THE ASK: Please continue to support the Provider Stability Act as it heads to the floor in the House and thank senators for voting for it in the Senate.

This bill initially limited changes to provider fee schedules and payment policies during the life of a health plan network contract, intending to give predictability and stability to healthcare providers who typically have little negotiating power over the large insurance industry. Summer meetings led to a compromise between the provider community and the health insurance industry. The 2017 bill provides transparency from health insurance companies to healthcare providers.

Why the bill is needed:

The intent of the legislation is to give healthcare providers some predictability during a term of a participating provider agreement with a health plan. This bill will ensure that the services patients and payers expect from their network providers are available, and are based on the terms of the negotiated rates between the two parties.

What the bill does:

- Requires a health insurance company to give a 60-day notice to a healthcare provider when a change in reimbursement is the result of a policy change that is at the sole discretion of the payer.

- Allows changes to a fee schedule only once in a 12-month period.

- Requires a 90-day notice to the provider for any change to a fee schedule.

- Requires a health insurance company to provide a copy of the fee schedule to a provider within 10 business days of a written request.

- All notices and fee schedules must be sent to a dedicated email address as stipulated in the contract between the provider and insurance company.

- Exempts all government programs, including TennCare, Medicare programs and the State Employee Health plan.

*Please note that there are two bills were originally filed.
OPPOSE Patients for Fair Compensation
SB0744/HB1150

“Insurance Costs Reduction Act”

Senator Jack Johnson (R-Franklin) and Representative Glen Casada (R-Franklin)

SENATE: referred to Judiciary Committee  HOUSE: referred to Civil Justice Subcommittee

Patients for Fair Compensation (PFC), a group based in Atlanta, has been trying to build support among Tennessee legislators for SB 744/HB 1150, which would establish a Patient Compensation System (PCS) to replace our current medical malpractice liability system FOR PHYSICIANS ONLY.

- No other state has a Patient Compensation System; this untested and unproven experiment would be an unnecessary gamble using Tennessee physicians’ money.

- If the proponents’ cost assumptions turned out to be optimistic, then contributions to the PCS could dramatically increase, making it more expensive for physicians and driving up the overall cost of healthcare in our state.

- While Tennessee’s current medical malpractice liability system isn’t perfect, replacing it with an untested system, based on conjecture and speculation, is not what is best for patients or healthcare providers.

  o The tort reforms of 2008 and 2010 decreased claims by 40%, decreased medical malpractice insurance premiums by 37.5%, and resulted in a stable, attractive environment for physicians.

  o Making changes like the one proposed by PFC would damage this stable environment and make Tennessee an undesirable state in which to practice medicine.

PFC is supporting of the legislation with claims that are not supported by facts:

PFC states: Physicians practice defensive medicine to avoid liability and financial exposure.

In reality: Most physicians practice prudent, quality patient care and do not order unnecessary tests primarily to avoid litigation. Physicians’ primary goals are the right diagnoses, not avoidance of litigation.
PFC states: A “no fault” administrative system would decrease the cost of defensive medicine.

In reality: A system that increases the number of medical liability claims paid out and reported to the National Practitioners Data Bank (NPDB) would actually increase the practice and cost of defensive medicine.

PFC states: A PCS would give physicians peace of mind that they would never need to go to court again.

In reality: Under the PCS, physicians would lose the right to defend their practice of medicine in court; an Administrative Law Judge would decide if the physician is at fault with absolutely no right of appeal to a trial court. Physicians would still be required to go to court if the facility or another healthcare provider employee is sued since the PCS would only handle claims against physicians.

PFC states: The cost of defensive medicine is up to $13 billion per year in Tennessee alone.

In reality: While studies differ as to the amount of healthcare costs attributable to defensive medicine, a widely cited 2010 study published in Health Affairs estimates the national cost of defensive medicine for physician and clinical services to be $5.4–$8.2 billion per year. PFC’s estimate of defensive medicine costs is grossly overstated.

PFC states: Payments made under the PCS on behalf of a physician would not be reportable to the NPDB.

In reality: The Director of the NPDB has stated in writing that until a PCS is established and is in operation, the Data Bank will not issue an opinion on the reportability of payments. Historically, the NPDB has required reporting in almost all situations.

PFC states: A Patient Compensation System would increase patient safety.

In reality: By changing the threshold for claims payments from provable medical negligence to a threshold of an “avoidable medical injury,” the system would be flooded with claims, making it very difficult to focus on true safety issues.

PFC states: The entire PCS would be funded by “mandatory contributions” from physicians, which would be less expensive than current insurance premiums.
In reality: Insurance premiums in Tennessee have steadily decreased by approximately 37% during the past 10 years. Increasing the number of claims paid by 67% (a PFC statistic that is likely an underestimation) would require an increase in “contributions” in order to fund the system. The PCS Board would have the discretion to increase the contribution amount without oversight from the Department of Commerce and Insurance. Non-payment of the contribution would result in the loss of licensure. Physicians would also still need to carry malpractice insurance to cover prior claims and to provide coverage for employees (especially those who are healthcare providers). All of this makes the PCS more expensive.

