Federal Standard of Care Protection Included in H.R. 2 Medicare Access and CHIP Reauthorization Act. of 2015

We are pleased to report that the 114th Congress passed bipartisan legislation H.R. 2--Medicare Access and CHIP Reauthorization Act of 2015--which repeals the sustainable-growth-rate formula and revises Medicare's payment policies to tie reimbursement to certain quality measures. The bill passed the House with a 392-37 vote, the Senate with a 92-8 vote, and was signed by the President on April 16, 2015.

Included in the Medicare Access and CHIP Reauthorization Act of 2015 is a standard of care protection provision in Section 106(d) that Physicians Insurance has worked on for more than five years with our national insurance trade association PIAA (https://www.piaa.us) to promote access to care and protect health-care providers and their patients in cases of alleged medical liability.

Section 106(d) of the new law clearly states and clarifies that no federal health-care provision shall be interpreted as creating a duty of care or the standard of care owed by a health-care provider to a patient in a medical liability or medical product liability action or claim.

We applaud the 114th Congress and the President for acting and recognizing the importance of this standard of care provision to ensure that federal health-care metrics and reimbursement guidelines may not be misused to expand opportunities in claims of medical liability. It is a step in the right direction.

Although health-care providers continue to face challenges under the current medical liability system, they now have assurances that protections are in place to ensure that federal health-care guidelines and regulations are not misused in court to prove, or disprove, allegations of medical negligence—a section of law that protects both health-care providers and patients.

The federal law also sets out certain quality metrics. Physician reimbursement depends in part on performance against those metrics. The standard of care provision protects physicians and patients by expressly prohibiting those government performance measures from being used by plaintiffs to establish a deviation from the standard of care or by defendants in trying to show the physician-delivered care consistent with the standard of care.

CLOSING THE DOOR ON NEW CLASS OF LAWSUITS
Simply put, the new law clarifies that federal guidelines or standards regarding health care, which were not designed to establish a standard of care, should not be interpreted as creating a standard of care. Thus the law merely ensures that provisions of federal health-care law are used only as intended—not to generate new lawsuits or protect providers from claims of negligence.

This provision does not change prior law or alter the way courts seek to determine if an act of medical negligence occurred.It also offers no new protections from medical liability lawsuits. Instead, it simply maintains the status quo on matters regarding the standard of care in such lawsuits and guarantees that the playing field is not inadvertently tipped to favor either defendants or plaintiffs.

Below is an excerpt from H.R. 2 – Medicare Access and CHIP Reauthorization Act of 2015, Section 106(d)(1):
(d) RULE OF CONSTRUCTION REGARDING HEALTH
CARE PROVIDERS.—
(1) IN GENERAL.—Subject to paragraph (3), the development, recognition, or implementation of any

guideline or other standard under any Federal health care provision shall not be construed to establish the standard of care or duty of care owed by a health care provider to a patient in any medical malpractice or medical product liability action or claim.

Please see www.congress.gov/bill/114th-congress/house-bill/2/text for full text of H.R. 2 – Medicare Access and CHIP Reauthorization Act of 201PR5.