniel Tulip, MD
Janet Shen, MD
Jeanette Legenza, MD
R. Kilian Schafer, MD

March 6, 2023

Sarah Bailey
Division of Insurance
Alaska Department of Commerce & Economic Development
PO Box 110805
Juneau AK 99811-0805

RE: **OPPOSE REPEALING** 3AAC26.110, aka the 80th Percentile Rule

Ms. Bailey,

I am writing to comment on the division's proposed changes to 3AAC26.110, specifically, the deletion of paragraphs (a)(1) and (a)(2), and the revision of paragraphs (4) and (5)(A). I **OPPOSE** the proposed changes.

My concern is that the proposed changes will further unbalance the patient / provider / insurance carrier relationship in the carrier's favor. Simply put, the proposed regulation changes grant more power to the carriers and less into the hands of the Alaskan consumers who need medical care.

My medical practice has contracted with many of the larger insurance carriers in Alaska to insure our patients are able to receive quality care at a reasonable cost. However, there are some insurance carriers that we are not contracted with that attempt to pay at Medicare rates for pediatric healthcare. We have been able to recoup reasonable reimbursement with this law in place. Prior to this law, extremely low usual and customary rates were frequently seen, to the detriment of patients and their families. The "No Surprise Act" will certainly make patient's families aware of the potential out-of-pocket cost but it will not hold the insurance carriers accountable to pay a reasonable benefit for services rendered. The cost of healthcare will be pushed from the carrier to the Alaskan patient/consumer.

There are many reasons the 80th should not be repealed, but here are some brief points to consider:

- My business cannot afford to stay open providing medical care if reimbursed rates reduce to Medicare levels
- The 80th Percentile Rule protects Alaskan patients from balance billing, usual and customary denials, and high out-of-pocket costs for healthcare
- The Federal "No Surprises Act" applies only to emergent care and does **NOT** replace the patient protections in the 80th Percentile Rule
- Repealing the 80th Percentile Rule will only benefit insurance companies, all of whom are based in the lower 48 states
- Repealing the 80th Percentile Rule will affect Alaska's ability to recruit and retain high quality healthcare providers, which are already in short supply and will greatly reduce patient's access to care in Alaska

Please **DO NOT** proceed with changes to 3AAC26.110 until you can provide additional language with assurances for small providers that better reflect conditions in this market.

Thank you,


Jeanette Legenza, MD



**Ajay Pabby, MD, MPH
Nicolas Guillen-Villa, MD
Miguel Ordonez, MD
Pioneer GI Clinic, APC
1200 Airport Heights Drive
Building E Suite 210
Anchorage, AK 99508**

**Phone 907 562-6001
Fax 907 562-6002**

**info@pioneergiclinic.com
www.pioneergiclinic.com**

March 6, 2023

To Whom it May Concern,

We are writing on behalf of the state's 80th percentile regulation and our opposition in removing the regulatory requirement that "usual and customary" charges be based on the 80th percentile of market pricing.

Alaska has limited services for healthcare options, and if the insurance rates are modified it is a hindrance to deliver good quality healthcare. Therefore, the 80th percentile should remain.

Here in Alaska, we offer and deliver specialized services that allow patient access to quality healthcare. Our specialty physicians provide specialty services here in Alaska. By offering these services, it provides patients with the option to stay in their home state of Alaska and not travel to the lower 48 states where this can become a large travel expense for the patient.

The 80th percentile rule has allowed more physicians to care for seniors, provided services that the patient would generally have to travel out of state to receive, as well as sub-specialty and specialty services. We made the decision to come to Alaska to offer services not offered previously so that Alaskans do not have to travel out of their state. It is an additional cost to us as physicians traveling to Alaska to provide these specialized services. Despite the 80%, specialty services are still limited here in Alaska.

If this regulation is changed, we will see the same behavior that led to its suggestion for change – patients shouldering a larger percentage of healthcare care costs and patients not receiving the full value of the insurance product they believe they are purchasing. Taking away this rule hinders patients and limits the services offered here in Alaska.

Sincerely,

Ajay Pabby, MD, MPH
Nicolas Guillen-Villa, MD
Miguel Ordonez, MD



March 3, 2023

To Whom It May Concern,

This correspondence is to serve as my formal opposition for repealing the 80th Percentile rule / 3 ACC 21.110(a). This proposed regulation modification will have incalculable ramifications to our community and the continued operations of physician practices / healthcare entities in Alaska conducting business as a going concern.

Patients, though enhanced in their protections against unexpected healthcare costs with the No Surprises Act of 2022, will be immensely burdened with new challenges should this proposed repeal move forward. The 80th Percentile rule is protective to patients in the sense that it assures a level of reimbursement to the providers that more closely aligns with the costs of rendering care in a state that is unlike any other state in the country.

Without this in place, providers will be left to either accept a level of reimbursement that does not adequately cover the costs of services or provide patients with good faith estimates that reflect higher out of pocket expenses (this is a change from what patients have come to expect in receiving care in Alaska). This will also shift the market share towards Alaska's major insurers and entice further concentrations in the marketplace, with far less competition, at the cost of both patients and healthcare providers. Should the physicians and medical providers in Alaska be required to accept substantially lower rates of reimbursement from out of network payers and additionally navigate far less negotiation power for in-network contract dialogues, the viability of these businesses and the medical resources currently available to Alaskan patients will destabilize onto a trajectory of concerning uncertainty.

If the physicians and medical providers of Alaska cannot accommodate the balance of ever-rising healthcare costs (staffing, staffing shortages, supplies, supply-chain shortages, PPE, shipping & freight to Alaska, RCM management, etc.) alongside this certain reimbursement reduction (both in-network and out of network), what will become of the Alaskan medical community? How will Alaska continue to attract and retain the specialized talent required to offer healthcare services a population over the nation's largest geographic region with the fewest resources and some of the highest rates of chronic disease? Alaska so desperately needs enhancements in access to care, and I agree, reductions in costs. The answer, however, is not to be found in a legislative proposal that will constrict resources to the point of business closure.

Can the Alaskan medical community, who already finds scarcity in access to healthcare, survive such a burden? Beyond the scope of obvious impact, Healthcare is a large employer in the state of Alaska. The closing of businesses and consolidation of local services will likely lead to a substantial workforce reduction in this sector. Patients will then find themselves struggling to navigate access to local services, and will go without or be forced to travel out of state.

Is the state truly prepared for this?

As you are aware, Premiera Blue Cross currently holds the market share majority, as it has for years. Below, I've outlined their audited financial statements from 2012 & 2018. Though net income over time has substantially increased, the increased profitability has done little to alleviate the financial burdens imparted upon patients by means of their premiums, copays, coinsurances, deductibles, etc. In 2023, premiums to patients have increased in Alaska by 19.79% by Alaska's top carrier. It is the Division of Insurance's role to protect Alaskans from such a market share concentration.

- Premiera Blue Cross Net Income in **2012 was \$98,214,000.00**
https://www.premera.com/documents/020560_05-2013.pdf
- Premiera Blue Cross Net Income in **2018 was \$234,305,000.00**
https://www.premera.com/documents/031109_2018.pdf



Alaska 2023 ACA-compliant Individual Market Unsubsidized Avg. Premium Changes (On + Off Exchange) ACASignups.net						
Carrier	On/Off Exchange	Est. Policy Enrollees	Carrier Market Share (on + off exch)	Avg. Requested % Rate Change	Avg. Final % Rate Change	Notes
Moda Assurance Co.	BOTH	2,200	9.57%	3.97%	12.10%	(enrollment estimated)
Premiera Blue Cross Blue Shield of AK	BOTH	20,791	90.43%	20.20%	19.78%	
		22,991	100.0%	18.65%	19.05%	
Average UNSUBSIDIZED 2022 Premium				\$746	\$746	Prelim Final
Average UNSUBSIDIZED 2023 Premium				\$885	\$888	Avg. Monthly change: \$139 \$142
						Avg. Annual change: \$1,669 \$1,705

Alaska 2023 ACA-compliant Small Group Market Unsubsidized Avg. Premium Changes (On + Off Exchange) ACASignups.net						
Carrier	On/Off Exchange	Est. Policy Enrollees	Carrier Market Share (on + off exch)	Avg. Requested % Rate Change	Avg. Final % Rate Change	Notes
Aetna Life Insurance Co.			#DIV/0!	9.70%	9.13%	
Moda Health Plan, Inc.			#DIV/0!	3.52%	3.06%	
Premiera Blue Cross Blue Shield of AK			#DIV/0!	5.67%	5.73%	
UnitedHealthCare Insurance Co.			#DIV/0!	0.40%	0.45%	
			Unweighted	4.82%	4.59%	

<https://acasignups.net/22/11/03/alaska-final-avg-unsubsidized-2023-aca-rate-changes-191>

The GAO (Government Accountability Office) released the following statement, reporting: "From 2015 through 2020, states in which the top three issuers already had at least 80% market share became more concentrated."

<https://www.gao.gov/assets/gao-23-105672.pdf>

In review of the below table, it is evident the concentration continues to trend with even fewer issuers in Alaska's health insurance market.

Table 4: Number of Issuers in Each State's Individual Health Insurance Market, 2011 through 2020										
State	Number of issuers									
	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Alabama	27	22	23	17	16	11	10	10	7	8
Alaska	13	13	14	12	10	7	5	5	3	4

Table 5: Market Share of the Largest and Three Largest Issuers in Each State's Individual Health Insurance Market, 2017 through 2020									
State	Largest issuer name	Market share of the largest issuer (percent)				Market share of the three largest issuers (percent)			
		2017	2018	2019	2020	2017	2018	2019	2020
Alabama	BCBS OF AL GRP	97.6	97.3	96.7	96.5	99.9	99.7	99.8	99.7
Alaska	PREMERA BLUE CROSS GROUP	99.3	99.3	99.5	91.1	99.9	100.0	100.0	100.0
Arizona	CENTENE CORP GRP	43.8	49.5	40.6	37.1	95.8	99.0	88.9	85.5

Income is down for Alaskans and costs are up, and yet Alaska has surpassed several other far western states in preserving the balance of both healthcare spending for patients and the continued operations of healthcare services in Alaska, even amidst COVID19, in great part to the 80th percentile rule. I strongly oppose the rule's repeal and appreciate this opportunity to publicly comment on this matter.

Sincerely,

Eric Tompkins, MD
 Internal Medicine Associates, LLC
 2841 DeBarr Road, Suite 50
 Anchorage AK 99508
 907-276-2811

March 3, 2023

To Whom It May Concern,

This correspondence is to serve as my formal opposition for repealing the 80th Percentile rule / 3 ACC 21.110(a). This proposed regulation modification will have incalculable ramifications to our community and the continued operations of physician practices / healthcare entities in Alaska conducting business as a going concern.

Patients, though enhanced in their protections against unexpected healthcare costs with the No Surprises Act of 2022, will be immensely burdened with new challenges should this proposed repeal move forward. The 80th Percentile rule is protective to patients in the sense that it assures a level of reimbursement to the providers that more closely aligns with the costs of rendering care in a state that is unlike any other state in the country.

Without this in place, providers will be left to either accept a level of reimbursement that does not adequately cover the costs of services or provide patients with good faith estimates that reflect higher out of pocket expenses (this is a change from what patients have come to expect in receiving care in Alaska). This will also shift the market share towards Alaska's major insurers and entice further concentrations in the marketplace, with far less competition, at the cost of both patients and healthcare providers. Should the physicians and medical providers in Alaska be required to accept substantially lower rates of reimbursement from out of network payers and additionally navigate far less negotiation power for in-network contract dialogues, the viability of these businesses and the medical resources currently available to Alaskan patients will destabilize onto a trajectory of concerning uncertainty.

If the physicians and medical providers of Alaska cannot accommodate the balance of ever-rising healthcare costs (staffing, staffing shortages, supplies, supply-chain shortages, PPE, shipping & freight to Alaska, RCM management, etc.) alongside this certain reimbursement reduction (both in-network and out of network), what will become of the Alaskan medical community? How will Alaska continue to attract and retain the specialized talent required to offer healthcare services a population over the nation's largest geographic region with the fewest resources and some of the highest rates of chronic disease? Alaska so desperately needs enhancements in access to care, and I agree, reductions in costs. The answer, however, is not to be found in a legislative proposal that will constrict resources to the point of business closure.

Can the Alaskan medical community, who already finds scarcity in access to healthcare, survive such a burden? Beyond the scope of obvious impact, Healthcare is a large employer in the state of Alaska. The closing of businesses and consolidation of local services will likely lead to a substantial workforce reduction in this sector. Patients will then find themselves struggling to navigate access to local services, and will go without or be forced to travel out of state.

Is the state truly prepared for this?

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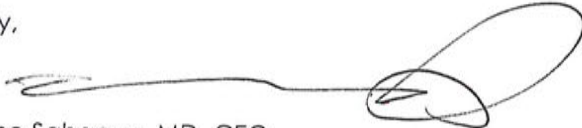
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Sincerely,



Geronimo Sahagun, MD, CEO
Internal Medicine Associates, LLC
2841 DeBarr Road, Suite 50
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Signed by:

Kim D. Houghton

5A45055837854A1...