FROM The Tennessean [March 10, 2017]

Hands off Tennessee's medical liability system

Tennesseans should be concerned that lawmakers may be misinformed about a proposal by an out-of-state company to dismantle and replace our state’s medical-liability system.

For two years, Patients for Fair Compensation, a Georgia-based organization, has pushed an unproven concept for medical-liability reform in Tennessee.

The concept has failed in every other state in which it has been introduced. Any and all claims about the benefits of the plan are conjecture at best.

Tennessee has one of the most favorable climates for medical liability in the country, which keeps our state competitive in recruiting and retaining the best and brightest physicians. Tort reforms enacted since 2008 have resulted in a 40 percent drop in volume of medical-liability claims filed against physicians and a 37 percent drop in physicians’ insurance premiums. Those are real cost savings in our health-care system.

The laws in place provide a fair, transparent way to significantly reduce frivolous lawsuits. The civil legal system, hospital quality improvement committees, health plan utilization and medical necessity reviews, state and federal pilot initiatives, and the state licensing boards keep physicians accountable for legitimate injuries and quality of care, while keeping liability insurance premiums and speculative payouts in check.
Most doctors in the state – including more than 9,000 members in the Tennessee Medical Association – would agree that the current system works well. Changing to an untested system makes no sense. Tennessee physicians also take issue with the generalization that doctors routinely practice defensive medicine by placing their own self-interests above safe, efficient, evidenced-based and high-quality care.

Any assertion that Tennessee’s doctors overwhelmingly support the “Insurance Costs Reduction Act” (Senate Bill 744 / House Bill 1150) is simply not true. The proposal is wrought with issues, is far from a “no-blame, no-fault system,” and has been misrepresented in surveys and marketed to physicians as something other than what it really is.

TMA has been opposed to this concept since it was introduced two years ago and is on record exposing significant problems, but none of our threshold concerns have been satisfactorily addressed.

TMA has raised concerns about verifying the actuarial numbers proponents claim will save the state money, and preserving medical liability insurance in the event a patient compensation system does not work.

Shifting physician liability cases from the civil court system to a government-run administrative system would adversely affect our health-care system without any guarantee of the cost savings the proponents are selling.

Fortunately for Tennesseans, much of the General Assembly has shown it does not want Tennessee to be a test site for an unproven concept, especially since we already have a system that is working.

If we want to do something that will truly help contain healthcare costs – and we all do – then we should look at other areas that offer more certain, realistic value, such as team-based healthcare delivery models.

Perhaps a third consecutive defeat in the legislature will compel Patients for Fair Compensation to stop wasting our lawmakers’ time and taxpayers’ resources.

Keith G. Anderson, MD, is president of the Tennessee Medical Association.
SUPPORT: Local Option for Healthier Communities in TN SB0303/ HB0122
Senator Bill Ketron (R-Murfreesboro) and Representative Bob Ramsey (R-Maryville)
Referred to Senate Commerce and House Agriculture Committee/subcommittee

Local governments have the right and responsibility to respond to the needs and concerns of their communities. Yet when it comes to reducing exposure to secondhand smoke, local communities are specifically preempted from taking action.

WHAT IS PREEMPTION?

Preemption is a legislative or judicial action in which a higher level of government (state or federal) strips lower levels of government of their authority over a specific subject matter, in this case tobacco regulation. Tennessee’s preemption clause TN CODE ANN. §39-17-1551 (1994) prevents local governments from passing ordinances designed to protect the public from secondhand smoke.

WHY IS LOCAL OPTION IMPORTANT?

- It provides communities the opportunity to address issues by identifying solutions at the level of government closest to them. This ensures that any laws intended to protect and expand the ability to breathe smoke-free air meets the communities’ needs and protects public health.

- The right and responsibility of local elected officials to protect the health and safety of their communities has been well-established. Local governments should certainly have the power to protect the rights of their citizens to breathe smoke-free air by eliminating smoking in workplaces and public places.

- The vast majority of states do not prevent local governments from passing smoke-free laws that are stronger than the state law.

- More than 4,500 local governments across the country have successfully passed policies protecting citizens from dangerous secondhand smoke.

- In an effort to stop local efforts to prevent and reduce the harmful effects of tobacco use, the tobacco industry has made preemption their top legislative goal
for more than three decades.

-Preemption local authority has had a devastating effect on tobacco control efforts, and subsequently on public health of Tennessee’s residents and workers.

TENNESSEE COMMUNITIES WANT LOCAL OPTION:

Kingsport, Nashville, and a growing list of communities have asked the Tennessee General Assembly to grant them the authority to regulate smoking in public places. Local option to pass such policies should be fully restored, so that localities can decide how to address the needs and concerns of their citizens.