

**To:** Carrie Embree, LSW, Governor's Consumer Health Advocate  
**From:** Dr. Bret Frey, Legislative Liaison – Nevada ACEP  
**Date:** August 30, 2019  
**Re:** Public Workshop August 28, 2019 – Assembly Bill 469 Regulations

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AB469 outlaws the practice of balanced billing for emergency care and provides a system for physicians and hospitals to receive a fair payment by third-party payers in the scenario an out-of-network instance occurs.

We would like to highlight some areas that need clarification through the regulatory process.

**1. Arbitration should be conducted in an "economically efficient manner" (Section 17(3)(a))**

This portion of the bill outlines the small claims arbitration process for claims under \$5,000. It goes on to specify a process that must include one of the following options: 1. the use of arbitrators that are qualified state employees; 2. arbitration through the judicial district; or 3. a program the judicial district chose. It is critical for emergency physicians that the state prioritize the cost and quality of this arbitration process. The average bill for emergency physicians in Nevada is \$800; the amount of dispute between provider and payer is likely only a fraction of the total bill. To preserve due process rights of both parties, the cost of arbitration must be less than the average bill. Physician practices and administrators don't have staff attorneys; they are often small groups. This process needs to be one that doesn't require the hiring of expensive legal counsel. It is imperative that the small claims arbitration process isn't cost prohibitive for doctors. We would recommend a program that uses unbiased arbitrators qualified in the area of medical billing. In addition, we would recommend a flat fee structure or a percentage fee structure to ensure that the cost for arbitration wouldn't exceed the bill needed to arbitrate, thus guaranteeing access for physicians to a fair process.

In addition, a process needs to be established for submittal of documents to the chosen arbitrator in a clear, simple, and affordable fashion. We recommend a universal form for submittal, an online submission option, and in cases less than \$5,000 there be an option for telephone attendance. Teleconference or telephonic processes may be an important

addition for many of our rural Nevada practices. We also recommend that there be an option for either party submit information not present on the form. This will assist the majority of our emergency practices that have full schedules attending to the state's emergency patients and contend with on-call schedules.

## **2. Transparency for patients and doctors (Section 18(1,2))**

Section 18(1-2) require the Department of Health and Human Services to publish a list of third-parties who have opted into the law. In addition, this section allows for regulations on a third-party electing into the law.

While the law is clear for compliance of commercial plans, this section addresses the ability for additional ERISA plans to participate and protect their patients. It will be important that plans clearly notify their patients when they opt into this law. Patients need to know if they are covered under the law and that this only applies to emergency care. Through this section of the bill, we think it is essential that the Department provide a list of these plans in an easy to find location on their website, keep it updated in a timely basis on plan changes, and provide contact information for DHHS-OCHA if there is an issue. This provision is important for physicians as well. If patients and providers know the plans that are opting into the law, it will create a more efficient process and fewer delays for all involved.

Lastly, we advise the Department to set up a basic procedure for identifying when a network has been rented to a third-party payer and is covered by this law. It will be important in the scenario that a payer has opted in, that they notify their third-party networks to streamline the process and maintain compliance. This will also provide for additional transparency for patients.

Nevada American College of Emergency Physicians (ACEP) was founded in 1973. We represent hundreds of emergency physicians, residents and medical students in the state. We are actively involved in a wide range of issues that matter to emergency physicians and our patients, including emergency medical services, public health and safety, and disaster preparedness and response. Most importantly, we are working to expand access to emergency care across Nevada.

On behalf of our members, I would like to thank you and the state for allowing Nevada ACEP the opportunity to provide input during the rulemaking process on Assembly Bill 469. We played an active role during the 2019 session negotiations and will continue our involvement through this rulemaking process.

There are more than 500 emergency doctors in Nevada. Emergency departments service 1.5 million patients per year statewide. This issue is one that impacts every single emergency physician in the state. We join our partners in the physician community to emphasize some needed clarification through regulation on this bill.

We would like to thank you for your consideration. We will continue to engage and provide input through this regulatory process. We stand ready to be a resource to the state transitions to implementation of AB469.

Sincerely,

Dr. Bret Frey  
Legislative Liaison for Nevada ACEP