Kimberly Houghton, MD
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The GAO (Government Accountability Office) released the following statement, reporting: "From 2015 through 2020, states in which the top three issuers already had at least 80% market share became more concentrated."

<https://www.gao.gov/assets/gao-23-105672.pdf>

In review of the below table, it is evident the concentration continues to trend with even fewer issuers in Alaska's health insurance market.

Table 4: Number of Issuers in Each State's Individual Health Insurance Market, 2011 through 2020

State	Number of Issuers									
	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Alabama	27	22	23	17	16	11	10	10	7	8
Alaska	13	13	14	12	10	7	5	5	3	4

Table 5: Market Share of the Largest and Three Largest Issuers in Each State's Individual Health Insurance Market, 2017 through 2020

State	Largest issuer name	Market share of the largest issuer (percent)				Market share of the three largest issuers (percent)			
		2017	2018	2019	2020	2017	2018	2019	2020
Alabama	BCBS OF AL GRP	97.6	97.3	96.7	96.5	99.9	99.7	99.8	99.7
Alaska	PREMERA BLUE CROSS GROUP	99.3	99.3	99.5	91.1	99.9	100.0	100.0	100.0
Arizona	CENTENE CORP GRP	43.8	49.5	40.6	37.1	95.8	99.0	88.9	85.5

Income is down for Alaskans and costs are up, and yet Alaska has surpassed several other far western states in preserving the balance of both healthcare spending for patients and the continued operations of healthcare services in Alaska, even amidst COVID19, in great part to the 80th percentile rule. I strongly oppose the rule's repeal and appreciate this opportunity to publicly comment on this matter.

Sincerely,

Steven Ingle, MD
 Internal Medicine Associates, LLC
 2841 DeBarr Road, Suite 50
 Anchorage AK 99508
 907-276-2811



March 3, 2023

To Whom It May Concern,

This correspondence is to serve as my formal opposition for repealing the 80th Percentile rule / 3 ACC 21.110(a). This proposed regulation modification will have incalculable ramifications to our community and the continued operations of physician practices / healthcare entities in Alaska conducting business as a going concern.

Patients, though enhanced in their protections against unexpected healthcare costs with the No Surprises Act of 2022, will be immensely burdened with new challenges should this proposed repeal move forward. The 80th Percentile rule is protective to patients in the sense that it assures a level of reimbursement to the providers that more closely aligns with the costs of rendering care in a state that is unlike any other state in the country.

Without this in place, providers will be left to either accept a level of reimbursement that does not adequately cover the costs of services or provide patients with good faith estimates that reflect higher out of pocket expenses (this is a change from what patients have come to expect in receiving care in Alaska). This will also shift the market share towards Alaska's major insurers and entice further concentrations in the marketplace, with far less competition, at the cost of both patients and healthcare providers. Should the physicians and medical providers in Alaska be required to accept substantially lower rates of reimbursement from out of network payers and additionally navigate far less negotiation power for in-network contract dialogues, the viability of these businesses and the medical resources currently available to Alaskan patients will destabilize onto a trajectory of concerning uncertainty.

If the physicians and medical providers of Alaska cannot accommodate the balance of ever-rising healthcare costs (staffing, staffing shortages, supplies, supply-chain shortages, PPE, shipping & freight to Alaska, RCM management, etc.) alongside this certain reimbursement reduction (both in-network and out of network), what will become of the Alaskan medical community? How will Alaska continue to attract and retain the specialized talent required to offer healthcare services a population over the nation's largest geographic region with the fewest resources and some of the highest rates of chronic disease? Alaska so desperately needs enhancements in access to care, and I agree, reductions in costs. The answer, however, is not to be found in a legislative proposal that will constrict resources to the point of business closure.

Can the Alaskan medical community, who already finds scarcity in access to healthcare, survive such a burden? Beyond the scope of obvious impact, Healthcare is a large employer in the state of Alaska. The closing of businesses and consolidation of local services will likely lead to a substantial workforce reduction in this sector. Patients will then find themselves struggling to navigate access to local services, and will go without or be forced to travel out of state.

Is the state truly prepared for this?

As you are aware, Premiera Blue Cross currently holds the market share majority, as it has for years. Below, I've outlined their audited financial statements from 2012 & 2018. Though net income over time has substantially increased, the increased profitability has done little to alleviate the financial burdens imparted upon patients by means of their premiums, copays, coinsurances, deductibles, etc. In 2023, premiums to patients have increased in Alaska by 19.79% by Alaska's top carrier. It is the Division of Insurance's role to protect Alaskans from such a market share concentration.

- Premiera Blue Cross Net Income in **2012 was \$98,214,000.00**
https://www.premera.com/documents/020560_05-2013.pdf
- Premiera Blue Cross Net Income in **2018 was \$234,305,000.00**
https://www.premera.com/documents/031109_2018.pdf



Alaska 2023 ACA-compliant Individual Market Unsubsidized Avg. Premium Changes (On + Off Exchange) ACASignups.net						
Carrier	On/Off Exchange	Est. Policy Enrollees	Carrier Market Share (on + off exch)	Avg. Requested % Rate Change	Avg. Final % Rate Change	Notes
Moda Assurance Co.	BOTH	2,200	9.57%	3.97%	12.10%	(enrollment estimated)
Premiera Blue Cross Blue Shield of AK	BOTH	20,791	90.43%	20.20%	19.78%	
		22,991	100.0%	18.65%	19.05%	
Average UNSUBSIDIZED 2022 Premium				\$746	\$746	Avg. Monthly change: \$139 \$142
Average UNSUBSIDIZED 2023 Premium				\$885	\$888	Avg. Annual change: \$1,669 \$1,705
Alaska 2023 ACA-compliant Small Group Market Unsubsidized Avg. Premium Changes (On + Off Exchange) ACASignups.net						
Carrier	On/Off Exchange	Est. Policy Enrollees	Carrier Market Share (on + off exch)	Avg. Requested % Rate Change	Avg. Final % Rate Change	Notes
Aetna Life Insurance Co.			#DIV/0!	9.70%	9.13%	
Moda Health Plan, Inc.			#DIV/0!	3.52%	3.06%	
Premiera Blue Cross Blue Shield of AK			#DIV/0!	5.67%	5.73%	
UnitedHealthCare Insurance Co.			#DIV/0!	0.40%	0.45%	
			Unweighted	4.82%	4.59%	

<https://acasignups.net/22/11/03/alaska-final-avg-unsubsidized-2023-aca-rate-changes-191>

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<https://www.gao.gov/assets/gao-23-105672.pdf>

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Sincerely,

Douglas Haghighi

EA5A3CE9640B4E9...

Douglas Haghighi, MD
 Internal Medicine Associates, LLC
 2841 DeBarr Road, Suite 50
 Anchorage AK 99508
 907-276-2811

March 5, 2023

Attention: Sarah Bailey

Sarah Bailey
PO Box 110805
Juneau, AK 99811-0805

To whom it may concern:

I am writing to express my support for Alaska's 80th percentile rule (3 AAC 26.110(a)) and to urge you to keep it in effect as written. I understand that the rule has been under review and may be up for potential repeal or amendment, but I believe that it is of great benefit to Alaskan consumers and healthcare providers.

Following the COVID-19 pandemic, Alaska's cost of living has risen significantly. The state's remote location and reliance on shipping have resulted in increased shipping rates, which have significantly driven up the cost of goods, including groceries. For low and moderate income families, these cost increases have made it difficult to cover basic expenses, let alone potentially higher costs for healthcare if the 80th percentile rule is repealed or amended.

The 80th percentile rule is a critical consumer protection measure that prevents insurers from setting unreasonably low reimbursement rates for out-of-network care, helping to rein in healthcare costs. By ensuring that consumers are not subject to exorbitant out-of-pocket costs, the rule provides much-needed financial security for Alaskan families. Any increased costs of medical care to consumers could place a significant hardship on Alaska residents, particularly those who are already struggling to make ends meet.

Repealing or amending the 80th percentile rule in Alaska will have dire consequences for the provision of high-quality care by medical providers, who may be forced to discontinue serving Alaska's Medicare and Medicaid patient populations. This would leave many Alaskans without access to the medical care they need, which could result in serious health consequences.

Alaska's seniors are already facing challenges finding essential primary care services needed because many practices are either no longer accepting new Medicare patients due to caps placed on the number of Medicare patients they are willing to see, or because they are closing their doors for other reasons such as staffing, as is the case for Alaska Regional Senior Healthcare Clinic, who closed their doors on February 28, 2023.

A recent article published in the March edition of Senior Voice (Volume 47, Number 3) describes these challenges based on feedback from Alaskan senior, Deborah Bear, who stated that she and her husband are considering drastic options to find the healthcare services they need. Those drastic options include moving out of state, or traveling out of state periodically to get the necessary healthcare they need. These drastic measures will be very difficult for seniors who are on a fixed income, as you can imagine.

Furthermore, repealing or amending the rule will quite likely make Alaska less attractive to physician recruits, limiting the number of high-quality medical specialists available in the state. This would exacerbate the existing shortage of healthcare professionals in Alaska, which is already a significant concern.

Without access to high-quality medical care, many Alaskans, not just seniors, may be forced to leave the state to seek treatment elsewhere, which could have negative economic and social consequences for Alaska. The loss of these patients would also have a significant impact on Alaska's healthcare system, which could struggle to provide care to the remaining patient population.

It is my belief that instead of repealing or amending Alaska's 80th percentile rule, Alaska's leaders should focus on reducing healthcare costs by addressing overutilization by hospital facilities. Many hospitals are performing unnecessary

tests and extensive therapies with little to no oversight, to drive their own financial interests while increasing healthcare costs to the state and to Alaskan residents.

In conclusion, I strongly urge you to keep Alaska's 80th percentile rule in effect as written. It is a critical consumer protection measure that helps to keep healthcare costs in check and supports physician practices in Alaska. The rule is also critical for ensuring that Alaskans have access to high-quality medical care, which is essential for maintaining good health and preventing serious health consequences. Thank you for your attention to this important issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Kira Gallier". The signature is fluid and cursive, with the first name "Kira" being more prominent than the last name "Gallier".

Kira Gallier

ceo@medgroupak.com

Chief Executive Officer

Medical Group of Alaska, LLC

From: onecreativdoc@protonmail.com
To: [Bailey, Sarah S \(CED\)](#)
Cc: lori.wing-heirer@alaska.gov; kori.heirer@alaska.gov
Subject: my thoughts on the repeal of the "local 80% Rule"
Date: Monday, March 6, 2023 4:17:07 PM
Attachments: [EDITED iNS bD LTR 3-6-23.docx](#)

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Joan Priestley, M.D.
3705 Arctic Blvd., # 1332
Anchorage, Alaska 99503
(907) 244-7983 AFTER 1 PM, PST
onecreativdoc@yahoo.com

To: Ms. Sarah Bailey, and **Lori Wing-Heirer**
Alaska Insurance Sivation
P.O. Box 110805, Juneau, AK 99811-0805

Dear Ms. Bailey and Ms. Wing-Heirer,

I am writing this letter to counteract and dispel the myths and outright lies that my colleagues are bombarding into your office, concerning the consequences of repealing the "80% Rule."

As you know, insurance payers are presently limited to paying 80% of customary charges, measured in only the local geographical area. The carriers cannot compare our Alaska health care fees to the national average, in calculating payment amounts. In addition, carriers cannot use the national average in calculating their payment amount for any procedures or services.

In your Notice of Proposed Changes, you correctly stated that "the reimbursement level established in [3 AAC 26.110] has been identified as increasing the cost of health care."

Actually, it is a gross understatement, to say that this present "80% Rule" situation is merely "Increasing the cost of healthcare." Physicians and other providers, over the past 20 or so years, have taken advantage of and abused this protective rule. They have gradually jacked their prices up to FIVE TIMES THE NATIONAL AVERAGE- and insurance carriers have been held hostage by the "80% of local prices Rule" that is now in place.

This obscene economic situation is allowed to exist only by the present "80%

Rule” restrictions. The present “80% Rule” does nothing to protect patients, and in fact has extremely detrimental consequences for the public. With prices for services in Alaska set at five times the national average, the usual 20% copayment amounts in Alaska cost citizens an amount equal to the entire bill in other states.

Consequently, insurance companies have been willing to pay the costs to fly a patient and his/her family to another state, pay for hotels and meals, and pay for all costs of the procedure. Why? Because the carriers still save an enormous amount of money, compared to the obscene prices they are forced to pay for the same procedures performed in Alaska.

I am confident that my colleagues and their paid lobbyists are going into high gear, sending you reams of letters stating that our health care system will implode, our economy will crash, the Northern Lights will never shine again, and our Alaskan way of life will be extinguished, etc, etc. without the present “80% Rule.”

I strongly urge you not to fall prey to these utter lies, other pressures, or promises of gifts or rewards, etc. My fellow physicians are obviously throwing every red herring they can at you. They will use any rationale that sounds even remotely logical and legitimate, to cover up the stark reality- the present situation, with the “local 80% Rule” restrictions, allows a uniquely predatory pricing structure to continue, that has been gouging captive Alaska citizens for years.

Repealing the protective “local 80% Rule” will go far to reign in and even terminate this extortionary and protected medical pricing system, that Alaskans face daily.

