Consumer and Provider Protection Act

Insurer Transparency (Rental Networks)

- Providers and insurers will often contract with each other for discounted rates.
- Third parties purchase the contracts from insurers and rent the discounted rates without the knowledge of physicians or consumers.
- These 3rd party entities are known as silent PPOs or "rental networks."
- Rental networks are paid from the savings they provide to the insurance companies.
- All savings benefit the insurers with the patient receiving no reduction in cost and the provider receiving no benefit from their original contract.
- This bill:
    - Ensures that rental networks register with the Commissioner and must be licensed and placed on an approved list in order to commence business in Georgia.
    - Allows the Commissioner to revoke approval if the rental network uses a provider's discount without a contractual relationship or leases or rents a provider's discounted network with limited exceptions.
- Other states:
    - Florida, Connecticut, Colorado, Indiana, and Ohio regulate rental networks
    - North Carolina, South Carolina, Kentucky, Louisiana, Virginia, Texas, Arkansas, California, Maryland, and Oklahoma prohibit or limit rental networks
- Anecdotal evidence from physicians and practice managers:
    - Rental networks will access a contracted network discount and then pay claims on an out-of-network basis. As an example, (Company Name Omitted) had rented their network to (Company Name Omitted) so (Company Name Omitted) could access physicians in areas where they either did not want to devote resources to building their own network or offered terms that were so egregious that physicians opted not to participate in the network. (Company Name Omitted) would take the physician's (Company Name Omitted) contracted discount and then pay the physician as if they are a non-participating provider. One practice manager had to terminate almost 400 physicians from the (Company Name Omitted) network because (Company Name Omitted) would not stop doing this

and (Company Name Omitted) refused to intervene on behalf of their contracted providers.

- An additional growing issue is that third party administrators (TPA), an organization that processes insurance claims or certain aspects of employee benefit plans for a separate entity, no longer use specific networks for their clients; so there is no steerage to specific physicians as outlined in most physician's network agreements. Now, a claim comes into a TPA and the TPA researches the network discounts and the cost for those discounts and processes the claim according to the most profitable discount to the TPA.
- Many rental networks allow inappropriate access to modify the contracted rates by allowing cost containment companies to cut allowables arbitrarily against contract agreement. The network rental company then blames the employer.
- It is challenging at time to identify patients and link the patients to the right rental network so administratively when someone enters office with ID card there may not be reference to the rental network. If this occurs the provider does not know what they are going to get paid, of course, unless they call. (Company Name Omitted) was popular doing this at one point in time.

Provider Right to Choose (All Products Clause Prohibition)

- Typically, providers have an independent contract for every health insurance plan (product) they are contracted with.
- If an insurer offers 5 different products, the provider would typically have 5 different contracts.
- All products clauses force a provider to contract with all products instead of individually.
- This bill:
  - Prohibits insurers from forcing providers to contract with all products.
  - It allows a physician the right to negotiate and choose which products work best for their business and patients.
  - A provider is still allowed to contract for all products if they choose so, they simply have the freedom to choose.
- Other states:
  - Florida, Kentucky, Virginia, Arkansas, Indiana, Alaska, DC, Kansas, Maryland, Massachusetts, Minnesota, and Ohio restrict all-products clauses
- Anecdotal evidence from physicians and practice managers:
  - A network will list all of their available product lines in the contract and if a physician communicates to that network that they only want to participate in some of the products, the network tells them that it is "all or nothing". Now, when the practice contacts DOI, the network tells DOI that this is not the case but 99% of doctors would never think to reach out to DOI. In the long term, networks may start using this as a mechanism to determine whether physicians should be in their

narrow network offerings; i.e. the narrow network products will only be available if the physician is in all their other products.

- (COMPANY NAME OMITTED) has an all products clause in their new agreement. (COMPANY NAME OMITTED) can choose to opt a provider in or out of network at any time. (COMPANY NAME OMITTED) has several other clauses that allow them to automatically amend at any time. So when you have these two clauses together, (COMPANY NAME OMITTED) can add any product at any contracted allowable. Participation in a payor product needs to be a mutual agreement instead of it being shoved down a provider's throat by a payor.
- All products clauses make it difficult for practices to manage their own payer mixes. As networks enlarge and add in varying product types (commercial, (Product Name Omitted), (Product Name Omitted), (PRODUCT NAME OMITTED), etc.), physicians are forced into product participation that disrupts their patient population mixes.
- As networks expand their product line offerings, a contractual "all products" clause allows the network to add these new products at rates that have not been negotiated and agreed upon between the physician and network. A major concern now is that networks are creating new parallel products for the Exchange and the commercial network; they will begin transitioning current beneficiaries to the new commercial product that pays the provider significantly less for providing the same exact service to the same exact beneficiary.
- (Company Name Omitted) has been forcing providers to contract under their (Product Name Omitted) Advantage plan by threatening them to drop them from all other networks. This forces physicians to accept a certain type of insurance that may not be feasible for their small business.

