TESTIMONY BEFORE THE
HEALTH AND GOVERNMENT OPERATIONS COMMITTEE
March 7, 2023
House Bill 725: Maryland Medical Assistance Program, Maryland Children's Health Program, and Community First Choice Program - Reimbursement of Service Providers
Written Testimony Only

POSITION: FAVORABLE WITH AMENDMENTS

I am Joe DeMattos, President and CEO of the Health Facilities Association of Maryland (HFAM). On behalf of our members, and after much work with leaders at 1199SEIU, I appreciate the opportunity to outline our support with amendments for House Bill 725.

The Health Facilities Association of Maryland is the oldest association of its kind in Maryland and is affiliated with the American Health Care Association/National Center for Assisted Living (AHCA/NCAL), which is the largest national post-acute and senior living association. HFAM skilled nursing members provide nearly 4 million days of care across all payer sources annually, including more than 2.3 million days of Medicaid care.

I apologize that an unavoidable conflict prevents my testifying in person today. For the last year and a half, we have proactively kept in contact with our colleagues at 1199SEIU, often breaking bread together and advising on nursing homes and Medicaid financing.

As introduced, House Bill 725 intends to increase wages and benefits for certain workers in all Medicaid settings. The original 1199SEIU legislation calls for an additional 10% increase in the Medicaid rate for all providers for this purpose. The bill is well intended, but relative to the State budget, is likely not fiscally feasible and is also not operationally feasible for Medicaid providers. Finally, it is important to note HB 725 is limited in setting Medicaid spending targets; by federal law, states cannot mandate Medicare spending.

THREE ASPECTS OF THE ORIGINAL LEGISLATION, AS WRITTEN, ARE PROBLEMATIC:

- It requires significant wage increases at a time when wages in nursing homes are, on average, historically high and continue to be driven by inflation.
- It would fund an infusion of $140M to $180M into wages in the near term and then create an unfunded mandate in the following years.
- The reporting language and penalties in the bill as drafted are problematic and punitive.

The amended legislation, with the attached amendment crafted under the leadership of Senator Rosapepe, Delegate Henson, HFAM, and 1199SEIU it is a very different and more workable bill. That said, the amendment still needs to be modified with 70 percent spending targets, the definition of workers, staff, and long-term contractors as included in the amendment, and with wages and benefits both being included as part of the target calculation— 1199SEIU and HFAM agree on these points.

As it directs spending, this legislation should have been funded with new State Medicaid dollars from the onset. Neither the annual 4% Medicaid rate nor any possible rate increase associated with the Fair Wage Act of 2023 can apply toward a wage-pass-through measure such as HB 725. This legislation must pass with new funding for HFAM to be supportive.

Unlike the $70M - $90M in new state Medicaid funding required by the originally introduced version of this legislation, we estimate that the agreed-upon amended legislation will require approximately $56M annually in new state Medicaid funding.

Last week in the Senate hearing, HFAM was the only long-term care association to testify in support of this legislation. We are proud that our Board of Directors empowered us to do so, just as we are proud of supporting the Fight for Fifteen legislation a few sessions ago.

REGARDING THIS LEGISLATION, FIVE CRITICAL POINTS MUST BE MADE:

1. Nursing homes in Maryland want to pay staff as much as possible supported by the Medicaid rate.

2. The majority of Medicaid rate dollars go to direct nursing care, and the majority line item in direct nursing care is labor (wages and benefits). **NOTE**: Wage data is on page 3 and 4 of this testimony.

3. Healthcare is a people caring for people enterprise. The number one single expense in nursing homes is the workforce.

4. The predominant payor for Marylanders in skilled nursing and rehabilitation centers is Medicare for short-stay rehabilitative care and Medicaid for long-term care. Providers are reliant on these non-negotiable Medicare and Medicaid rates set by the government for the majority of their revenue. Unlike other enterprises, nursing homes cannot simply adjust their prices to accommodate rising expenses, inflation, and wage increases. HFAM will not support this legislation if it is not accompanied by new funding.

5. Neither the annual 4% Medicaid rate nor any possible rate increase associated with the Fair Wage Act of 2023 can apply toward a wage-pass-through measure such as HB 725. This legislation must pass with new funding for HFAM to be supportive.