Thank you for considering my thoughts about this important matter. It is time for your office to protect Alaskan citizens, by repealing the “local 80% Rule.”

Sincerely,

Joan Priestley, M.D.

P.S. I have included the sample letter sent to physicians from the Alaska Medical Association. No doubt you have already received several variations of this theme. I have edited it to eliminate the lies, and added truthful statements, for your enjoyment (see attachment).

Sent with [Proton Mail](#) secure email.

From: [Natalia Saprykina](#)
To: [Bailey, Sarah S \(CED\)](#); [Bailey, Sarah S \(CED\)](#)
Subject: Oppose 80% rule repeal
Date: Monday, March 6, 2023 2:34:10 PM

You don't often get email from nataliasaprykina@hotmail.com. [Learn why this is important](#)

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March 6, 2023

The State of Alaska Division of Insurance

Attention Sarah Bailey

sarah.bailey@alaska.gov

RE: Proposed Repeal of 80th Percentile Rule

OPPOSED

Dear Division Director:

I am writing to respectfully oppose any proposed change that amends or removes the regulatory requirement under 3 ACC 21.110(a) that “Usual and Customary” charges be based on the 80th percentile of market pricing.

Our patient mix includes 27% Medicaid patients by patient volume, and we see many other patients who are Medicare, Tricare, and VA patients. Therefore, we understand the needs of Alaska’s vulnerable populations of patients. We see all our patients without discrimination based on type of insurance plan, public or private.

I oppose this rule change because it will adversely affect the fees that many Alaskans pay, driving up costs for out-of-pocket and balance billing payments. Under the proposed change, healthcare consumers will pay more due to higher balanced billing. There is no reason to make the change. The regulation is working as intended, encouraging providers and payers to work together in good

faith and transparent contracting. The proposed change is supported by payers who routinely see their profits increase while holding down their contracted rates with providers. Increasing their leveraging power in negotiations with providers will not trickle down to consumers because these payers have a near monopoly in the state.

Not only will eliminating the rule drive up costs for patients, it will adversely impact providers who are currently seeing Alaska's vulnerable populations, encouraging providers to stop participating in these critically important government programs. Thus, the proposed change will not only drive up costs for out-of-network patients, it will decrease patient access to providers overall in Alaska.

We respectfully urge the Division of Insurance to retain the current rule.

Sincerely,

Natalia Saprykina, MD, FABOG

Denali OBGYN clinic

From: [Dwayne Trujillo and Janet Shen](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: OPPOSE REPEALING 3AAC2..110, aka 80th Percentile Rule
Date: Monday, March 6, 2023 3:24:32 PM

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March 6, 2023

Sarah Bailey

Division of Insurance

Alaska Department of Commerce & Economic Development

PO Box 110805

Juneau AK 99811-0805

RE: **OPPOSE REPEALING** 3AAC26.110, aka the 80th Percentile Rule

Dear Ms. Bailey,

I am writing to comment on the division's proposed changes to 3AAC26.110, specifically, the deletion of paragraphs (a)(1) and (a)(2), and the revision of paragraphs (4) and (5)(A). I adamantly OPPOSE the proposed changes.

Simply put, the proposed changes will raise the cost of medical care to Alaskan consumers by granting more power to the insurance companies to set rates for medical care.

I am a pediatrician in a small physician owned practice. We contract with many of the larger insurance carriers in Alaska to ensure that our patients can receive quality care at a reasonable cost. However, there are some insurance carriers that we are not contracted with that attempt to pay at Medicare rates for pediatric healthcare. We have been able to recoup reasonable

reimbursement with this law in place. Prior to this law, extremely low usual and customary rates were frequently seen, to the detriment of patients and their families. The “No Surprise Act” will allow patients' families to be aware of the potential out-of-pocket cost but it will not hold the insurance carriers accountable to pay a reasonable benefit for services rendered. The cost of healthcare will be pushed from the carrier to the Alaskan patient/consumer.

There are many reasons the 80th should not be repealed, but here are some brief points to consider:

- My business cannot afford to stay open providing medical care if reimbursed rates reduce to Medicare levels
- The 80th Percentile Rule protects Alaskan patients from balance billing, usual and customary denials, and high out-of-pocket costs for healthcare
- The Federal “No Surprises Act” applies only to emergent care and does **NOT** replace the patient protections in the 80th Percentile Rule
- Repealing the 80th Percentile Rule will only benefit insurance companies, all of whom are based in the lower 48 states
- Repealing the 80th Percentile Rule will affect Alaska’s ability to recruit and retain high quality healthcare providers, which are already in short supply and will greatly reduce patient’s access to care in Alaska

Please DO NOT proceed with changes to 3AAC26.110 until you can provide additional language with assurances for small providers that better reflect conditions in this market.

Thank you,

Janet Shen, MD., PhD.

From: [Gloria Jueneman](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: OPPOSE REPEALING the 80th Percentile rule
Date: Monday, March 6, 2023 3:32:53 PM
Attachments: [image001.jpg](#)

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March 6, 2023

Attention: Sarah Bailey
Sarah Bailey
P.O. Box 110805
Juneau, AK 99811-0805
Sarah.Bailey@alaska.gov

I am providing written comment on the 80th 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 "80th percentile" rule for determining "usual and customary" charges for healthcare services provided to Alaskan consumers.

The reason the 80th percentile regulation was put into effect was to provide more transparency and greater consumer protections and I would contend that this has certainly been the case.

The No Surprises Act (NSA) provides protection for out of network emergent care. Therefore, if the 80th percentile regulation is removed there will be nothing protecting the consumer if healthcare providers in good faith fail to negotiate with the insurance entity and thus are forced to go out of network.

Please accept my strong opposition to a repeal or amendment to the 80th percentile rule. Most specialists have entered into contracts with insurance companies and the NSA would not provide Alaska consumers of healthcare any protection if a specialty was not in network.

Thank you,

Gloria Jueneman, BS, CMPE
Chief Revenue Officer
Alaska Heart and Vascular Institute
3841 Piper Street, Suite T-100
Anchorage, AK 99508

(907) 550-2240 Office



the heart of a healthy community

From: [Ross Dodge](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: OPPOSE REPEALING the 80th Percentile rule / 3 ACC 21.110(a)
Date: Monday, March 6, 2023 1:07:38 PM

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Dear Ms. Bailey,

There are many reasons the 80th should not be repealed:

- The 80th Percentile Rule protects patients from balance billing and out-of-pocket costs for healthcare in Alaska
- The 80th Percentile Rule encourages providers and insurers to work together in good faith for fair and transparent contracting to benefit patients
- The Federal No Surprises Act applies only to emergent care and does NOT replace the patient protections in the 80th Percentile Rule
- Repealing the 80th Percentile Rule will only benefit insurance companies, all of whom are based in the lower-48 and enjoy substantial profits
- Any claim that increasing insurance company profits will “trickle-down” to reduce the individual Alaskan’s healthcare costs is dubious at best
- Healthcare is a major employer of Alaskans and provides well-paying jobs with good benefits, which supports a healthy economy
- Repealing the 80th Percentile Rule will affect Alaska’s ability to recruit and retain high quality healthcare providers, which are already in short supply and will greatly reduce patient’s access to care in Alaska
- Without high quality primary care and specialists that are local and accessible, patients will have to travel to the lower 48 for care – this will especially impact our most vulnerable populations who may not have the means or ability to travel

In addition, I was interested to list to the NPR Article showing how “No Surprises Act” doesn’t adequately protect patients or replace Alaska’s Law:

<https://www.npr.org/sections/health-shots/2023/02/28/1159786893/a-surprise-billing-law-loop-hole-her-pregnancy-led-to-a-six-figure-hospital-bill>

Regards,
Ross Dodge

Ross W. Dodge, MD, FACP
ABIM Board Certified in Internal Medicine and Sleep Medicine

PEAK Neurology & Sleep Medicine, LLC
2741 Debarr Road, Ste c308
Anchorage, AK 99508
P: (907) 331-3640

From: [Christina Magill, MD](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: Opposition to removing 80th percentile rule
Date: Monday, March 6, 2023 9:57:28 AM

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Dear Ms. Bailey,

I am a surgical subspecialist practicing ENT and Facial Plastic Surgery in Anchorage and Wasilla. My parents live in Alaska and that is why I live here. I am worried about my parents as Alaska healthcare changes. They can't get in to specialists and are on medicare. They have waited months for appointments for vision loss, chest pain, and other ailments – I sometimes make personal phone calls to try to get them seen – because of the MD behind my name, my overworked colleagues will see them.

Repealing the 80th percentile rule will make caring for Alaska's aging and vulnerable patients even more difficult. Doctors' offices will not be able to see Medicare or Medicaid patients because these patients are seen at a "loss" for the time they need for care. The people who benefit from this are the insurance companies, not the patients. It is not doctors that drive up the cost of healthcare. Physician reimbursement goes down every year while insurance premiums sky rocket. Three years ago I paid 1200 a month for my family's insurance and now pay 1800 a month.

I wish Alaskans knew how tenuous our specialty and medical community here is. We had a brain-drain during the pandemic, and it will continue if the 80th percentile rule is continued. It is cold and dark in Alaska. Doctors that live here are hard to replace if they leave.

If you are wondering why you are not hearing from more doctors about the 80th percentile rule, it is because we are overburdened by our work and demands on us – not because we don't care. If you take care of us, we can take care of Alaskans.

I grew up in Alaska and want to see our healthcare system strengthened, not torn apart by the agendas of insurance companies while we sit idly by.

Please help protect Alaska's patients and Alaska's doctors from predatory legislation by insurance company agendas.

Respectfully,

Christina Magill, MD, FACS

From: [Johnna Kohl](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: Opposition to the repeal of the 80th % regulation
Date: Monday, March 6, 2023 2:59:32 PM

You don't often get email from johnna.kohl@anchoragebariatrics.com. [Learn why this is important](#)

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To whom it may concern,

I strongly oppose repealing the 80th % regulation. I have worked as a primary care physician in Alaska for over 20 years. Over the course of my career (and as a patient myself), I have watched as insurance companies make astronomical profits while cutting corners on the reimbursement to physicians for the hours of care we provide to patients and the coverage they provide to the patients they insure. These days, offices must find, train and pay numerous staff members to help us jump through insurance company hoops for many of the medically necessary medications we prescribe to our patients. It is only getting worse. There is a reason that insurance companies want to repeal the 80th% regulation, and it is not for the benefit of patients. It is to reduce the ability of physicians to negotiate for fair reimbursement so that insurance companies can undercut payments further and make more profit.

Alaska is not an easy place to recruit and retain physicians and we need to be paid appropriately for the hard work that we do. Please support the continuation of the 80th percentile regulation.

Sincerely,

Johnna Kohl MD
Alaska Family Medicine Residency class of 2002
Board certified in Family Medicine and Obesity Medicine



March 6, 2023

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

Dear Director Wing-Heier:

It's no secret that Alaska has the highest health care costs in the country. What may be less obvious, though, is the 80th percentile regulation has been a significant driver of health care cost increases in the state. In fact, a University of Alaska Anchorage study found the rule is responsible for pushing costs between 8.61% and 24.65% higher than they otherwise would have been over the last decade.

I've worked for Premera Blue Cross Blue Shield of Alaska for the past 24 years. My role with the company has been primarily working with medical claims and cost data in the two states we operate in – Alaska and Washington. This puts me in a unique position to see firsthand the impact of the 80th percentile rule on medical claim cost trends in Alaska.

The 80th percentile rule was originally adopted to protect consumers from surprise billing, which occurs when medical providers bill a patient for the difference between the amount they charge and the amount that the patient's insurance pays. Instead of simply protecting patients from unexpected costs, it has contributed to Alaska's soaring health care expenses – an expense typically borne by employers and consumers directly.

Now with the passage of the federal No Surprises Act in 2020, which protects consumers from surprise billing, the 80th percentile regulation is no longer needed.

The Congressional Budget Office estimates that the federal law will reduce commercial insurance premiums by up to 1%. While at first glance this may not seem like a large amount, the financial impact over the long term is significant. What it does is save taxpayers \$17 billion over 10 years and saves consumers about \$34 billion in reduced premiums and cost-sharing. Add this savings to the reduction of health care costs if the 80th percentile regulation is repealed, and Alaska employers and residents will have more money for their bottom line and pocketbooks. This means more money can be invested in building the workforce, supporting local businesses, and strengthening other economic development.

Another unintended consequence is that the 80th percentile has provided health care providers with an open door to keep increasing rates with little incentive to keep costs low or to join insurance networks. As an example, Alaska has a small number of providers in certain areas and it is easy to drive the cost of care up by 20-30%, forcing the 80th percentile to float up with it. This regulation also discourages providers from being in-network with health plans because they know they can demand a higher reimbursement rate thanks to the 80th percentile regulation. This drives up costs for Alaska employers and patients.

Lastly, and perhaps most concerning, is the massive fraud that has been perpetrated under the extraterritorial component of the 80th percentile. An elaborate scheme has been discovered that involves falsifying Alaska addresses for people in the lower 48 with substance use disorders, purchasing an individual health plan policy for that person, then admitting them for in-patient treatment at an out-of-network facility. The health plan is then billed outrageous rates – some exceeding \$8,000 per day, whereas the same treatment ranges from \$170 to \$700 per day in Alaska. This type of fraudulent activity drives up premiums for everyone in the state. Without the 80th percentile regulation, the out-of-network facilities would be constrained to the median in-network rate by the federal No Surprises Act, eliminating the fraud incentive entirely.