Provider Stability Act (Material Change)

- Current contract language allows insurers to change the terms of agreements with physicians in the middle of multiyear contracts.
- Insurers do not need consent from physicians to change the payment structure, often resulting in a physician receiving less money for the same services.
- Under standard contract law, contracts are not allowed to be changed without mutual consent of both parties.
- This bill:
  - Requires any material changes to be agreed upon at the beginning of a new contract, at the renewal of the contract, or anniversary of the effective date.
- Other states:
  - Tennessee has a bill in the legislature
- Anecdotal evidence from physicians and practice managers:

- The (Company Name Omitted) amendments which went out to several different areas of Georgia to thousands of physicians is the biggest and most recent example of midterm material changes to a contract. These "amendments" were basically new unilateral contracts which did not require the physician's agreement or signature. They modified the fee schedule and several other important clauses, as well as attempting to force the physician to participate in all products. While MAG was able to work with the DOI in this particular case, smaller scale material changes happen all the time with no interference by the DOI.

Consumer Right to Access (Network Adequacy)

- Insurers generally have the ability to define and adjust the number, the qualifications and the quality of providers in their networks.
- Insurers may limit the number of providers in their networks as a means of lowering costs or coordinating care.
- This often narrows their provider networks to an extent that consumers may have limited options when choosing providers or may not have access to necessary specialists at all.
- Network adequacy requires an insurer to deliver the benefits promised by providing reasonable access to a sufficient number of in-network primary care, specialty and sub-specialty physicians.
- It also ensures access to all health care services included under the terms of the contract.
- Network accuracy refers to the correctness of network directories which provide consumers with a list of in-network physicians.
- This bill:
    - Requires insurers to maintain a network that is sufficient in numbers and types of providers to assure that all services to covered persons will be accessible without unreasonable delay.
    - Insurers must report annually to the Commissioner for each of its policies or plans the number of enrollees and the number of participating in-network health care providers.
    - Maintain an updated network directory via internet website, mobile app or other electronic means.
    - Gives the Insurance commissioner the power to regulate network adequacy and create rules.
- Other states:
    - Florida, Louisiana, Tennessee, Texas, California, Colorado, Connecticut, Hawaii, Illinois, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Hampshire, New York, Oregon, South Dakota, Vermont, Washington, and DC all require adequate networks.

- Anecdotal evidence from physicians and practice managers:
    - (Company Name Omitted) has started selectively terminating physicians from their (Product Name Omitted) network; forcing beneficiaries who have long-standing physician relationships to try and find another primary care physician to accept them into their practice. With a narrowed network of physicians, it can be difficult for the patient to find another primary care home.
    - Patient example: (Patient Name Omitted) of Augusta is still upset about a letter she received from (Company Name Omitted) who wrote to notify her that it was dropping (Physician Name Omitted), her physician, from its (Product Name Omitted) doctor network. "I've been with (Dr. Name Omitted) for years,'' says (Patient Name Omitted), 67, a registered nurse. "He treats me like his mother."(Physician Name Omitted), an Augusta family physician, says dozens of his patients got similar letters. "For many reasons, it has been a disaster, for us and our patients," says (Physician Name Omitted). (Patient Name Omitted) and (Physician Name Omitted) both say they have not received an adequate reason from (Company Name Omitted) as to why the change took place.
    - In many parts of Georgia, (COMPANY NAME OMITTED) GA was the only Exchange plan offered in 2014; however, (COMPANY NAME OMITTED) GA only built a narrow network for its Exchange plan offering and in some communities, patients had no geographically reasonable access to in-network physicians, hospitals, or other healthcare providers. In fact, when selling the Exchange product, consumers often received misleading information about their available panel of physicians.
    - Network accuracy is as important as network adequacy; as an example, networks often include sub-specialists and hospitalists in their primary care network; however, these types of physicians do not provide a primary care medical home for patients; hospitalists do not even have a physical office location at which to see patients. It is not uncommon to review a provider directory and discover physicians that have passed away or relocated to another state.
    - (COMPANY NAME OMITTED) has several pathway products that they sell on and off the exchange. At present, (COMPANY NAME OMITTED) has justified several limited or no access networks across the state for these products. While they are required to file the list of providers with the DOI and (attest that the network is adequate), there is no oversight by the DOI or HHS as to whether the network is truly adequate or not. In Bibb County, for example, (COMPANY NAME OMITTED) has inappropriately listed providers in network to the Pathway X products when there is no contract. It is deceiving to the member that the provider is in network when the provider is not. The reason the provider may not want to join is twofold: (1) (COMPANY NAME OMITTED) wants additional discounts for the same commercial business which can cause a significant loss in

revenue and (2) (COMPANY NAME OMITTED) in many instances is asking the provider to sign the new “enterprise” agreement which has many unfavorable terms in it thus holding the provider hostage. In other parts of the state there are no hospitals in network for the Pathway x product.