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February 22, 2022

To: The Honorable Delores G. Kelley
Chair, Finance Committee

From: Patricia F. O'Connor, Health Education and Advocacy Unit (HEAU)

Re: Senate Bill 707 (Health Insurance - Provider Panels - Coverage for Nonparticipating Providers): Support

The Office of the Attorney General's Health Education and Advocacy Unit (HEAU) supports Senate Bill 707 because carriers would no longer be able to shift the costs of inadequate provider networks for mental health and substance use disorder (MH/SUD) benefits to their insureds. The Fiscal Note for the 2020 version of this bill stated on page 3 that "most carriers are not currently meeting at least some of the network adequacy standards for mental health and substance use disorder services," *see* link below, and the resulting lack of access to in-network care has been exacerbated by the pandemic. This bill proposes a feasible and fair solution.

<https://mgaleg.maryland.gov/2020RS/fnotes/bil_0005/hb1165.pdf>

Currently, unless the federal No Surprises Act balance billing protections apply¹, if an insured must go out of network because a carrier's network has an insufficient number or type of participating providers with the expertise to provide covered MH/SUD services to the insured within the appointment waiting time or travel distance standards established in regulations, the carrier does not accept responsibility for the balance bill. The balance bill is sent to the insured, who never bargained for that risk and who paid premiums in reliance on the contract to avoid that risk. The insured's deductible, copayment amount, or coinsurance is calculated as if the provider was in-network.

¹ Balance billing is prohibited when emergency services are provided by an out-of-network provider or facility and when services are provided by an out-of-network provider at an in-network facility (with limited exceptions when appropriate notice-and-consent is given.) 42 USC 300gg-111.

This bill would expressly require the carrier to cover the services provided by an out-of-network provider at no greater cost to the insured than if the services had been provided by an in-network provider.² In other words, consumers would get the benefit of the bargain they assume they are making when they purchase health insurance or receive it as an employment benefit, i.e., carriers are paid premiums in exchange for paying out MH/SUD claims when services are needed. An insured expects to pay only what he would have paid in an adequate network, and this bill would fulfill that expectation.

While HEAU believes that all consumers should be protected from balance billing in these situations, we support this incremental step to address Maryland’s current behavioral health crisis.

We ask the committee for a favorable report.

cc: Delegate Sample-Hughes, Sponsor

² The 2000 and 2006 legislative history of Section 15-830 reflects intent for carriers whose plans in fact prove inadequate, to “bring” specialists into network for mandated referred care, at the carrier’s expense, with the consumer in the same place he bargained to be – paying only what he would have paid in an adequate network.