All that to say, there is a reason no other state in the United States has anything like the 80th percentile. The cost differences between Alaska and other high-cost regions of the country are steep, they are statistically significant, and they are largely driven by the 80th percentile rule.

With the federal No Surprises Act in place, now is the time to repeal this inflationary regulation. It is the right thing for Alaska – we simply can't afford to continue ranking first in rising health care costs.

Thank you,

Jim Grazko
President of Premiera Blue Cross Blue Shield of Alaska

From: [Kylie Gore-Hall](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: Public Comment on Notice of Proposed Regulation Changes
Date: Monday, March 6, 2023 4:10:15 PM

You don't often get email from kgore-hall@continuinghope.org. [Learn why this is important](#)

CAUTION: This email originated from outside the State of Alaska mail system. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello Mrs. Bailey,

My name is Kylie Gore-Hall. I am a licensed psychological associate and licensed professional counselor. I have been a provider of mental health services and business owner in Alaska for the past 5 years. As a provider, small business owner, and consumer in Alaska, I am writing to communicate my strong opposition to efforts being made to overturn the 80th percentile rule brought forward by the Division of Insurances on behalf of Premera Blue Cross.

As a state with some of the highest rates of mental health, suicide, and substance abuse concerns, as well as the unique geographical considerations, Alaska cannot afford to make legislative changes that impede access to quality healthcare. In order to protect Alaska's consumers, decisions should be made to support and encourage growth of medical and mental health markets in Alaska. This is done, not through overturning the 80th percentile rule, but through supporting fair compensation and a legal ability for providers to fairly negotiate with insurance companies.

As a provider, small business owner, and consumer in Interior Alaska, myself and my colleagues have directly experienced the consequences of these efforts with insurance companies failing to negotiate rates that have been unchanged for over a decade. As such, our ability to retain quality providers to meet our organization's waitlist of over 75 people has been unsuccessful.

Premera posits these efforts decrease healthcare costs to the consumer, but put forth a premium increase of 20.2% to individual policies Jan 1st, 2023. Efforts made to decrease reimbursement to an already struggling healthcare system within Alaska has already and will continue to result in providers leaving Alaska. A decrease in quality providers only serves to hinder efforts made to address Alaska's Mental Health crisis. Patients should not be worried if their insurance will pay for lifesaving medical and mental health needs.

I strongly encourage the State of Alaska to preserve the 80th percentile rule, to maintain AK Statute 21.54.020 requiring insurances to pay the provider and not the patient, and to require insurance companies to bill for their deductible and co-insurance amounts instead of

providers.

-Kylie Gore-Hall, MS, LPA, LPC-S

Kylie Gore-Hall, MS, LPA, LPC-S

Doctoral Intern

Licensed Psychological Associate #130209

Licensed Professional Counselor Supervisor #157795

Continuing Hope Counseling LLC

Business Owner

Phone: 907.451.8208

Fax 907.451.8207

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Director Lori Wing-Heier
Division of Insurance
550 West 7th Avenue, Suite 1560
Anchorage, AK 99501

Dear Director Wing-Heier,

I am writing on behalf of Alaska Emergency Medicine Associates (AEMA) to comment on the proposed repeal of the 80th Percentile Rule. AEMA is a small democratic group of twenty-eight Emergency Physicians based in Anchorage; each member is a small business owner providing emergency care to Alaskans at Providence Alaska Medical Center. The 80th percentile rule has served a valuable role for patients in Alaska, protecting both their access to high quality medical specialists and limiting their financial burden when faced with out of network medical bills. At this time we are opposed to the proposed repeal of the 80th Percentile Rule as the federal No Surprises Act (NSA) has yet to demonstrate itself as an appropriate replacement. In addition, without appropriate protections in place, such as a robust All Payer Claims Database, the repeal of the 80th Percentile Rule will give insurers free reign to determine provider reimbursement rates which will jeopardize access to medical specialists during medical emergencies.

When established in 2004, the 80th Percentile Rule served to protect healthcare consumers from balance billing of patients seeing out of network providers, especially during medical emergencies. The Federal No Surprises Act was passed in 2021 and may eventually be able to serve as a replacement for the 80th Percentile Rule but it is still in its infancy with many questions regarding its utilization and fairness still pending. The latest litigation from Texas on Feb 6, 2023 found that the independent dispute resolution process in the NSA unlawfully restricted arbitrators' discretion by placing undue weight in favor of the insurers. This has resulted in confusion regarding the resolution process and marked delays in arbitration cases from the NSA, clearly showing it is not currently a functioning nor appropriate replacement for the well established 80th Percentile Rule we currently have in place.

Repealing the 80th Percentile Rule will work to strip physicians of negotiating power and place them at the whim of insurers, who have demonstrated in other states such as Alabama, that when payment floors are removed they will work to quickly and markedly reduce reimbursement for in network providers, or to unilaterally terminate pre-negotiated contracts. Assuming these cost cutting practices will trickle down to consumers seems unlikely, especially when actual physician reimbursement represents less than 10% (Range 8-24%) of all healthcare costs.¹²³⁴ Also important to consider is that physician reimbursement often goes on to support ancillary staff, nursing, and administrative costs, with overall physician wages contributing only 1% to the overall healthcare salary expenditure per the Alaska Department of Labor in 2021.⁵ While we commend the formation of the All Payer Claims Database (APCD) as a potential solution to this concern, without

¹ Drivers of Health Care Costs, [Mo Med](#). 2013 Jan-Feb; 110(1): 30–34., PMID: [23457745](#)

² What Doctors Make, and Why. Reinhardt, NY Times Aug 5, 2007,

³ Debunking Myths: Physicians' Incomes are Too High. Price and Norbeck, Forbes, Nov 27, 2017

⁴ Health Care Expenditures, <https://www.cdc.gov/nchs/hus/topics/health-care-expenditures.htm>, accessed Feb 28, 2023

⁵ Alaska Healthcare Workforce Analysis, AHHA, 2022

compulsory participation by “all payers” including all insurers in the State, it will not be a robust resource for making it clear what constitutes fair reimbursement rates. Until the APCD is fully functioning and inclusive, repeal of the 80th Percentile Rule will give insurers undue negotiating power for establishing reimbursement rates.

Alaska has its challenges recruiting highly trained health care providers. If compensation is lowered to the rates equal to or below the rates in the Lower 48, it will be even more difficult to recruit and retain providers. From our perspective in the Emergency Department, this will lead to a loss of providers both in the ED, but also medical subspecialties such as neurosurgeons, cardiothoracic surgeons and pediatric subspecialties. We already have no pediatric nephrologists and limited pediatric gastroenterologists, and in the not so distant past we had to transfer our unstable patients with aortic tears (thoracic aortic dissection) to Seattle for appropriate care as we had inconsistent cardiothoracic surgery coverage in Anchorage. Some people may argue that the patients would prefer to be medically evacuated to Seattle for care, but that is not the reality that we see on a daily basis. Access to high quality, timely care in Alaska saves lives, especially in a medical emergency. Separating sick patients from their families and communities to evacuate them to the Lower 48 is incredibly traumatic, inconvenient and expensive.

While the 80th Percentile Rule is not perfect, it still serves an important role in the state that will not be clearly covered by the federal No Surprises Act. Until the No Surprises Act demonstrates itself to be a fair replacement and until the All Payer Claims Database is fully operational and includes compulsory participation of all Alaska insurers, we are in opposition to the repeal of the 80th Percentile Rule.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jake Miss', with a stylized flourish at the end.

Jake Miss, MD

Business Manager - Alaska Emergency Medicine Associates
Providence Alaska Medical Center, Anchorage, AK

CC: Sara Bailey, Insurance Specialist
P.O. Box 110805
Juneau, AK 99811-0805



American College of
Emergency Physicians®

ALASKA CHAPTER
ADVANCING EMERGENCY CARE 

Director Lori Wing-Heier
Division of Insurance
550 West 7th Avenue, Suite 1560
Anchorage, AK 99501

Dear Director Wing-Heier,

We are writing on behalf of the Alaska Chapter of the American College of Emergency Physicians regarding the proposed repeal of the 80th Percentile Rule. Our primary concern is the safety of Alaskans, and the protection of critical physician access in our state. Historically we have struggled to recruit and retain a robust and broad physician network. Over the past few decades we have seen growth in several specialties where we now have excellent coverage. Despite this growth we continue to have tenuous coverage in rural areas and even in Anchorage continue to have inadequate numbers of subspecialists in some fields. There are a myriad of forces contributing to this problem - physician burn out, isolation from family in the lower 48, and increasing cost of business in Alaska, among others. If the 80th percentile is repealed we will see health care access shrink.

Since its creation the 80th percentile rule has been effective at protecting Alaskans from surprise billing, and with the creation of the No Surprises Act (NSA), we can see the potential that it will no longer be a necessity in the future.. However, now is not the time for a repeal. The No Surprises Act is in its infancy and we have yet to see how it will affect a state like Alaska. Initial signals from other states illustrate that it could be catastrophic for our health care businesses and in effect health care access in Alaska.

In states where the NSA has rolled out we have seen concerning behavior in the marketplace. National ACEP has been gathering stories from emergency groups all over the country and has been taking stock of concerning trends including; artificially low qualifying payment amounts (QPAs), failure of health plans to engage in open negotiation, high costs of independent dispute resolution (IDR) process, inability to meet time frames, failure of insurance to pay arbitration fees, as well as health plans failing to pay providers within 30 days as is required by law. Please see the letter written by ACEP and the Emergency Department Practice Management Association (EDPMA) regarding these concerns for more detail.¹ The reality is that these are more than just

¹ACEP, & EDPMA. (2023, January 19). *Secretary U.S. Department of Health and Human Services Hubert*

concerns, in fact the NSA has been embroiled in litigation since its inception. Just this week a federal court blocked the implementation of the NSA IDR for the 2nd time due to problems with artificially low QPAs.² As we watch the implementation of the NSA it is clear that the rules are skewed to favor insurers and that a regulatory overhaul of the bill is needed.

In this context we must be diligent to protect Alaskans from the deleterious effects seen when insurers are handed a disproportionate share of negotiating power. To illustrate how tenuous our healthcare system is, one only has to look at our capacity to care for facial trauma. Despite there being several otolaryngology (ENT) groups, plastic surgeons and oral maxillofacial surgeons in town, we are unable to maintain hospital coverage for emergent facial trauma year round. It is not uncommon that an emergency physician has to call 5 different surgeons to find someone willing to come care for a patient with severe facial trauma. Ultimately, if no provider is available, these patients are sent to Seattle for further care and reconstructive surgeries. This travel ensures that the patient will experience higher costs, the hardship of separation from family and more importantly, delayed care. These transfers lead to greater overall system costs as well. Once additional leverage is handed to insurance companies under the NSA, we will only see greater barriers to these surgeons and sub-specialists staying in the state and taking EMTALA call. Essentially all of them are operating small businesses; they move here with limited social support and have grueling jobs. They need to employ and support healthcare staff, such as nurses, medical technicians and office personnel. Without negotiating power they will naturally leave to seek opportunities elsewhere. As emergency physicians we provide care to everyone regardless of ability to pay. Our jobs are not glamorous, the days are long and hard, and to fully care for our patients we rely on the expert opinions and specialized services of our fellow physician colleagues in the community. With fewer and fewer colleagues to call, the future of emergent care in Alaska looks grim.

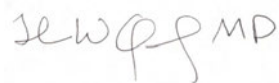
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<https://www.acep.org/globalassets/new-pdfs/advocacy/acep--edpma-follow-up-no-surprises-act-implementation-letter-final.pdf>

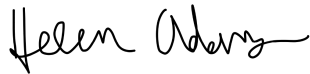
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We advocate for a metered approach and rather than joining the chaos described above, we encourage the Division of Insurance to keep the 80th Percentile in place until Alaska is set up for success. To achieve this aim we support the creation of a robust all payer claims database, compelling all payers to participate in the database, and support the Division of Insurance to monitor and call out bad behavior in the market place.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Quimby MD".

Tom Quimby, MD, FACEP
President, Alaska ACEP

A handwritten signature in black ink, appearing to read "Helen Adams".

Helen Adams, MD, FACEP
Vice President, Alaska ACEP

A handwritten signature in black ink, appearing to read "Nicholas Papacostas".

