Memorandum in Opposition
S1793 (Rivera)
Senate Health Committee

AN ACT to amend the public health law, in relation to hospital statements of rights and responsibilities of patients; to amend the general municipal law, in relation to insurance coverage of ambulance and emergency medical services; to amend the financial services law, in relation to dispute resolution for emergency services; and to amend the financial services law and insurance law, in relation to assignment of health insurance benefits.

The New York American College of Emergency Physicians (New York ACEP) supports the intent of this bill to ensure that patients are protected from excessive out-of-pocket costs for health care services.

New York ACEP is strongly opposed to provisions of this bill to prohibit balance billing of emergency services when a patient elects to assign benefits to an out-of-network (OON) health care provider for emergency services. The unintentional consequence of this legislation will be to allow health insurance companies to significantly underpay health care claims and undermine the quality of the emergency health care safety network by discouraging physicians to practice in emergency departments.

New York ACEP represents over 2,900 emergency physicians across the State that have a shared mission to provide high quality emergency care at any hour of the day or night, helping those who are acutely injured, acutely and dangerously ill, and those who cannot access the care they need, all of whom arrive on an unscheduled basis. Because these visits are emergent and unscheduled, the chance that a patient is in an out-of-network insurance plan is significant.

Emergency medicine physicians are required by the Emergency Medical Treatment and Labor Act (EMTALA) to evaluate and treat every patient who enters their door, regardless of insurance status or ability to pay. Under the provisions of this bill, insurers will be free to under reimburse emergency providers knowing that these physicians are legally bound to provide emergency care to patients.

The current law already holds patients harmless from excessive fees and works to protect patients. Chapter 60 of the Laws of 2014 places responsibility on the health plan to ensure that the patient receives no greater out-of-pocket costs than they would have incurred with a participating health care provider.

Chapter 60 was enacted in response to a report by the Department of Financial Services (DFS), “An Unwelcome Surprise,” that found some egregious charges by OON providers in hospital emergency departments and in ambulatory surgery centers. The majority of the excessive charges pertained to OON specialists in hospital emergency departments and ambulatory surgery centers and not to emergency physicians. The 2014 report did not provide evidence of
excessive physician charges for emergency services and we are not aware of any evidence that has been brought forward since the report was issued.

In fact, data from DFS confirms that the number of complaints filed through the Independent Dispute Resolution (IDR) process for emergency services is extremely low given that the annual volume of patient visits for emergency services in the State is estimated to be 8.5 million. Data reported for the calendar year 2017 shows that 472 eligible disputes were filed for emergency services (.0056%) and from January 1, 2018 to October 25, 2018, 573 disputes were filed (.0067%).

New York ACEP is concerned about attracting and retaining qualified emergency physicians in the State. This proposal will create more pressure on emergency physicians to leave the State or practice outside the hospital. In many regions of the State, the highly litigious environment is causing emergency physicians to migrate elsewhere or to leave emergency medicine for urgent care. This recommendation, if enacted, provides an additional reason for emergency physicians to consider practicing elsewhere. This could threaten patient access to timely, life-saving emergency services.

Chapter 60 is a fair and balanced law which was negotiated and passed in 2014 with the full participation of all stakeholders: health care plans; consumers; and health care providers. These amendments will unintentionally give one party-health insurance companies- an unfair advantage. For all of the above reasons, New York ACEP strongly opposes S1793 (Rivera) and urges the New York State Senate not to pass the bill.