RELEVANT BACKGROUND ON THE FIGHT FOR FIFTEEN RATE INCREASES AND THE FAIR WAGE ACT OF 2023:

- The Fight for Fifteen legislation and the resulting 4% annual increases were designed to raise wages for all workers in Medicaid care settings. That has certainly happened in Maryland nursing homes. On average very few employees make less than $15 an hour, and of those that do, very few work in direct care.

- Maryland was one of very few states that did not raise Medicaid rates during the COVID-19 pandemic. Our first State one-time bonus payment was enacted in April 2021. Our only one-time 4% rate increase came last year from the General Assembly and not the previous administration. This funding was greatly appreciated and much needed.

- For most of the pandemic, Medicaid providers that serve as a safety net for Marylanders most in need only received the 4% rate increase associated with the Fight for Fifteen legislation.

- When our sector advocated for additional funding due to skyrocketing operational expenses, state leaders referred to the 4% increase as adequate– the state government took an unrealistic approach that providers could use the single 4% increase to cover historically inflated costs for wages, benefits, food, personal protective equipment, energy costs, and more.

- Relative to the FY24 budget and this legislation, we find ourselves in the same general situation. The FY24 budget includes the 4% rate increase tied to the original Fight for Fifteen legislation and includes funding tied to the proposed Fair Wage Act of 2023. This funding is all intended and will mostly be used to pay for wages and benefits of all employees working in settings funded by Medicaid.

- As well-intentioned as this legislation is, HB 725 relies on the existing funds in the budget for additional wage and benefit increases for only some employees. Once again, this is counting a single source of funding toward multiple uses.

- It is not possible to spend the same $10 on multiple purchases because the money is finite. For example, each of us in this hearing could not spend the same $10 on gas while simultaneously spending it on rent, food, and utilities. The same concept applies to any increase in Medicaid funding.

<u>Together, let's support the wages and benefits of all workers in nursing homes and quality care for Marylanders in need. If enacted, this legislation must be funded with new Medicaid dollars.</u>

Again, nursing homes in Maryland want to pay staff as much as possible supported by the Medicaid rate. Our sector's success depends on adequate staffing, which in turn depends on adequate wages and benefits. Paying competitive wages and benefits is a key part of recruiting and retaining sufficiently trained and effective staff who provide quality care and improve the lives of the most vulnerable Marylanders.

We currently find ourselves in the most inflationary period in 40 years, and that includes wage inflation. While there are outliers who have not increased wages, most skilled nursing and rehabilitation centers have increased wages to historic levels in recent years.

EXAMPLES OF WAGES IN OUR SETTING, BASED ON MEDICARE AND MEDICAID COST REPORTS AND FEDERAL MEDICARE PAYROLL-BASED JOURNAL DATA, INCLUDE:

- In January 2019, the average hourly wage of any professional with nursing licensure (GNA, LPN, RN) was $23.55.
- In the second quarter of 2022, the average hourly wage of any professional with nursing licensure (GNA, LPN, RN) was $29.51.
- On average, the blended hourly average nursing wage (GNA, LPN, RN) has increased by 25 percent from the first quarter of 2019 to the first quarter of 2022.

IN A TARGETED SURVEY OF HFAM MEMBERS, WE FOUND:

- The average geriatric nursing assistant (GNA) starting wage is $17.02 per hour.
- The average geriatric nursing assistant (GNA) wage among all GNAs is $19.83 per hour.
- The highest wage among geriatric nursing assistants (GNAs) averages $22.21 per hour, with some centers paying as high as $25 per hour.

NOTE: Some will testify that direct care workers make less than $15 per hour. While a home health aide may make less than $15 per hour, those wages are not accurate on average for direct care nursing home employees.

As additional background, nursing homes provide services and employ individuals in nearly every jurisdiction of the state. There are approximately 22,000 Marylanders receiving quality care in nursing homes and about 30,000 professionals providing that care.

Nursing homes provide a critical safety net for Marylanders in need. People who receive care in skilled nursing and rehabilitation centers often have multiple medical conditions such as congestive heart failure, diabetes, and hypertension. Again, this quality care is dependent on the dedicated long-term care workforce.

Adequate Medicaid funding is now more important than ever to maintain care capacity, support wage increases, and cover increased operational expenses.