Nicholas Papacostas, MD FACEP
Immediate Past President, Alaska ACEP

Attachment: ACEP, & EDPMA. (2023, January 19). *Secretary U.S. Department of Health and Human Services Hubert.*

<https://www.acep.org/globalassets/new-pdfs/advocacy/acep--edpma-follow-up-no-surprises-act-implementation-letter-final.pdf>

CC: Sara Bailey, Insurance Specialist
P.O. Box 110805
Juneau, AK 99811-0805



American College of
Emergency Physicians®

ALASKA CHAPTER

ADVANCING EMERGENCY CARE 

Director Lori Wing-Heier
Division of Insurance
550 West 7th Avenue, Suite 1560
Anchorage, AK 99501

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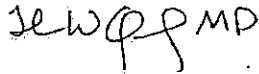
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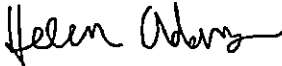
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Sincerely,



Tom Quimby, MD, FACEP
President, Alaska ACEP



Helen Adams, MD, FACEP
Vice President, Alaska ACEP



Nicholas Papacostas, MD FACEP
Immediate Past President, Alaska ACEP

ATTACHMENT

CC: Sara Bailey, Insurance Specialist
P.O. Box 110805
Juneau, AK 99811-0805

The Honorable Xavier Becerra
Secretary
U.S. Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Avenue SW
Washington, DC 20201

January 19, 2023

The Honorable Martin J. Walsh
Secretary
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

The Honorable Janet Yellen
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

Dear Secretaries Becerra, Walsh, and Yellen:

On behalf of our members, the American College of Emergency Physicians (ACEP) and the Emergency Department Practice Management Association (EDPMA) would like to thank the Departments of Health and Human Services (HHS), Labor, and Treasury (the Departments) for the opportunity to meet with members of their staff and other stakeholders on January 5, 2023 to discuss issues related to the implementation of the *No Surprises Act* and discuss potential solutions to the challenges our members are experiencing with the federal dispute resolution process. We found the discussion to be very productive, and we hope that we can continue to work collaboratively with the Departments and other stakeholders to find mutually beneficial ways to improve the process.

The figure below presents a high-level summary of the key issues that were discussed during the meeting.



As a follow-up, we are now providing additional input on some of these issues and more detailed recommendations for addressing them. ACEP and EDPMA's specific recommendations are broken out by the distinct phases of the dispute resolution process.

Before discussing our recommendations, we would like to first note that some of the difficulties with the process have been exacerbated by the unique aspects of how patient care billing works in emergency medicine. Despite the fact that these are universal realities in emergency care, we find they are often confused with the realities of scheduled, non-emergency care.

There is a great deal of variability in the amount of information that emergency medicine groups receive about an individual's insurance coverage at the time of treatment. Because of the dynamics and realities of acute, unscheduled patient care, emergency medicine providers often only receive limited information (or none at all) at the time they treat the patient in the emergency department (ED). This phenomenon is amplified by an important difference between scheduled care and emergency care due to the Emergency Medical Treatment & Labor Act (EMTALA). Emergency medicine groups do not collect billing or cost-sharing information prior to stabilizing the patient in accordance with the long-standing law, first enacted in the late 1980s.

In addition, in contrast to emergency care, insurance verification for pre-scheduled health care involves far more than the name of the insurance plan. With respect to scheduled health care, administrative staff not only verify first-level insurance information, but they also drill down to the patient's individual health plan type before the patient enters the exam room or treatment space. This type of information is critical and necessary not only for the payment process, but also for the federal dispute resolution process under the *No Surprises Act*. Administrative staff also pre-identify the correct co-pays, deductibles, and other pertinent benefit information, and, often, will require pre-payment of some or all patient-responsibility amounts, **all before health care is delivered**.

Emergency medicine practices, on the other hand, must wait until *after* the episode of care has occurred, and then wade through the morass of individual policy benefits, relying on costly and time-consuming administrative back-and-forth that may again involve the patient for more clarification (who often, will not know a sufficient level of detail, and must go back to the insurance plan, who *does* have the information). Therefore, requiring key information exchange between health insurers and providers proactively reduces administrative cost and keeps patients out of the middle.

The following table provides more detail and articulates a basis for ACEP and EDPMA's recommendations below, particularly around proactively communicating the health plan type and the *No Surprises Act* Remittance Advice Remark Codes (RARCs) and making accurate insurance information readily available to both providers and patients.

Step in the Emergency Encounter	Accompanying Data
<p>1. A person presents to an emergency department (ED) believing they have an emergency medical condition (EMC). The hospital collects enough information from the patient so that care can be initiated.</p> <p>As mandated by the federal Emergency Medical Treatment and Labor Act (EMTALA) statute, a clinician performs a medical screening exam (MSE) – which may or may not include testing – to determine if an EMC exists.</p>	<p>Name, date of birth, allergies, etc.</p> <p><i>This basic information is sufficient to initiate treatment, but insufficient for billing purposes.</i></p>

<p>2. If the clinician reasonably believes an EMC exists, stabilizing treatment must be rendered to the patient. If the EMC can be stabilized and treated in the ED, the patient is discharged from the ED once that is complete (and, if necessary, any post-stabilization care will be addressed as appropriate).</p> <p>The hospital will collect more in-depth information from the patient prior to discharge from the ED.</p>	<p>Insurance coverage (if any), detailed contact information, demographics, employer, etc.</p> <p><i>Note that patients often have outdated or inaccurate insurance cards or no information in hand at the time of their emergency, so emergency physician groups and billing companies may never have access to the patient's actual insurance card.</i></p> <p><i>In addition, certain health plan coverages in effect may not apply to this emergency (for example, auto insurance or workers' compensation is actually the payor for the claim). Due to EMTALA restrictions, the patient and the provider cannot definitively determine the health plan that is responsible for payment, the deductible amount, or co-insurance at the time care is rendered.</i></p>
<p>3. If the patient requires further care to stabilize the EMC, the patient may be admitted to the hospital or transferred—in compliance with EMTALA mandates.</p>	<p><i>Comprehensive billing information is gathered if the patient is admitted from the ED to the hospital but may not be gathered if the patient is transferred to another hospital (a higher level of care). These patients are often unstable. Financial discussions are inappropriate at the time of transfer; information must be obtained later.</i></p>
<p>4. Following the patient's visit, the hospital shares patient information with the emergency physician group and/or billing company as part of a regular data transfer—usually daily.</p>	<p><i>The physician group usually receives billing information routinely from the hospital, but its accuracy and thoroughness for ED patients is highly variable. This requires additional or more accurate data to supplement the initial data feed. Hospitals are subject to EMTALA and have the same limitations in their ability to gather data at the time of care as noted above.</i></p>
<p>5. The physician group or billing company submits a claim to the patient's insurance company for the encounter.</p>	<p><i>The physician group or billing company determines whether to submit a claim based on the best information available. The patient is re-contacted or directly billed if there is no information or if the information is inaccurate or incomplete.</i></p>
<p>6. The insurance company responds to the physician or its billing group with an initial payment or denial, and an accompanying remittance.</p>	<p><i>The health plan is responsible to remit timely payment under the No Surprises Act's provisions. In order to do that, it must receive, evaluate, and process the claim, and remit timely payment. In doing so, it must also be able to identify the health plan type and other critical information. In service of reducing administrative burden, keeping patients out of the middle, reducing cost, and reducing reliance on IDR, EDPMA and ACEP strongly advocate for requiring and enforcing transparency and communication at the time of initial payment, including health plan type, RARCs, and claim adjustment reason codes (CARCs).</i></p>
<p>7. If the patient's insurance coverage has a deductible that has not yet been met, the physician group or billing company sends a bill to the patient for their cost-sharing responsibility.</p>	<p><i>Patient responsibility amounts are determined by the Qualifying Payment Amount (QPA) as set forth in the No Surprises Act. It is important that the QPA be identified (as required) at the time of initial payment.</i></p>

Overall, this process demonstrates how emergency care is substantially different due to EMTALA's requirements for provision of a medical assessment and stabilizing care without prior review of the patient's ability to pay (or health insurer's willingness to pay). As a result, the emergency care system has significant and unique dependency on payment and billing processes *after* care has been rendered.

With that context in mind, here are our additional recommendations related to the federal dispute resolution process:

Initial Payment and Notice of Denial Phase

Information Disclosures

As discussed in the meeting, in many cases, the provider does not receive all the information required to be disclosed by health insurers at the time of the initial payment or notice of denial. In some cases, the qualifying payment amount (QPA) for the item or service billed is not being clearly identified, and a certifying statement that affirms that the QPA was calculated properly and that it serves as the recognized amount for the purposes of calculating patient cost-sharing is missing. This lack of information makes it difficult for providers and eventually for certified IDR entities to determine whether a claim is eligible for the federal IDR process.

We have [previously made recommendations](#) about how to address the lack of information that providers are receiving from health insurers both during the initial payment and notice denial phase, and during the rest of the dispute resolution process. These recommendations were made with the intention of reducing the frequency on IDR, reducing administrative cost, and providing time- and cost-saving interventions early in the process. While our key recommendations are found below, we have also included a table in the **Appendix** that provides an overview of how our recommendations align with the major regulatory requirements of the dispute resolution process.

Recommendations

- **Mandate Plan Type Disclosure:** The Departments should require that the plan type be disclosed at the time of the initial payment or notice of denial, as this information is not available on a patient's insurance ID card (if that is even obtainable). Without knowing the type of plan early in the dispute resolution process, it will be extremely difficult for the provider to know whether the plan is a fully insured or self-insured plan, and whether it is therefore subject to the federal or state dispute resolution process.
- **Mandate Use of RARCs:** The Departments should require health insurer and issuer use of the [Remittance Advice Remark Codes \(RARCs\)](#) when providing the disclosures that regulation requires accompany the initial payment or notice of denial. Ensuring the use of the RARCs for all claims will also give providers the necessary information to assess patient responsibility amounts, keep patients out of the middle of the process, and reduce the need to initiate payment disputes for out-of-network services. Further, the RARCs will provide certified IDR entities with dispositive information about whether a particular claim is eligible for the federal IDR process.

QPAs and Initial Payments Being Artificially Low

During the January 5 meeting, ACEP and EDPMA emphasized some key points about the QPA and the initial payments:

- The QPA methodology finalized by the Departments is leading to artificially low QPAs that do not reflect market-rates. It was designed to limit cost-sharing liabilities and is not a market-based indicator of appropriate payment for an item or service.
- We are also hearing complaints that health insurers are miscalculating the QPA, leading to QPAs **even lower** than what proper adherence to the methodology would dictate. This combination of the QPA methodology *and* the miscalculations has led to QPAs that “don’t even pass the laugh test”—those that are so low that they are even significantly below Medicare and Medicaid payment rates.

Recommendations

- **Increase Transparency Around Calculation of the QPA:** It is essential that the Departments require health insurers to disclose the methodology used to calculate the QPA for an out-of-network claim, so that providers are ensured it is calculated correctly and in line with the regulatory requirements. Currently, there is little to no recourse for providers who believe that the QPA is miscalculated. While they can submit a complaint, the initial payment they receive for that service is still, in most cases, based on an incorrectly calculated QPA. Currently, providers are restricted from requesting from health insurers specific information on how the QPA was calculated (i.e., to “check their math”), so requiring more transparency is the **ONLY** way to ensure that health insurers actually adhere to the methodology.
- **Scale up and Publicize Auditing of the QPA:** ACEP and EDPMA understand that the Departments have begun with their statutorily required audits of the QPA calculations. However, to enhance transparency, the Departments should scale up and publicly report on the results of these audits. That way, health insurers will be able to better understand the common mistakes that are being made when calculating the QPA and, hopefully, the number of miscalculations will decrease over time.
- **Modify the QPA Methodology to Ensure that the QPA Reflects Market Rates:** Our organizations have requested numerous modifications to the QPA methodology in [previous comments](#). We continue to be especially concerned about the decision to use each contracted rate as a single data point when calculating a median contracted rate. The rate negotiated under a contract constitutes a single contracted rate regardless of the number of claims paid at that contracted rate. We request that the Departments base the rate on the total number of actual payments issued to individually contracted physicians. By basing the contract on claims rather than contracts, the QPA would more accurately reflect the actual negotiated rates between payors and providers. **Health insurers should also be reminded that they are not required to tie the initial payment to the artificially low and potentially miscalculated QPA. The initial payment is supposed to represent a reasonable payment in full for the service that was delivered—and in many cases, the QPA, which was designed to keep patient cost-sharing low, does not reflect a reasonable payment.**

Open Negotiations Phase

There was ample discussion during the meeting about the lack of active negotiations during the Open Negotiations phase of the dispute resolution process. Our physician groups report that health insurers are sometimes not acknowledging receipt of the notice to initiate Open Negotiations and/or are not actively engaging in negotiations at any point during the 30-day period. The lack of engagement by health insurers to come to a resolution before

the IDR process is initiated is counter to the overall intent of the *No Surprises Act* to use the IDR process as a last resort— and is a significant contributing factor toward the high number of disputes that advance to Federal IDR.

Some stakeholders did note that part of the reason why there may not be much engagement during this part of the dispute resolution process is the fact that both the statute and the regulations do not lay out a particular structure to Open Negotiations nor do they articulate any goals or parameters of the negotiations. Health insurers also reported that the notice of Open Negotiations was frequently going to the wrong contact person, so they had no way of tracking which claims had entered into the Open Negotiations Process.

