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March 4, 2024

The Honorable Joseline A. Pena-Melnyk
Chair, House Health and Government Operations Committee
241 House Office Building
6 Bladen Street
Annapolis, MD 21401

Re: House Bill 1149 – Hospitals and Related Institutions – Outpatient Facility Fees -
Support

Dear Chair Pena-Melnyk:

The Office of the Attorney General (OAG) respectfully urges the Health and Government Operations Committee to give House Bill 1149 a favorable report. If enacted into law, House Bill 1149 would provide individuals with the information they need to make informed decisions about where to obtain affordable health care. By expanding the existing statutory notice requirement and requiring the Health Services Cost Review Commission to convene a group to study the impact of facility fees on the health care systems in Maryland, House Bill 1149 will align Maryland with current best practices around the nation in the crucial areas of consumer choice and health care affordability.

Facility Fee Notice for All Outpatient Services

Hospitals are able to charge patients a facility fee for services provided by any healthcare provider it employs and at any facility it owns, even if the patient never sets foot in the hospital. During the 2020 legislative session, the Maryland General Assembly passed the Facility Fee Right to Know Act (FFRKA), Md. Code Ann., Health-Gen. §19-349.2 (2020 Md. Laws, Chs. 365, 366), after hearing from and about countless consumers who were surprised to receive a large

hospital bill for services like routine eye examinations, EKGs, and MRIs. The FFRKA requires hospitals that charge outpatient facility fees to provide patients with a written notice containing specified information, including if a facility charges a facility fee. During deliberations on the FFRKA, OAG proposed that the notice requirement should apply to all outpatient services; however, the notice requirement that was included in the final statute was limited only to “clinic services”, inexplicably leaving consumers in the dark with relation to a wide variety of other outpatient services. House Bill 1149 would change that.

Since the enactment of FFRKA, the OAG’s Health Education and Advocacy Unit (HEAU) has continued to hear from consumers who have received hospital bills that are often triple or quadruple the cost of what a provider would bill for the same services simply because of the addition of an undisclosed facility fee. The fact that HEAU continues to receive these types of complaints from consumers illustrates the need to expand the FFRKA to better protect consumers. Too often, patients are unaware that (1) a regular provider/doctor visit that takes place in a place other than their regular doctor’s office is in fact taking place at what is considered “a hospital” and (2) that they may be billed by both the provider and the hospital for the services rendered. Patients consistently complain they should be given this information when they make their appointment so they can decide for themselves whether to see the provider “at the hospital” or at another location where a facility fee is not charged.

Definition of “Hospital”

In addition to expanding the provisions of the FFRKA to require notice for all hospital outpatient services, House Bill 1149 alters the definition of “hospital” for purposes of the required notice to include out-of-state hospitals that are operating outpatient facilities in the State and charging facility fees. Out-of-state actors should not be allowed to dodge the protections Maryland puts into place for outpatients by claiming they are not subject to our laws when they are operating within our State and are treating Maryland consumers.

Expanding the provisions of the FFRKA to **all** hospital outpatient services and to **all** hospitals that offer outpatient services means that less consumers will be surprised by large, unexpected facility fees and will be armed with the knowledge to make informed health care decisions by receiving:

- a notice regarding a separate facility fee charge;
- the amount or estimate and range of fees they may be charged;
- information about seeing the provider at a location without facility fees; and
- material about the availability of financial assistance for eligible consumers.

Facility Fee Study

OAG supports the proposition that, at a minimum, consumers have the right to know about a facility fee upfront so they can make an informed choice about where to receive their outpatient health care services. While this notice offers some consumer protections, it does not address the fact that hospital outpatient facility fees are increasing costs for both consumers and employers by rising out-of-pocket costs and insurance premiums. This notice does not address the fact that carriers are

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responding to these increased costs by, in turn, increasing cost-sharing for services provided in hospital outpatient settings. This notice also does not address the fact that as more provider offices become regulated spaces, consumers have fewer facility-fee-free locations to obtain care. These are concerns that simply cannot be ignored.

House Bill 1149 requires the Maryland Health Services Cost Review Commission, in consultation with various stakeholders and subject matter experts in all areas of the health care system, to (1) study the impact of facility fees on health equity, access to care, and the cost of health care services, and (2) report their findings and recommendations to the General Assembly. This comprehensive study will include review of the impact of facility fees on consumers, employers, providers, hospitals, and insurers; the interaction of outpatient facility fees with Maryland's Total Cost of Care model obligations to the federal government; and efforts by other states, federal regulatory agencies, and national advocacy organizations related to the regulation of facility fees.

The information this study will provide is critical to understanding our options for reforms that might better protect consumers, reduce costs, and increase transparency. Similar studies are taking place at the state and national levels as outlined in Georgetown University's Center on Health Insurance Reforms recent report, [*Protecting Patients From Unexpected Outpatient Facility Fees: States on the Precipice of Broader Reform*](#), (Monahan et al., July 2023).

The OAG believes all consumers are entitled to receive meaningful notice of outpatient facility fees. Consumers harmed by these fees repeatedly propose the same solutions - the State should require notification, revision, or elimination of outpatient facility fees charged by hospitals. On behalf of consumers, we ask for no further delay in providing them the notification they have been urgently requesting and obtaining the critical information necessary for more meaningful reform. For the foregoing reasons, we ask your favorable report for HB 1149.

Sincerely,



Anthony G. Brown

Enclosures

cc: Committee Members