Going forward, it is critical that together we work towards a long-term funding plan for all Medicaid providers. Given this and other factors, we would ideally put a pause on any wage pass-through initiative this Session and take the interim to come to an agreed-upon consensus and long-term plan.

However, we are making a good-faith effort to secure passage of this legislation this year. We've had an ongoing general dialogue with leaders at 1199SEIU for over a year now, and more detailed discussions leading into and during Session.

It is critical to reiterate that a wage pass-through must be supported by new Medicaid dollars; if there is no new funding, then HFAM would be forced to oppose this legislation.

BELOW IS A NARRATIVE DESCRIPTION OF THE AMENDMENTS THAT HAVE BEEN AGREED UPON BY SEIU 1199:

The 10% Medicaid increase and the requirement that 90% of that increase go to wage increases will be stricken. Instead, this will be the measurement for wages and benefits, the targets, and the funding will be the following:

- An additional 8% Medicaid rate increase in FY24 and 70% towards direct and indirect care worker wages and benefits.
- An additional 8% Medicaid rate increase in FY25 and 70% target towards direct and indirect care worker wages and benefits.
- An additional 8% Medicaid rate increase in FY26 and 70% target towards direct and indirect care worker wages and benefits.

The salary and benefits of nursing home administrators will not be included in the spending targets. The wage and benefits target will include but not be limited to physicians, physicians' assistants, nurse practitioners, nurse specialists such as those engaged in diabetic, renal, and wound care, or other chronic medical conditions; registered nurses, licensed practical nurses, certified nurse aides, geriatric nurse aides, resident care aides; dietary workers, housekeeping/laundry, in-house clerical staff regularly interacting with residents and caregivers; maintenance, clergy, security staff; staff development coordinator, quality assurance professional, unit clerks, MMQ evaluation nurse/MDS coordinator; social service worker, behavioral health staff, interpreter service, restorative therapy, and recreational therapy. As is currently the case, Medicaid rates can be used to pay for temporary agency (nursing) staff, and temporary agency wages and benefits will be included in wage and benefit targets.

The measures and targets of the legislation will be verified annually by the Maryland Department of Health (MDH) via Medicaid cost reports and existing reporting requirements and will be reviewed by MDH with these new additional criteria.

The punitive language for the loss of nursing home licenses shall be stricken from the legislation. We are confident that working in partnership with our MDH colleagues, that the Department will ensure compliance in a way that is not onerous to nursing homes.

Lastly, this legislation shall sunset after three years.

Again, we want to pay workers as much as possible as supported by the Medicaid rates— our workforce is critical to providing quality care to Marylanders most in need. Given that providers are reliant on non-negotiable Medicare and Medicaid rates for the majority of their revenue, any wage-pass-through measures must be funded with new Medicaid dollars.

We appreciate the opportunity to provide this testimony, and with the amendments supported both by HFAM and 1199SEIU, we request a favorable report from the Committee on HB 725.

Submitted by:

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SB0468/813924/1

AMENDMENTS PREPARED BY THE DEPT. OF LEGISLATIVE SERVICES

28 FEB 23
14:44:32

BY: Senator Rosapepe
(To be offered in the Budget and Taxation Committee)

AMENDMENTS TO SENATE BILL 468
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 4, strike "a"; in the same line, strike "year" and substitute "years"; in line 9, strike "a"; in the same line, strike "year" and substitute "years"; and in the same line, strike "wage increases" and substitute "wages and benefits".

AMENDMENT NO. 2

On page 2, in line 29, strike "a"; and in line 30, strike "**10%**" and substitute "**AN 8%**".

On page 3, in lines 1 and 6, in each instance, strike "a 4%" and substitute "**AN 8%**".

On page 4, in line 7, after "**PLAN;**" insert "**OR**"; strike beginning with the semicolon in line 8 down through "**LICENSURE**" in line 9; in line 11, strike "90%" and substitute "70%"; in line 12, after the first "for" insert "each of"; in the same line, strike "year" and substitute "years"; in the same line, after "2024" insert ", 2025, and 2026"; in line 14, strike "wage increases" and substitute "wages and benefits"; in line 15, after "workers;" insert "and"; and strike beginning with "staff" in line 16 down through "services" in line 19 and substitute "workers and staff providing direct care, indirect care, direct care support services, and other patient care to residents in a nursing home".