Recommendation

- **Include the Open Negotiations Process in the IDR Portal:** The Departments should consider incorporating the Open Negotiations Process into the IDR portal. Doing so could help both health insurers and providers better track what claims are entering the dispute resolution process and when the 30-day Open Negotiations Process begins. There could also be a way to assign an identification number to specific items or services under dispute to better track them through the process. The updated portal could also clearly include the contact information, including the email addresses, for all the key contacts involved in the dispute. Finally, it would formalize the Open Negotiations Process and provide a more structured way for health insurers and providers to share information and try to resolve disputes before the IDR process. Therefore, it could track the level of engagement by both health insurers and providers and provide more data to the Departments about the level of compliance among the disputing parties to the statutory and regulatory requirements.

If the Departments were to move in this direction, they must take the following into account:

- *Administrative Complexity:* It is important that such a change is done in a manner that *reduces* administrative burden and does not create even more complexity.
- *Terms of Open Negotiations NOT a Factor in the IDR Process:* If disputes go to the IDR phase of the dispute resolution process, the certified IDR entity should not be privy to the specific discussions that took place during Open Negotiations, including the amounts of any offers or counteroffers exchanged between the parties. The ONLY factor the certified IDR entity should take into account (or perhaps even be privy to) from Open Negotiations is the ***level of engagement*** of each party during that phase of the process.
- *Batching Flexibility:* There are different rules around how claims can go through the Open Negotiations Process versus how they can be batched during the IDR process. If Open Negotiation is moved into the portal, we want to ensure that providers would continue to have the flexibility to decide how they want to batch certain claims at the beginning of the IDR process, rather than having to already make that decision at the start of Open Negotiations. Yet this could also offer providers an incentive and mechanism to enter some groups of claims into Open Negotiation organized according to the batching criteria, which could ease throughput pressure on certified IDR entities.

IDR Process and Beyond

Accessibility, Transparency, and Enforcement

Participants in the meeting discussed the results of the Department's [first report](#) on the IDR process that included data from the initial reporting period, April 15 to September 30, 2022. There was particular interest in understanding the geographic variation among the total number of initiated IDR claims and the number of claims determined to be ineligible for the IDR process—as most of the disputes were concentrated in a select few states.

Further, ACEP and EDPMA pointed out that the reason the majority of the initiating parties were large practice management companies, medical practices, or revenue management companies representing hundreds of individual groups was that many smaller groups simply did not have the resources or administrative capability to engage in the complex and administratively burdensome (and often fruitless) process. In fact, because of the high cost of the process and the fact that many IDR claims are currently on hold, some billing companies are instructing smaller groups not to use the process at all.

Finally, provider groups in the meeting noted the extremely concerning trend related to health insurers' failure to pay what they owe to the provider if a certified IDR entity finds in favor of the provider. **Many health insurers are simply not paying the amount owed within the required 30-day period, if at all**, despite numerous attempts by providers to collect the payment they are entitled to under the terms of the arbitration. One group noted during the meeting that it has not received the amount owed to it in **over 90 percent** of the cases in which the certified IDR entity ruled in its favor (the eligibility rate and win rate was also over 90 percent, demonstrating a high level of reasonableness and good faith in utilizing the IDR process).

Recommendations

- **Reduce the IDR Fees in 2023:** The Departments should immediately rescind the significant increases in both the administrative fee and the fees that certified IDR entities can charge. These fees already create a financial barrier that prevents physician practices from participating, especially smaller and rural practices. These increases will further limit what types of claims go through the IDR process.

- **Make Enforcement and Auditing More Transparent:** The primary mechanism for addressing non-compliance with the *No Surprises Act* is on a case-by-case basis through the submission and resolution of individual complaints.

We therefore recommend that the Departments release aggregated information about these cases, including:

- The total number of cases
- The total number of cases that are resolved
- The total number of cases that are unresolved
- The most common issues raised and how these issues were addressed
- Best practices to avoid issues that are commonly leading to complaints

This information should also be broken out by state to help provide more granular data and potentially answer some of the questions posed during the meeting about the possible reasons for geographic variation among IDR cases.

Releasing all of this information will reduce the overall number of complaints and increase compliance of all *No Surprises Act* requirements. Further, analysis of these complaints could help determine which health insurers need to be audited. **Auditing is critical to ensuring that health insurers have an incentive to comply with the statutory and regulatory requirements.** The Departments should therefore publicly report auditing results, as well as best practices.

- **Enforce Required Payments:** Health insurers who are not paying what they owe to a provider after the IDR process is completed **must be penalized and forced to compensate the provider the total amount owed plus interest.**

Batching Issues

During the meeting, multiple participants stated that the rules and requirements around batching are leading to significant confusion as well as an *increase* in the number of claims going through the IDR process (rather than the decrease batching was intended for). One of the major batching issues relates to “the same group health plan or health insurance issuer.” This policy alone has created so much confusion that some providers are simply not even trying to batch self-insured claims. Further, these criteria require providers to know the employer of a product. This information is frankly not readily available to out-of-network providers, thus injecting a batching criterion that has thrown the entire system into disarray.

We believe that the statute was clear that all disputes (that otherwise met the batching requirements) from the same group health plan (or health insurance issuer) could be batched. The statute did *not* state that batching was limited to individual insurance products offered by a group health plan. Moreover, it is unworkable from the provider’s perspective because in order for it to work, it relies on out-of-network providers organizing disputes based on information that they simply do not have.

Not having the plan type (as described earlier with regard to eligibility for IDR) also creates issues with batching, as providers do not know whether the health plan is a self-insured plan or the employer corresponding to the plan. Requiring health plans to provide the plan type at the time of the initial payment or notice of denial (one of our previous recommendations) would therefore also help reduce some of the errors in batching.

Having to put small batches through the IDR process has become even more concerning given the significant increase in IDR fees in 2023. Not only did the Departments announce a 40 percent increase to the maximum amounts that certified IDR entity fees could charge in 2023, but the Departments also just recently announced a 600 percent increase in the administrative (non-refundable) IDR fee that the Departments charge—from \$50 to \$350. With these increases, the financial burden of entering the IDR process will become even more cost-prohibitive for many physician groups who have limited infrastructure or resources. The high administrative fee of \$350 specifically creates an artificial threshold for the IDR process—a **barrier that Congress explicitly omitted from the statute despite several proposals for thresholds offered along the way**. If claims are less than \$350 and cannot be batched together to exceed this threshold, it is actually more expensive to enter the IDR process than to adjudicate a low payment to a claim, thereby limiting what types of claims can go through the IDR process, and unfairly providing insurers with further advantages in the process.

Recommendations

- **Modify Batching Rules to Have Fewer, Larger Batches Rather than More, Smaller Batches or Individual Disputes:** The Departments should take a careful look at all their batching requirements and ensure that they are 1) simple and easy to understand; and 2) do not require providers to have access to information that they do not have. This should at least include a modification to how batching is conducted for self-insured claims. In the alternative, the Departments must require that health insurers provide all information necessary to correctly batch claims in tandem with delivery of the initial payment.

Collection and Exchange of IDR Fees

Some stakeholders during the meeting raised the issue that it was difficult to transfer both the IDR administrative fee and the certified IDR entity fee to the certified IDR entity, as required. If the certified IDR entity does not receive the fees for both parties, the entity cannot render a decision—and this has contributed to some delays in the IDR process. One provider group said that certified IDR entities have different systems in place to electronically collect the fees (and noted that at the be process, one entity actually at one point had even required the use of PayPal to receive the fees).

Recommendation

- **Require Electronic Payment Uniformity Among Certified IDR Entities:** Certified IDR entities should have a uniform process in place to electronically collect all the IDR fees and refund the winning party the certified IDR entity fee. By creating a streamlined process of exchanging fees associated with the IDR process, there would be less interruptions to process and more adherence to the statutorily required timeframes.

Conclusion and Summary

We hope our letter sufficiently summarizes the major issues that providers are experiencing and provides more detail about the recommendations we discussed during the meeting. Overall, as stated throughout the letter, we recommend that the Departments **immediately** take the following steps:

Initial Payment and Notice of Denial Phase

- **Mandate Plan Type to Be Disclosed:** The Departments should require that the plan type be disclosed at the time of the initial payment or notice of denial.
- **Mandate Use of the RARCs:** The Departments should require health insurer use of the Remittance Advice Remark Codes (RARCs) when providing the disclosures that are required along with the initial payment or notice of denial.
- **Increase Transparency around the Calculation of the QPA:** The Departments should require that health insurers demonstrate to providers that they are following the methodology outline in regulation and ensuring that QPAs are calculated correctly.
- **Scale up and Publicize Auditing of the QPA:** The Departments should scale up and publicly post the results of the ongoing QPA audits.
- **Modify the QPA methodology to ensure that the QPA reflects market-rates:** The Departments should modify the QPA methodology by basing the median contracted rate on the total number of actual payments issued to individually contracted physicians.

Open Negotiations Phase

- **Include the Open Negotiations Process in the IDR Portal:** The Departments should consider incorporating the Open Negotiations Process into the IDR portal. If the Department do pursue this

approach, there are a number of factors that ACEP and EDPMA believe the Departments must take into account when doing so.

IDR Process and Beyond

- **Reduce the IDR Fees in 2023:** The Departments should immediately rescind the significant increases in both the administrative fee and the fees that certified IDR entities can charge.
- **Make Enforcement and Auditing More Transparent:** The Departments should release information about the complaints they receive—broken out by state. Auditing is also critical to ensuring that health insurers have an incentive to comply with the statutory and regulatory requirements. The Departments should therefore publicly report auditing results, as well as best practices.
- **Enforce Required Payments:** Health insurers who are not paying what they owe to a provider after the IDR process is completed must be penalized and forced to compensate the provider the total amount owed plus interest.
- **Modify Batching Rules So That There Will be fewer LARGER Batches Rather Than More SMALLER Batches or Individual Disputes:** The Departments should take a careful look at all their batching requirements and ensure that they are 1) simple and easy to understand; and 2) do not require providers to have access to information that they do not have.
- **Require Electronic Payment Uniformity Among Certified IDR Entities:** Certified IDR entities should have a uniform process in place to collect all the IDR fees and refund the winning party the certified IDR entity fee.

We appreciate the opportunity to lay out our concerns and provide potential solutions to help improve the implementation of the *No Surprises Act*. If you have any questions, please contact Laura Wooster, ACEP's Senior Vice President of Advocacy and Practice Affairs at lwooster@acep.org, or Cathey Wise, EDPMA's Executive Director at cathey.wise@edpma.org.

Sincerely,



Christopher S. Kang, MD, FACEP
ACEP President



Don Powell, DO
Chair of the Board, EDPMA

Appendix: Information Needed for Federal Dispute Resolution Process

Major Regulatory Requirement	Regulatory Citation	Are Health Insurers Complying?	Recommendations
<i>Disclosures Required at the time of the Initial Payment/Notice of Denial</i>			
<p>Qualified Payment Amount (QPA)</p>	<p>45 CFR § 149.140(d)(1)(i)</p>	<p>Rarely</p>	<ul style="list-style-type: none"> • Mandate RARCs. • Publish audits of the QPA. • Require insurers to display the methodology used to calculate QPA. Information could include: <ul style="list-style-type: none"> ○ Number of contracts used to calculate the QPA; ○ Whether QPA was calculated using contracts with clinicians in same or similar specialty; ○ Geography used to calculate the QPA (i.e., Single MSA, all MSAs in a state, Census Division); ○ Percentage of total claims covered by contracts used to calculate QPA (in-network percentage); ○ Percentage of in-network claims attributable to each contract; ○ Whether plan or issuer's QPA calculations have had an audit result of anything other than "clean" within the last 3 years; ○ If the plan or issuer uses a standard fee schedule, the amount for the service as it

			<p>appears on the fee schedule for the specific market; and</p> <ul style="list-style-type: none"> ○ If plan or issuer uses contracts from a plan year other than January 31, 2019 to calculate the QPA.
<p>Statement that the QPA is Calculated Accurately and Can be Used for Cost-Sharing:</p> <p>Statement certifying that, based on the determination of the plan or issuer: (1) the QPA applies for purposes of the recognized amount each QPA; and (2) the QPA shared with the provider or facility was determined in compliance with the methodology outlined in these interim final rules.</p>	45 CFR § 149.140(d)(1)(iii)	Rarely	<ul style="list-style-type: none"> • Mandate RARCs. • Require health insurers to disclose the plan type.
<p>Statement Regarding Initiation of Open Negotiations: A statement that if the provider wishes to initiate a 30-day open negotiation period for purposes of determining the amount of total payment, the provider may contact the appropriate person or office to initiate open negotiation, and that if the 30-day negotiation period does not result in a determination, generally, the provider or facility may initiate the independent dispute resolution process within 4 days after the end of the open negotiation period. The plan or issuer must provide contact</p>	45 CFR § 149.140(d)(1)(iv); 45 CFR § 149.140(d)(1)(v)	Rarely	<ul style="list-style-type: none"> • Better enforcement of this requirement. • Include contact information as an element in combined Open Negotiations and IDR Portal.

information, including a telephone number and email address, for the appropriate office or person to initiate open negotiations for purposes of determining an amount of payment (including cost sharing) for such item or service.			
Information about Contracted Rates not Based on FFS: Upon request of the provider, information about whether the QPA includes contracted rates that were not set on a fee-for-service basis.	45 CFR § 149.140(d)(2)(i)	Sometimes	<ul style="list-style-type: none"> • Better enforcement of this requirement.
Information about Cost-sharing Rates including Incentive Payments: Upon request, a statement that the plan's or issuer's contracted rates include risk-sharing, bonus, penalty, or other incentive-based or retrospective payments or payment adjustments for the items and services involved that were excluded for purposes of calculating the QPA.	45 CFR § 149.140(d)(2)(iv)	Sometimes	<ul style="list-style-type: none"> • Better enforcement of this requirement.
Downcoding: If the QPA is based on a downcoded service code or modifier: <ul style="list-style-type: none"> • a statement that the service code or modifier billed by the provider or facility was downcoded; 	45 CFR § 149.140(d)(1)(ii)	Sometimes	<ul style="list-style-type: none"> • Better enforcement of this requirement.

