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February 22, 2023

TO: The Honorable Melony Griffith
Chair, Senate Finance Committee

FROM: Office of the Attorney General, Health Education and Advocacy Unit
and Consumer Protection Division

RE: SB0404 – Hospitals – Financial Assistance – Medical Bill
Reimbursement Process: **Support with Amendments**

The Office of the Attorney General's Consumer Protection Division (the Division) and Health Education and Advocacy Unit (HEAU) supports with amendments SB0404, which provides a cost-effective and timely solution to the serious problem that was revealed on Page 1 of the February 2021 legislative report from the Health Services Cost Review Commission (HSCRC) entitled [*Analysis of the Impact of Hospital Financial Assistance Policy Options on Uncompensated Care and Costs to Payers Mandated by House Bill 1420 \(Ch. 470, 2020 Md. Laws\) MSAR# 12823*](#):

HSCRC determined that approximately 60% of UCC (i.e. unpaid charges) attributable to individuals with a household income under 200% of the federal poverty level (FPL) is reported by hospitals as bad debt, rather than free care. **Hospitals are required by statute to provide free care to patients below this income level.** The analysis in this report suggests that hospitals attempted (and failed) to collect this debt from a sizable number of patients likely eligible for free care. In addition, **approximately 1% of total hospital charges to individuals who likely qualify for free care are paid by those individuals (this amounts to approximately \$60 million statewide).**

(Emphasis added).

The estimated amount of improperly collected payments from free-care eligible patients was based on data from HSCRC's hospital case mix data set; data from Maryland tax filings from the Maryland Office of the Comptroller (Comptroller's Office); and commercial insurance claims data from the Maryland Medical Care Database (MCDB) maintained by the Maryland Health Care Commission. The data did not, on its own, identify the free-care eligible patients who made payments they should never have been asked to make.

This bill follows legislation passed last year (HB694) which required the HSCRC in coordination with the Department of Human Services (DHS), the State-designated exchange (CRISP), the Comptroller's Office, and the Maryland Hospital Association (MHA) to develop a process to identify the free-care eligible patients; determine how data should be shared or disclosed to effectuate reimbursement while maintaining federal and state confidentiality laws; and provide reimbursement to the patients.

In the interim, the stakeholders met and the resulting HSCRC report, [Hospitals - Financial Assistance - Medical Bill Reimbursement](#), identified four options for the General Assembly's consideration, each reflecting a balance of policy and process goals. This bill implements Option 3, which we support because it reduces burden on patients, hospitals, the HSCRC and the HIE, and reduces the amount of data sharing required by the other options. The HEAU welcomes the opportunity to assist consumers in obtaining refunds but anticipates little assistance will be needed given the streamlined process this bill proposes – patients identified as free-care eligible will be issued refunds except in the limited instance where hospitals deemed the patient ineligible for free care, at the time of the service, based on an asset test. This streamlined process avoids putting consumers and hospitals back where they were in 2017-2021 when apparent failures of the financial assistance processes occurred. Consumers should not be required to supply asset information from up to 6 years ago in order to receive refunds. If asset tests are imposed, consumers, hospitals and the HEAU as the agency assisting consumers, will face an unreasonable burden to establish the patients' entitlement to financial assistance that should have been provided years ago.

The HEAU does offer several amendments to this bill to enable the HEAU to provide the assistance mandated by the bill, including provisions requiring information sharing with consumer authorization, and an enforcement provision. The House sponsor, Delegate Charkoudin, has agreed to these amendments. Those substantive amendments are attached.

The additional amendment HEAU requested which is not part of the sponsored amendments is to strike lines 16-19 on page 3. We believe this provision creates disincentives for hospitals and/or state agencies to implement the refund process in the manner intended by the legislature, and there is no feasible oversight to mitigate this risk.

Patients who otherwise would qualify for refunds should not lose out on the opportunity for the refund should the process be less effective than planned.

