maryland
health services
cost review commission

March 30, 2022

The Honorable Delores G. Kelley
Chair, Senate Finance Committee
3 East, Miller Senate Office Building
Annapolis, MD 21401

RE: HB 694 – Hospitals – Financial Assistance – Medical Bill Reimbursement –Letter of Information

Dear Chair Kelley and Committee Members:

The Health Services Cost Review Commission (HSCRC) submits this letter of information for House Bill 694 (HB 694) titled, "Hospitals – Financial Assistance – Medical Bill Reimbursement." This bill requires HSCRC, in coordination with the Department of Human Services, the State-designated Health Information Exchange, the Office of the Comptroller, and the Maryland Hospital Association, to develop a process for identifying and reimbursing patients who paid for hospital services while being eligible for free hospital care. The bill applies to hospital services provided between 2017 and 2021.

HSCRC staff provided significant feedback to the bill sponsor over the past 6 months to improve the operational feasibility of this bill and attempt to address issues with the process by which patients' financial and health data are gathered and shared between public and private entities. However, this process was not sufficient to protect patients experiencing domestic violence. Immediately before cross-over day, the bill was amended to remove details of the process and instead designate HSCRC to develop a process. HSCRC will work with the entities named in this bill if it passes, but HSCRC cannot assure the Committee that a process can be developed that protects domestic violence survivors while also providing adequate protections for personal health and tax information.

Background

Report Required in Chapter 470 of 2020

HB 694 was prompted, in part, by the findings of a report required by section 2 of Chapter 470 of 2020,[1] which required the HSCRC to evaluate the impact on uncompensated care (UCC) costs of proposed changes to Health General § 19-214.1. As a component of the analysis used to estimate the potential impact of these changes on UCC, HSCRC modeled hospitals' current performance in providing free hospital care using data from 2017 and 2018. HSCRC found that approximately 1% of total hospital charges to individuals who likely qualified for free care (or approximately $60 million statewide each year) were paid by those individuals.

HSCRC does not have any evidence that this amount represents intentional or negligent actions by hospitals. For a number of reasons described below, HSCRC believes that the amount that would be refunded to patients under this bill would be less than the $60 million figure.

[1] HSCRC, "Analysis of the impact of hospital financial assistance policy options on uncompensated care and costs to payers", February 2021. Available at: http://dlslibrary.state.md.us/publications/Exec/MDH/HSCRC/HB1420Ch470(2)(2020).pdf

Hospital Financial Assistance

Each hospital in Maryland is required by law to provide provide free care to patients with incomes at or below 200% of the federal poverty level (FPL)[2] and provide reduced-cost care to patients with income between 200% and 300% of FPL.[3] Reduced-cost care is also available to patients with income below 500% of FPL who have a substantial amount of medical debt.[4] HSCRC believes that access to hospital services for low income patients provided by these requirements is a key benefit of the Maryland Health Model and builds funding for this uncompensated care into the all-payer rates it sets for hospitals.[5]

To determine which patients are eligible for financial assistance in accordance with law, hospitals must verify factors such as income level or participation in certain social service programs. Hospitals often do so through an application process. Verification ensures that financial assistance is provided to those that truly need it while patients that can afford to pay their hospital bills do so.

Hospitals may encounter challenges determining the eligibility of patients for financial assistance. Common challenges include:

1. **Patient awareness of financial assistance:** Under Maryland law, hospitals are required to post notices throughout the hospital informing patients of their right to apply for financial assistance.[6] Hospitals must also inform patients how to apply for free and reduced-cost care before the patient receives scheduled medical services; before discharge; with the hospital bill; on request; and in each written communication to the patient regarding collection of the hospital bill.[7] Despite this effort by hospitals, patients may not realize that financial assistance is available to them or may not realize they will need it until after they have left the hospital.
2. **Applications and documentation demonstrating eligibility for financial assistance:** A patient must request to be considered for financial assistance and provide requested documents to the hospital. Without this information the hospital may not have the information necessary to determine if the patient is qualified. Hospitals do not have access to patient income data unless the patient provides that information to the hospital.[8].

