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TESTIMONY OF
THE
MARYLAND INSURANCE ADMINISTRATION
BEFORE THE
HEALTH AND GOVERNMENT OPERATIONS COMMITTEE

MARCH 31, 2022

SENATE BILL 180 – INSURANCE - CONFORMITY WITH FEDERAL LAW - THE NO SURPRISES ACT AND
OTHER PROVISIONS OF THE CONSOLIDATED APPROPRIATIONS ACT, 2021

POSITION: SUPPORT

Thank you for the opportunity to provide written comments regarding SB 180, which was passed unanimously by the Senate. SB 180 is a departmental bill that adds §15-146 to the Insurance Article to give the Maryland Insurance Administration (MIA) clear statutory authority to enforce provisions of the federal *No Surprises Act (NSA)* and other sections of the *2021 Consolidated Appropriations Act (CAA)* that apply to entities under the regulatory authority of the MIA.

The primary purpose of the NSA is to provide protections to consumers against surprise medical billing. Surprise medical billing results from interactions with providers that patients reasonably assumed would be in-network but were not, or when patients have no real choice of a provider. The services may be covered as out-of-network, with higher cost-sharing, and there may be balance billing due to reimbursement lower than the provider's billed charges. Typically, these situations arise out of visits to the emergency rooms, non-emergency care at an in-network facility, or via the use of ambulance transportation services. The CAA also includes various other requirements related to provider network directories, advance explanations of benefits, continuity of care when a provider leaves an insurance network, and insurance ID cards. Significantly, the federal law provides that states will be the primary enforcers of the new federal requirements. Therefore, legislation is needed to give the MIA enforcement authority for the provisions that apply to carriers in Maryland.

The NSA allows flexibility to accommodate state laws and gives states key roles in resolving balance billing issues and enforcing the statutory requirements. In setting payment

amounts for out-of-network services, specifically, the NSA defers to existing state processes for determining a payment amount. With respect to state laws regarding surprise billing, the NSA allows for a method under state law to set the “recognized amount” when there is a state law in place. This allows state laws today, as well as those enacted in the future, to establish payment standards. For example, Maryland has laws requiring specified payment methodologies to determine reimbursement in some situations, and prohibiting balance billing, but there are some gaps that the NSA will fill. For example, if an on-call surgeon refuses to accept assignment of benefits for an emergency surgery, the payment amounts and patient protections of Maryland law will not apply, but the NSA will. SB 180 gives the MIA direct authority to enforce the federal requirements of the NSA on applicable entities in Maryland, just as the legislature previously granted the MIA for other federal health care laws, including the Health Insurance Portability Accountability Act and the Affordable Care Act (ACA). Until the bill becomes law, the MIA intends to enter into a Collaborative Enforcement Agreement with agencies of the federal government to allow the MIA to refer cases to the federal government for enforcement if the MIA is unable to get the carriers to voluntarily comply with the law.

The federal government has not yet released all rules and guidance required to implement the CAA. While multiple sets of federal rules were released prior to the end of 2021, there are many issues surrounding interpretation and enforcement of some of the CAA requirements that still need to be clarified at the federal level. Due to the degree of uncertainty with some of the CAA provisions, SB 180 simply gives the MIA Commissioner broad enforcement authority related to the CAA. This approach is modeled after SB 57, Chapter 17, Acts of 2010, which passed when the ACA was first enacted, and which included similar language giving the MIA broad authority to enforce provisions of the ACA in Maryland.

A key area governed by federal law that states were previously unable to address before passage of the NSA is the regulation of air ambulance services. Air ambulance bills predominantly stem from situations where consumers cannot reasonably choose their provider. In these situations, services are provided and consumers then receive surprise bills even after their insurance company pays the provider. Prior to the NSA, states had no ability to address air ambulance bills because the federal Airline Deregulation Act prohibits states from regulating air carriers such as air ambulances. However, the NSA now explicitly grants authority to states to enforce its provisions on air ambulance providers at new Section 2799B-4 of the Public Health Service Act. Enacting SB 180 will give the MIA clear authority to enforce provisions of the NSA applicable to air ambulance service providers. Enforcement authority will provide greater consumer protections for Marylanders and will eliminate the need to refer disputed cases to the federal government for resolution under a Collaborative Enforcement Agreement.

The NSA addresses a pressing problem in our health care system by providing protections to patients that receive surprise medical bills resulting from gaps in coverage for emergency services and non-emergency services provided by out-of-network providers at in-network facilities, including services provided by air ambulances. To actualize these protections for patients against surprise medical billing, the MIA must be granted clear authority to enforce the provisions of the law in Maryland.

Noting that most of the major provisions of the NSA went into effect on January 1, 2022, the MIA requests that the committee accept the Senate version of SB 180 making it an emergency bill so that the MIA is able to enforce the federal law in Maryland as soon as possible. The MIA respectfully asks that the committee vote for a favorable report for SB 180.