The hospitals will pay for the costs associated with the reimbursement effort and HSCRC will not take the costs into consideration when setting rates for the hospitals. We believe it is very important to not allow hospitals to shift to the State those costs associated with ensuring that hospitals fulfill their tax-exempt status obligations under federal and State laws.

We urge your favorable report on SB0404.

cc: Senators Antonio Hayes and Steve Hershey

HEAU REQUESTED AMENDMENTS

1. On Page 3, line 3, after “failed asset test” insert “FOR THE IDENTIFIED DATE OF SERVICE”
2. On Page 3, line 32, after “(2)” insert “NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE COMMISSION, THE DEPARTMENT, THE DEPARTMENT OF HUMAN SERVICES, THE OFFICE OF THE COMPTROLLER, THE STATE DEPARTMENT OF EDUCATION, AND EACH HOSPITAL, UPON RECEIPT OF THE PATIENT’S EXECUTED AUTHORIZATION FOR RELEASE OF MEDICAL INFORMATION FORM PROVIDED BY THE HEALTH EDUCATION AND ADVOCACY UNIT, OR OTHER AUTHORIZATION FORM REQUIRED THE DEPARTMENT OF HUMAN SERVICES, THE OFFICE OF THE COMPTROLLER, THE STATE DEPARTMENT OF EDUCATION, SHALL DISCLOSE TO THE HEALTH EDUCATION AND ADVOCACY UNIT, RELEVANT INFORMATION NECESSARY FOR THE HEALTH EDUCATION AND ADVOCACY UNIT TO ASSIST PATIENTS IN OBTAINING REIMBURSEMENT UNDER SUBSECTION (A) OF THIS SECTION. (3) WHENEVER THE HEALTH EDUCATION AND ADVOCACY UNIT REQUESTS INFORMATION FROM THE COMMISSION, THE DEPARTMENT, THE DEPARTMENT OF HUMAN SERVICES, THE OFFICE OF THE COMPTROLLER, THE STATE DEPARTMENT OF EDUCATION, OR HOSPITAL IN ORDER TO ASSIST A PATIENT IN OBTAINING REIMBURSEMENT UNDER SUBSECTION (A) OF THIS SECTION, THE COMMISSION, THE DEPARTMENT, THE DEPARTMENT OF HUMAN SERVICES, THE OFFICE OF THE COMPTROLLER, THE STATE DEPARTMENT OF EDUCATION, OR HOSPITAL SHALL PROVIDE THE INFORMATION TO THE HEALTH EDUCATION AND ADVOCACY UNIT NO LATER THAN 10 WORKING DAYS FROM THE DATE OF RECEIPT OF THE REQUEST. ”

Rationale: The HEAU will be unable to assist consumers without the cooperation and relevant data of respective stakeholders.

3. On page 5, at the end of line 26, insert “(I) *FINE*. (1) EXCEPT AS PROVIDED IN SECTION (C)(1)(III), IF A HOSPITAL FAILS TO PROVIDE REFUNDS TO PATIENTS WHO QUALIFY UNDER SUBSECTION (G)(2), THE COMMISSION MAY IMPOSE A FINE NOT TO EXCEED \$50,000 PER VIOLATION. (2) BEFORE IMPOSING A FINE, THE COMMISSION SHALL CONSIDER THE APPROPRIATENESS OF THE FINE IN RELATION TO THE SEVERITY OF THE VIOLATION. (3) A VIOLATION BY A HOSPITAL OF THIS SUBTITLE IS AN UNFAIR, DECEPTIVE, AND ABUSIVE TRADE PRACTICE AND IS SUBJECT TO THE ENFORCEMENT AND PENALTY PROVISIONS OF TITLE 13 OF THE COMMERCIAL LAW ARTICLE.

Rationale: This section lacks a specific enforcement provision like that included in § 19-214.3.

4. Codified or uncodified language making HEAU a member of the HSCRC Workgroup.