These challenges impact hospitals' ability to identify and provide free care to all patients that qualify for it. HSCRC believes that some, if not all, of the $60 million outlined in the report under Chapter 470 of 2020 may be the result of these challenges.

Concerns with the process contemplated by HB 694

The project envisioned in HB 694 relies on a data set that HSCRC developed to estimate the impact of future policy changes, not to provide individual refunds to patients. Using this data set to provide refunds to patients is complex, raising issues about data assumptions, data sharing, data privacy, and patient safety.

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[2] Md. Code, § 19-214.1(b)(2)(i) of the Health General Article. Chapter 470, 2020 strengthened the law related to hospital financial assistance. In addition, hospitals are subject to rules related to debt collection (Health General § 19-214.2). Chapter 770, 2021 strengthened consumer protections related to hospital debt collection.
[3] COMAR 10.37.10.26 A-2 (2)(a)(ii)
[4] COMAR 10.37.10.26 §A-2
[5] The UCC fund is used to redistribute funds between hospitals, so that hospitals providing more financial assistance are not put at a financial disadvantage.
[6] COMAR 10.37.10.26.A-2(6).
[7] COMAR 10.37.10.26.A(3).
[8] Specifically, hospitals do not have access to the income data from the Comptroller's Office that was used for modeling hospital performance in providing financial assistance under Chapter 470 (2020). Hospitals do use commercially available data sets to find information about public program enrollment which can help the hospital determine if a patient is presumptively eligible for free care without documentation from the patient

Income Data

HSCRC's modeling for the report under Chapter 470 (2020) relied on HSCRC's ability to determine the percent of the patients who likely paid for hospital visits in a year that they were eligible for free hospital care (i.e., under 200% FPL). HSCRC was able to verify federal poverty levels ranges for some patients using income range (tax) data from the Comptroller's Office. For patients that did not have matching data from the Comptroller's Office, HSCRC made a number of assumptions related to patient income to complete the modeling.

Patients with Known Incomes

For about 45% of patient visits to hospitals in 2017-2018, we know that these patients had income under 200% FPL for the year because HSCRC was able to match income ranges provided by the Comptroller's Office to the patients in HSCRC's casemix data for the year. Approximately 13% of patient visits had income data from either 2017 or 2018, but not both years. For the report under Chapter 470 (2020), HSCRC staff assumed that a patient's income data from one year applied to both years. This may not be an accurate reflection of the patient's income in the year with the missing income data; the individual's financial status may have changed during that time period such that the patient was no longer eligible for free care.

Patients with Imputed Incomes

43% percent of the patient visits that HSCRC modeled as being eligible for free care for purposes of the report under Chapter 470 (2020) do not have income data from the Comptroller's Office for either 2017 or 2018. For these patients, HSCRC made assumptions about a patient's likely income for purposes of generating reasonable population-wide results.

Most of these patients were enrolled in Medicare. National statistics from the Kaiser Family Foundation demonstrate that about 20% of Medicare beneficiaries have incomes below 200% FPL. For purposes of the analysis under Chapter 470 (2020), staff randomly assigned an income of under 200% FPL to 20% of the Medicare population with no known income. This approach made sense for the purposes of population-level modeling of future policies required under Chapter 470 (2020). On the individual level, HSCRC staff do not know which patients in this population had incomes under 200% FPL. HSCRC also made assumptions about the income distribution of commercially insured individuals (4% - 5% of patient visits), and the homeless population (0.28% of the patient visits). Without income data, the only way for state agencies to identify if these people may have been eligible for financial assistance would be to match their data with data from the DHS, as individuals who are enrolled in certain social services programs are presumptively eligible for free care. HSCRC does not have information on enrollment in these programs. Because this population does not have a known income, the Comptroller likely does not have address information for these patients in their data set for the purpose of contacting the patients. HSCRC also does not have address information (or other identifiable information) for these patients. In order to provide a usable data set to DHS, HSCRC would need to share its data with the State-designated Health Information Exchange (HIE).The State-designated HIE is subject to specific privacy requirements (Health-General §4-302.2; COMAR 10.25.18).

