BROCATO & SHATTUCK CONSULTING

Date: Wednesday, February 12, 2025

Committee: Senate Finance Committee
The Honorable Pam Beidle, Chair

Bill: Senate Bill 437 - Health Maintenance Organizations - Payments to Nonparticipating Providers - Reimbursement Rate

Position: FAVORABLE

On behalf of our clients: The Maryland Society of Anesthesiologists, The Maryland Dermatological Association, The Maryland Psychological Association, the American Physical Therapy Association, Maryland Chapter, and the Maryland Academy of Nutrition and Dietetics we strongly support Senate Bill 437.

Senate Bill 437 "alters the reimbursement rate that a health maintenance organization (HMO) must pay a nonparticipating provider. Specifically, if an HMO pays a nonparticipating provider 125% of the average rate the HMO paid, reimbursement must be based on the rate paid as of January 31, 2019, indexed for inflation as specified."

Background:
Maryland has an extensive history and track record of success in addressing nonparticipating physician payment in both the HMO and PPO markets. The methodologies in statute strive to ensure fair and transparent payment for providers and balance billing protection for consumers/insured individuals.

Maryland most recently resolved its PPO surprise billing problem in 2010 by requiring insurers to reimburse hospital- based physicians who accept assignment of benefits (i.e., agree not to balance bill their patients) in accordance with a statutory formula. Hospital-based physicians accepting the assignment of benefits would be reimbursed the greater of 140% of the average rate the insurer paid to contracting hospital-based physicians or the final amount the insurer paid to that hospital-based physician as of January 1, 2010 adjusted for inflation. Maryland's benchmark includes a floor in order to be sure insurers enter contract negotiations with hospital-based physicians in good faith and not simply to lower the benchmark rate year over year.

Positive Impact:
Maryland's AOB law has provided patient protection for almost 10 years, has been impartially reviewed[1] and determined to be widely successful. It has eliminated patient complaints of surprise billing, doubled network participation by physicians overall and tripled participation in rural areas. The law is a time tested, evidence based, sound method to protect patients without disrupting existing safety nets and long-standing balances between safety and access to care.

The success of Maryland law has been due to the balanced incentives for physicians and insurers to come together to negotiate and be in-network. This success has been supported by data reviewed by the Maryland Health Care Commission (MHCC), showing a consistently decreased volume of out of network payments since the law's implementation in 2010. In fact, the MHCC's review of data in Maryland's All Payer Claims Database (APCD) shows that the overall proportion of health care users with out-of-network services has steeply declined: From 20.9% in 2010 to 9.4% in 2013 to 3.6% in 2017.

[1] FINAL REPORT - Impact of the Assignment of Benefits Legislation - January 15, 2015; Prepared for: The Maryland Health Care Commission; Prepared by: Social & Scientific Systems, Inc.

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What Senate Bill 437 does:
Maryland's PPO law has the date certain of January 1, 2010 in order to be sure insurers enter contract negotiations with hospital-based physicians in good faith and not simply to lower the benchmark rate year over year. However, Maryland HMO law does not provide a date certain in the calculation methodology for out of network rates.

This legislation aligns the HMO law with the PPO law by adding a date certain in the HMO law from which the insurer must base calculations for out of network payment to providers. Current law references 125% of the average contractual rate the health maintenance organization paid as of "January 1 of the previous calendar year". House Bill 418 changes this to … "125% of the average contractual rate the health maintenance organization paid as of JANUARY 31, 2019… INFLATED BY THE CHANGE IN THE MEDICARE ECONOMIC INDEX FROM 2019 TO THE CURRENT YEAR."

Furthermore, "Greater of" language is included to ensure that providers are not subject to rates lower than what they would receive today.

This date reflects what is established in the Federal No Suprises Act to serve as a date certain from which insurers must utilize in determining out of network rates. The date certain provides an important baseline from which insurers must base their non-par reimbursement calculations. Aligning the HMO and AOB laws through the utilization of a date certain that coincides with the Federal No Surprises Act is an important step to take.

For these reasons we ask for a Favorable report on Senate Bill 437.

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