<ul style="list-style-type: none"> • An explanation of why the claim was downcoded, including a description of which service codes or modifiers were altered, added, or removed, if any; and • The amount that would have been the QPA had the service code or modifier not been downcoded. 			
Open Negotiations			
Notice to Initiate Open Negotiations: To initiate the open negotiation period, a party must send a notice to the other party (open negotiation notice) that includes information outlined in 45 CFR § 149.510(b)(1)(ii).	45 CFR § 149.510(b)(1)	Rarely acknowledging receipt of the Open Negotiations notice or actively engaged in negotiations.	<ul style="list-style-type: none"> • Consider combining the Open Negotiations and IDR Portal in order to make sure Open Negotiations Process can be better tracked and actually help facilitate negotiations prior to the IDR process.
IDR Process and Beyond			
Notice of IDR Initiation: To initiate the Federal IDR process, a party must submit a written notice of IDR initiation to the other party and to the Secretary, using the standard form developed by the Secretary, during the 4-business-day period beginning on the 31st	45 CFR § 149.510(b)(2)	Since health insurers rarely provide this information at the time of initial payment or notice of denial, it is difficult for initiating parties (providers) to include all the required information.	<ul style="list-style-type: none"> • Better enforcement of previous requirement for health insurers to provide certain disclosures at the time of the initial payment/notice of denial.

business day after the start of the open negotiation period.			
The notice must include information outlined in 45 CFR § 149.510(b)(2)(iii).			
Batched items and services: Batched items and services may be submitted and considered jointly as part of one payment determination by a certified IDR entity only if the batched items and services meet the requirements listed in 45 CFR § 149.510(c)(3)(i).	45 CFR § 149.510(c)(3)(i)	The batching rules are difficult to adhere to and result in more, not less, batches.	<ul style="list-style-type: none"> Modify batching rules so that there will be fewer larger batches rather than more smaller batches or individual disputes.
IDR Offer: Not later than 10 business days after the selection of the certified IDR entity, the plan or issuer and the provider, facility, or provider of air ambulance services must each submit to the certified IDR entity: an offer of an out-of-network rate expressed as both a dollar amount and the corresponding percentage of the qualifying payment amount; information requested by the certified IDR entity relating to the offer; and additional information listed in 45 CFR § 149.510(c)(4)(i)(3).	45 CFR § 149.510(c)(4)(i)	In many cases, the offer submitted by the health insurer is close to the initial payment, which mirrors the QPA. It is difficult for providers to develop a counteroffer when there is limited transparency over how the QPA is calculated.	<ul style="list-style-type: none"> Remind health insurers that the initial payment does not need to be based on the QPA. Publicize audits of the QPA. Require more transparency over how the QPA is calculated.

Payment Determination and Notification: Not later than 30 business days after the selection of the certified IDR entity, the certified IDR entity must select as the out-of-network rate for the qualified IDR item or service one of the offers as the out-of-network rate.	45 CFR § 149.510(c)(4)(ii)	Certified IDR entities rarely meet this 30-business-day timeline for making a payment determination.	<ul style="list-style-type: none"> • Reduce the backlog of claims and enforce the 30-day requirement.
Written Decision: The certified IDR entity must explain its determination in a written decision submitted to the parties and the Secretary that includes specific information outlined in 45 CFR § 149.510(c)(4)(vi)(B).	45 CFR § 149.510(c)(4)(vi)	Certified IDR entities meet this requirement, but sometimes do not fully explain how they came to their decision.	<ul style="list-style-type: none"> • Better transparency around how certified IDR entities render their decisions.
Payment by Losing Party: If applicable, the amount of the offer selected by the certified IDR entity (less the sum of the initial payment and any cost sharing paid or owed by the participant or beneficiary) must be paid directly to the provider, facility, or provider of air ambulance services not later than 30 calendar days after the determination by the certified IDR entity.	45 CFR § 149.510(c)(4)(ix)	Insurers rarely pay within 30-day period in cases where certified IDREs select the provider's offer.	<ul style="list-style-type: none"> • Penalize health insurers not paying what they owe to a provider after the IDR process is completed. • Compel health insurers to compensate the provider the total amount owed plus interest.
Costs of IDR Process: Each party must pay the predetermined certified IDR entity fee charged by the certified IDR entity to the	45 CFR § 149.510(d)	Sometimes Certified IDREs do not receive the IDR fees from health insurers.	<ul style="list-style-type: none"> • Certified IDR entities should have a uniform process in place to collect all the IDR fees and refund the winning party the certified IDR entity fee.

<p>certified IDR entity at the time the parties submit their offers.</p> <p>Each party must, at the time the certified IDR entity is selected, pay to the certified IDR entity a non-refundable administrative fee due to the Secretary for participating in the Federal IDR process.</p>		<p>The high IDR fees are making it cost-prohibitive for many physician groups to participate in the IDR process.</p>	<ul style="list-style-type: none"> • The Departments should immediately rescind the significant increases in both the administrative fee and the fees that certified IDR entities can charge.
<p>Extension of Time Periods for Extenuating Circumstances: The time periods for the IDR may be extended in extenuating circumstances at the Secretary's discretion if certain conditions, found in 45 CFR § 149.510(g)(1).</p>	<p>45 CFR § 149.510(g)</p>	<p>The timelines are being extended routinely even in the absence of a formal extension request.</p>	<ul style="list-style-type: none"> • Reduce the backlog of claims. • Enforce timelines mandated by statute and regulation.

From: [Jason Tauriainen](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: Repeal of 80th percentile
Date: Monday, March 6, 2023 3:10:13 PM

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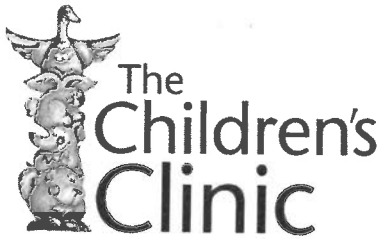
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I strongly support repealing the 80th percentile rule. This has drive costs up and has made Healthcare costs in Alaska climb upward faster than other states.

Jason Tauriainen

46660 Tauriainen Trl
Nikiski, AK 99635
907-398-1024

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Daniel Tulip, MD
Janet Shen, MD
Jeanette Legenza, MD
R. Kilian Schafer, MD

March 6, 2023

Sarah Bailey
Division of Insurance
Alaska Department of Commerce & Economic Development
PO Box 110805
Juneau AK 99811-0805

RE: **OPPOSE REPEALING** 3AAC26.110, aka the 80th Percentile Rule

Ms. Bailey,

I am writing to comment on the division's proposed changes to 3AAC26.110, specifically, the deletion of paragraphs (a)(1) and (a)(2), and the revision of paragraphs (4) and (5)(A). I **OPPOSE** the proposed changes.

My concern is that the proposed changes will further unbalance the patient / provider / insurance carrier relationship in the carrier's favor. Simply put, the proposed regulation changes grant more power to the carriers and less into the hands of the Alaskan consumers who need medical care.

My medical practice has contracted with many of the larger insurance carriers in Alaska to ensure our patients are able to receive quality care at a reasonable cost. However, there are some insurance carriers that we are not contracted with that attempt to pay at Medicare rates for pediatric healthcare. We have been able to recoup reasonable reimbursement with this law in place. Prior to this law, extremely low usual and customary rates were frequently seen, to the detriment of patients and their families. The "No Surprise Act" will certainly make patient's families aware of the potential out-of-pocket cost but it will not hold the insurance carriers accountable to pay a reasonable benefit for services rendered. The cost of healthcare will be pushed from the carrier to the Alaskan patient/consumer.

There are many reasons the 80th should not be repealed, but here are some brief points to consider:

- My business cannot afford to stay open providing medical care if reimbursed rates reduce to Medicare levels
- The 80th Percentile Rule protects Alaskan patients from balance billing, usual and customary denials, and high out-of-pocket costs for healthcare
- The Federal "No Surprises Act" applies only to emergent care and does **NOT** replace the patient protections in the 80th Percentile Rule
- Repealing the 80th Percentile Rule will only benefit insurance companies, all of whom are based in the lower 48 states
- Repealing the 80th Percentile Rule will affect Alaska's ability to recruit and retain high quality healthcare providers, which are already in short supply, and will greatly reduce patient's access to care in Alaska

Please **DO NOT** proceed with changes to 3AAC26.110 until you can provide additional language with assurances for small providers that better reflect conditions in this market.

Thank you,


R. Kilian Schafer, MD



Comprehensive • Minimally Invasive • Transformational

Monday, March 6, 2023

Re: 80th % Regulation

To: The State of Alaska Division of Insurance

Attn: Sarah Bailey

I strongly oppose the repeal of the 80th % regulation.

I work in the healthcare industry as a Patient Care Coordinator in Anchorage, AK. I feel that the 80th Percentile Rule already protects patients from balance billing and out-of-pocket costs for healthcare in Alaska. The 80th Percentile Rule encourages providers and insurers to work together in good faith for fair and transparent contracting to benefit patients. The Federal No Surprises Act applies only to emergent care and does NOT replace the patient protections in the 80th Percentile Rule. Repealing the 80th Percentile Rule will only benefit insurance companies, all of whom are based in the lower-48 and enjoy substantial profits. Any claim that increasing insurance company profits will “trickle-down” to reduce the individual Alaskan’s healthcare costs is dubious at best. Healthcare is a major employer of Alaskans and provides well-paying jobs with good benefits, which supports a healthy economy. Repealing the 80th Percentile Rule will affect Alaska’s ability to recruit and retain high quality healthcare providers, which are already in short supply and will greatly reduce patient’s access to care in Alaska. Without high quality primary care and specialists that are local and accessible, patients will have to travel to the lower 48 for care – this will especially impact our most vulnerable populations who may not have the means or ability to travel.

Best Regards,

RheAnna Lorenz

March 5, 2023

Attention: Sarah Bailey

Sarah Bailey
PO Box 110805
Juneau, AK 99811-0805

Esteemed Members of the Alaska State Legislature,

As a medical professional and a consumer of healthcare insurance in Alaska, I am writing to bring your attention to the 80th percentile "rule" for determining "usual and customary charges for healthcare services" in Alaska, which has been the subject of intense debate in recent years. It is important to understand that this rule plays a crucial role in safeguarding the interests of healthcare providers and consumers in Alaska.

The 80% rule is essentially a safety measure for consumers, ensuring that insurance buyers have coverage at least at the 80th percentile of the locally established out-of-network costs. This not only shields consumers from financial burden but also facilitates the recruitment of physicians in Alaska, ensuring that residents receive prompt and effective diagnostic and treatment services within the state.

As a healthcare provider, I have observed the various specialty groups negotiate their way towards becoming in-network with Alaska's limited insurance providers. Contrary to the belief of the rule's opponents, most specialty groups are now in-network. Additionally, despite a rise in the number of in-network providers and the flat to decreased fee schedules negotiated with them, the cost of healthcare insurance has increased at a rate considerably faster than inflation.

As a healthcare consumer, I have experienced the same exorbitant costs that most Alaskans have faced. The health insurance policies that I purchase for my family and staff have increased by 10-23% in most years since 2017, and the deductibles have risen considerably each year. However, I understand that this cannot be blamed on physicians or the 80% rule.

Eliminating the protection that the 80% rule offers consumers, which obligates insurance providers operating in Alaska to negotiate regionally appropriate pricing in good faith, would be unwise. It would undo the progress made in the last two decades and revert to the problem the rule was meant to solve. Consumers will continue to pay exorbitant rates for insurance, and the networks will shrink dramatically, making it difficult for them to access quality care locally.

Some have suggested that the national "No Surprises Act" (NSA) will provide the same protection to consumers as the 80% rule, rendering the rule outdated and unnecessary. However, the NSA is primarily applicable to emergency and inpatient care, and the majority of healthcare provided is neither emergency nor inpatient. Its consumer protection, if any, would be far narrower than what the 80th percentile rule provides.

I urge you to recognize the significance of the 80th percentile rule in protecting consumers and healthcare providers in Alaska. Dismissing this rule would have adverse effects on both groups and undo the progress made in improving healthcare accessibility and affordability in our state.

Thank you for your time and consideration.

Respectfully,



Stephen Markewich, MD
Sdm507@hotmail.com
Medical Group of Alaska, LLC

From: [Teena Applegate](#)
To: [Bailey, Sarah S \(CED\)](#)
Subject: Support to Remove the 80th percentile regulation
Date: Monday, March 6, 2023 10:57:14 AM

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Hello Sarah

I wanted to submit my written comment supporting removing the 80th percentile regulation.