Privacy Concerns

In order to notify patients that they may have been eligible for refunds during the years covered by HB 694, this bill originally contemplated HSCRC sharing data for patients with known incomes (including a unique patient ID, year of hospital visit, and hospital name) with the Comptroller's office, who would send those patients letters using address information that the Comptroller's Office has on file. However, to use a safe address, as required by the amended bill, data on patients with a hospital visit and an income under 200% FPL (based on Comptroller data) would need to be shared with the hospital that provided the service, as only the hospitals have the safe addresses. Similar to the patients with a known income, to use a safe address, as required by the amended bill, data on patients with a hospital visit and qualifying DHS program enrollment would need to be shared with the hospital. Alternatively, for both patient populations, hospitals would need to share all safe addresses with a State Agency for matching with the list of patients who may be entitled to a refund. Both approaches raise significant concerns about data sharing and the privacy of tax, health, and safety data.

Data Concerns that Impact Total Possible Refunds

There are a number of factors that impact the total value of refunds that may be possible under HB 694.

Average Estimated Out-of-Pocket Cost Per Patient

HSCRC does not know the exact amount that each patient paid for hospital visits in 2017 or 2018. HSCRC estimated likely out-of-pocket costs for the report under Chapter 470 (2020) using population-level data. These estimates were used to construct the $60 million figure in the report. The actual amount paid may differ from HSCRC's estimates.

Insurance Denials

For any patient, regardless of whether their income is known or imputed, HSCRC's data does not show whether an insurance denial occurred. Insurance denials result in no cost sharing for the patient. In HSCRC's data set, insurance denials look like paid claims. Thus, even for patients with known income, HSCRC cannot definitively say if the patient is entitled to a refund under HB 694. Patients who did not make a payment, because no payment was due as a result of an insurance denial, should not receive a "refund." Hospitals will need to review their records to determine if a patient actually paid for the service before issuing a refund. This is an administrative cost for hospitals.

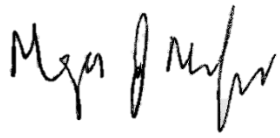
Assets, Asset Tests, and "Determination" of Eligibility for Free Care

For any patient, regardless of whether their income is known or unknown, HSCRC does not know the value of the patient's assets. Some hospitals consider assets when determining eligibility for financial assistance.[9] If a patient was denied financial assistance due to the legitimate application of an asset test by a hospital, no refund is due to the patient. Hospitals with financial assistance policies that allowed for asset tests between 2017 and 2021 would need to review their records to see if the patient was reviewed for financial assistance and denied based on assets.

HSCRC remains concerned about the complexities of the process outlined in HB 694, including the substantial privacy implications for the data sharing required to implement this process. HSCRC expects that, if a process is developed under HB 694, the legislature will need to take action next year to implement that process due to the need for statutory authority for the state agencies to share this sensitive data. Thus, HSCRC does not believe hospitals would be able to implement the process developed under HB 694 before mid-2023, when legislation from the 2023 session goes into effect.

The HSCRC remains committed to ensuring that patients in Maryland have access to free and reduced-cost hospital care. Thank you for your consideration of the information in this letter. If you have any questions or if we may provide you with any further information, please do not hesitate to contact me at 410-382-3855 or at megan.renfrew1@maryland.gov.

Sincerely,



Megan Renfrew
Associate Director of External Affairs

[9] Health-General 214.1(b)(8) permits, but does not require, hospitals to use asset tests in determining eligibility for free and reduced-cost care. Some hospitals use asset tests while others do not.