Maryland
Hospital Association

March 9, 2022

To: The Honorable Delores G. Kelley, Chair, Senate Finance Committee

Re: Letter of Information- Senate Bill 834 - Health Insurance - Two-Sided Incentive Arrangements and Capitated Payments - Authorization

Dear Chair Kelley:

On behalf of the Maryland Hospital Association's (MHA) 60 member hospitals and health systems, we appreciate the opportunity to comment on Senate Bill 834.

An earlier version of this bill was introduced during the 2021 legislative session. Given the comprehensive nature of the reforms and limited time to consider its far-reaching implications, the bill was withdrawn, and MHA, MedChi and the lead proponent, CareFirst, agreed to meet over the interim.

MHA participated in this process in earnest, attending more than 20 meetings. MHA and our members are committed to advancing sensible reforms to health care payment and delivery arrangements. As you know, Maryland's unique Total Cost of Care Model agreement with the federal government already gives our state a significant head start in value-based care (VBC). No other state comes close. Every hospital's payment is regulated, and every acute care hospital bears a high degree of risk for performance against cost and quality goals. These provisions place profound responsibilities on hospitals and the state. Yet, we know there is still more we can do.

Over the interim, hospital and physician representatives suggested many improvements to the draft bill. Among the needs of greatest concern were:

- To make plain that risk-based VBC contracting is purely voluntary for health care providers and to protect those that elect not to participate in such contracts with insurers from suffering any penalties. This is an important concern given that Maryland's commercial health insurance market is highly concentrated, with CareFirst alone holding approximately 65% share and thus having significant market power

- To ensure health care practitioners and other provider entities that participate in two-sided risk contracts with insurers are not made to bear outsized risk for health care costs incurred by their patients and/or attributed populations

- To guarantee that health care practitioners and other provider entities that enter capitation payment contracts with insurance carriers serving self-funded employer accounts on an "administrative services only" (ASO) basis—in which the carriers themselves do not insure the risk of heath care costs incurred by the covered

population—are not made to bear any form or amount of risk that would effectively place them in the business of insurance as defined by Maryland law

- To protect health care practitioners and other provider entities that participate in two-sided risk arrangements with insurers or that receive capitation payments from carriers functioning on an ASO basis through various means, including, but not limited to: timely delivery of data and reports on their performance sufficient to allow them to analyze sources of variance and to take corrective action; swift reconciliation of risk accounts and payment of penalties or rewards due; and dispute resolution involving independent agents of mediation or arbitration

All Maryland hospitals and health systems are committed to the principles of value-based care. We are very aware, though, that not every physician can or ought to engage in two-sided risk arrangements. Physicians in small independent practices, those in teaching roles, and others may have competing imperatives.

Any expansion of risk arrangements in health benefit programs should be approached judiciously and cautiously. Regulators will need to monitor these activities closely and act resolutely in response to concerns that affected parties may raise.

For more information, please contact:
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