Now that Congress has protected consumers from balance billing by passing the No Surprises Act, please repeal Alaska's 80th percentile regulation, as it is unnecessary and makes our health care more expensive. I work with many Alaskan businesses, and I see the cost of health care and their struggle to maintain a group health plan for their employees.

Warmest Regards,

Teena Applegate | Employee Benefits Account Executive
RISQ Consulting – an Acrisure Agency Partner | 582 East 36th Avenue STE 300, Anchorage AK 99503
o 907 561 RISQ [7477] | c 907 317 7577 | f 907 279 6818

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March 6, 2023

Re: 80th % Regulation

To: The State of Alaska Division of Insurance

Attn: Sarah Bailey

I strongly oppose the repeal of the 80th % regulation.

I work in the healthcare industry as an Assistant Manager. I feel that the 80th Percentile Rule already protects patients from balance billing and out-of-pocket costs for healthcare in Alaska. The 80th Percentile Rule encourages providers and insurers to work together in good faith for fair and transparent contracting to benefit patients. The Federal No Surprises Act applies only to emergent care and does NOT replace the patient protections in the 80th Percentile Rule.

Repealing the 80th Percentile Rule will only benefit insurance companies, all of whom are based in the lower-48 and enjoy substantial profits.

Any claim that increasing insurance company profits will "trickle-down" to reduce the individual Alaskan's healthcare costs is dubious at best. Healthcare is a major employer of Alaskans and provides well-paying jobs with good benefits, which supports a healthy economy. Repealing the 80th Percentile Rule will affect Alaska's ability to recruit and retain high quality healthcare providers, which are already in short supply and will greatly reduce patient's access to care in Alaska.

Without high quality primary care and specialists that are local and accessible, patients will have to travel to the lower 48 for care – this will especially impact our most vulnerable populations who may not have the means or ability to travel.

Thank you

Trudie Gibson
Assistant Manager

March 6, 2023

Sarah Bailey
Life and Health Supervisor
Division of Insurance

via email

RE: Proposed changes to 3AAC26.110(a)

Dear Ms. Bailey,

Thank you for the opportunity to comment on the proposed changes to 3AAC26.110(a). UnitedHealthcare supports the proposed changes to the regulation.

We agree that removal of the 80th percentile requirement for out-of-network services will help protect consumers and employer groups from higher health care costs. In addition, the current regulation may act to discourage network participation by certain health care providers.

As stated in the notice of proposed changes, the consumer protection provided under the federal No Surprises Act (NSA) provides the consumer protection intent of the current regulation. The NSA safeguards consumers from balance billing and establishes procedures for out-of-network providers and health insurers to negotiate reimbursement and an arbitration process if needed to resolve disputes.

We ask that the Division provide guidance on the effective date of this change and allow insurers and providers sufficient time to implement the new requirements.

Please let me know if you need additional information.

Regards,

/s/ Melanie J Anderson

Melanie Anderson
Associate General Counsel

Neurological Consultants of Alaska, LLC

Mary Downs, MD
BOARD CERTIFIED NEUROLOGY

Wayne Downs, MD
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March 3, 2023

State of Alaska Division of Insurance
ATTN: Director Lori Wing-Heirer
PO Box 11085
Juneau, AK 99811-0805

Email: sarah.bailey@alaska.gov

Dear Ms. Heirer and the Alaska Division of Insurance,

I am writing as a medical provider and small business owner to strongly oppose the repeal of the 80th percentile regulation. My priority is providing the highest quality of care to my patients. The 80th percentile regulation has been one of the factors contributing to the improvement in health care in Alaska. Repealing this regulation will have an immediate adverse effect on quality of care for our state. As a physician with twenty-eight years of experience practicing in Alaska, I am familiar with the state of care prior to implementation of this regulation and can share concrete examples of how repeal will be problematic.

Throughout my time in an Anchorage-based practice, I have cared for patients in my area as well as those who come see me from more remote communities such as Dutch Harbor, Kotzebue, Bethel and Ketchikan, I am extremely proud of the quality of health care my practice has provided despite many difficulties. As you know, Alaska has high cost of living, high cost of running a business, and significant distance from the rest of the United States. In spite of this, throughout my twenty-eight year Alaska career, we have provided what in many respects is near a tertiary referral center level of care. I routinely take care of problems in my Anchorage practice that in any other city of comparable size would be immediately transferred to a major medical center.

It is extremely difficult to get physicians to move to Alaska, and we have historically had a significant physician deficit compared to need. Every physician with whom I have had in-depth discussions on medicine in Alaska has as their highest goal providing the best health care possible to their patients. We of course also want to earn at least a decent living and have at least a reasonable quality of life, commensurate with our years of education and training, but that makes us no different from anyone else including yourselves.

Please consider the fact that insurance companies have as their highest legal obligation return on investment for their shareholders while physicians have their highest legal and ethical obligation the health of their patients, and that the Alaska Division of Insurance has as its highest legal and ethical

obligation the balancing of all the competing interests to maximize the availability and quality of health care to the citizens of Alaska.

Prior to implementation of the 80th percentile regulation, there was very little transparency and great uncertainty on the patient's part about how much they were going to have to pay for care when they saw a physician. They were frequently surprised when they saw how much they owed after insurance had paid what they considered their portion. I started my practice January 1, 1995, and I remember those years vividly. Numerous patients called upset about their remaining balance. Insurance companies often calculated what our usual and customary rate should be by lumping Alaska in with states where the cost of providing health care was far lower.

Anyone running a business in Alaska realizes just how expensive it is to live and operate here. As a small business owner, hiring well trained and capable staff is essential to the mission of providing good care. My employees help facilitate a positive patient experience, smooth office operations, and efficient use of resources. Providing competitive salaries and benefits, including good health insurance, are essential in hiring and retaining good employees. We have frequently chosen higher cost insurance plans to cover our employees precisely because they provided better coverage. Indeed, anyone who has ordered merchandise online and had it shipped to Alaska will realize the extra costs involved with obtaining everything from pens to network file servers as well as realize that sometimes they cannot be obtained at all as the seller will not ship to Alaska for any price. It is simply more expensive to live and do business here than places like Montana or Wyoming. Therefore, what we need to charge to keep the doors open is higher.

I have seen statements by Jim Grazko, president of Premera Alaska, on this subject, and his arguments are disingenuous. For example, he states that the 80th percentile regulation strongly disincentivizes providers to negotiate contracts as preferred providers. I and every physician I am personally acquainted with tries to be a network provider in as many networks as possible. Patients deliberately seek in-network providers, and by not joining networks there are a large number of patients who would simply go elsewhere. Being in network typically allows for billing costs to be lower and payments to be made more quickly, improving cash flow. Lastly, it reduces complexity for the patient and significantly reduces the patient's financial concerns at a time when they should be much more concerned about their health.

One of the big arguments I see made for repealing the 80th percentile regulation is allegations that in some markets specialists control more than 20% of the market and can set whatever rate they wish. While one can quibble over whether 80th percentile is the correct percentile for the regulation, and while too much power should never be concentrated in a single entity as it invariably leads to abuse of that power, we can turn this argument around and argue more convincingly that a much more significant problem is the extremely small number of companies writing policies in Alaska. The numbers I have available do not quite match our actual experience in the office but are close enough, and I would submit the following for your consideration:

1. For a decade or more the majority of policies in Alaska have been written by either Moda or Premera. The numbers I find suggest that over the last 8 to 10 years they have had each between 36 and 58 percent of the individual market in Alaska, and currently Premera is over

50%. Our experience in the office is that Premera is well over 50% of our billing. Effectively at the moment, Premera enjoys what I would consider a market near monopoly.

2. Monopolies are good only for the monopolizing entity. It is bad for free markets, it is bad for consumers, and it is bad for businesses who must deal with the monopoly. The social and political unrest in the United States around the turn of the 20th century had as one of its principle causes the trusts and monopolies that had come to dominate big business, and the United States becoming the economic powerhouse of the 20th century is at least partially due to the breakup of those trusts and monopolies and the existence of government regulations guaranteeing a competitive free market. Your time is limited, so I am going to pick a few examples that I believe are illustrative of this point:
 - a. Our first contract with Premera was signed sometime in 1997-1998. It was a single page and individual sections were typically three to four lines long. I could read and understand the entire contract with no legal training and be quite comfortable with what I was signing. Our most recent contract is 13 pages long, not counting 9 pages of amendments. The language is so complex that I as a reasonably educate person must pay a lawyer to review it to make sure I am not being too badly taken advantage of. As the number of insurance providers has dwindled, we have been forced to sign contracts that are more and more advantageous to the insurance companies as opposed to attempting to be fair and evenhanded toward both sides.
 - b. One example of the lopsided provisions in letter "a" above is a patient that I saw in the hospital due to a contractual agreement with Providence to be on call when needed. Premera denied the claims stating that the patient could have been seen as an outpatient once discharged.
 - c. Another example is a recent patient who has a condition called multifocal motor neuropathy. There are various treatments for this condition, none of which have really worked for the patient. We sent him to the Mayo Clinic in Rochester, Minnesota for a second opinion. The peripheral nerve lab there is easily one of the best on the planet, and the patient was seen by [REDACTED] MD, one of the top experts globally on peripheral nerve disease. Evaluation there showed the patient had a very unusual form of this disease (neurofascin-155 IgG4 autoantibody positive), a newly described subtype of this disease, which responds less well to the treatments we had been employing and responds much better to a drug called Rituxan. There is a letter dated December 6, 2022, from [REDACTED] that was sent to the patient's insurance to secure Rituxan for the patient after we had been unsuccessful. Premera's response: In spite of the opinion and experience of one of the foremost peripheral nervous system experts on the planet, "this is experimental and will not be covered."

Fortunately, and somewhat surprisingly, there is considerably more competition among the drug manufacturers. Motivated by profit, harnessed by free enterprise, and competition, the pharmaceutical companies have been increasingly stepping into the gap to provide necessary medications to patients whose health insurance will not step

up to the plate and take care of the patient's health. In this particular example, the manufacturer of Rituxan is providing an extremely expensive medication completely free of charge to the patient. Many of the other pharmaceutical companies are similarly providing free and discounted medications to patients whose insurance refuses to cover essential medication.

- d. One of my associates very recently had an insurance company refuse to pay for botulinum toxin treatment of a dystonia. The botulinum toxins are the only effective treatment, this particular botulinum toxin has specific FDA approval for treatment of a dystonia, and yet her insurance company refused to pay on the basis that it was experimental.
 - e. I have a patient with extraordinarily aggressive multiple sclerosis who is on an extremely potent drug called Tysabri. One risk of Tysabri is a certain opportunistic infection of the brain called PML that occurs since we are suppressing the immune system in the brain. Patients on Tysabri who have new neurological symptoms need to have PML ruled out, which requires an MRI scan of the brain as the appearance of PML and multiple sclerosis can be distinguished on the scan. There is no other way to differentiate the two. If it is not PML, then we continue Tysabri and treat the flare with steroids. If it is PML, then we perform plasma exchange to get all the Tysabri out of his blood so his immune system can get into the brain and fight the infection. His insurance has disallowed the MRI scan as unnecessary, and I am therefore completely unable to treat the patient at this point in time.
 - f. With the COVID epidemic, telehealth became widely used to help prevent the spread of infection and was being covered at a reasonable rate. Telehealth billing codes included a modifier to specify that this particular service was being provided via telehealth and to specify whether the physician was located in a facility (hospital) or non-facility (office) during the appointment. We complied with this requirement and were billing and being paid as a non-facility. Suddenly and with no warning or notification, Premera started changing the telehealth modifier to facility and paying at the much lower facility rate. If I used the facility modifier, it would be insurance fraud. Facility reimbursements are considerably below non-facility reimbursements. Additionally, Premera continued to tell their policyholders that they did cover telehealth even as we are transitioning from telehealth back to in office visits and leaving the patient confused as to why this transition was necessary.
3. Jim Grazko's argument that the 80th percentile regulation should be eliminated because a medical specialty group that has over 20% of the number of practitioners in the state can set rates for that entire specialty can easily be turned around to say that Premera enjoying over half the market in this state means that we the physicians should be able to tell Premera what they have to pay us, and the purchasers of healthcare should be able to tell Premera how much they should have to pay, and Premera will just have to eat any deficits.

State of Alaska Division of Insurance

03/03/23

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Many of Alaska's citizens, for the entire time I have practiced here, enjoyed a quality of available health care that exceeds that available in most, if not all, comparably sized areas elsewhere in the country. The quality of this care has on average improved during the time I have been here. Only a tiny fraction of patients, less than 2% of my practice, ever need to travel outside of state for anything health care related. The 80th percentile regulation has been one of the factors contributing to the improvement in health care in the state, and I strongly believe that the repeal of this regulation would have an immediate adverse effect on quality of care and that adverse effect would worsen significantly over a relatively short period of time.

I thank you for your previous actions which have helped improve the quality of health care in this state, your ongoing attention to continuing this, and your willingness to listen to the concerns of all sides, including my own.

Respectfully,

A handwritten signature in dark ink, appearing to read "Stanford Wayne Downs". The signature is fluid and cursive, with a large initial "S" and "W".

Stanford Wayne Downs, MD

WD:clb