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May 11, 2023

Senator Donna Bailey, Chair
Representative Anne Perry, Chair
Members, Joint Standing Committee on Health Coverage, Insurance & Financial Services
100 State House Station
Augusta, ME 04333-0100

Re: LD 1795 – *An Act to Protect Patients by Prohibiting Certain Medical Facility Fees*

Senator Bailey, Representative Perry, and Members of the Joint Standing Committee on Health Coverage, Insurance & Financial Services:

This letter is to provide information on LD 1795, *An Act to Protect Patients by Prohibiting Certain Medical Facility Fees*. This bill prohibits certain health care providers from charging, billing, or collecting a facility fee in certain situations and requires annual reporting on the amount of facility fees hospitals charge or bill.

As the Governor has said, she is interested in all ideas and effective approaches to protect Maine people from surprise costs and make health care more affordable. The Department shares this goal along with that of LD 1795 to improve data-driven, equitable health care billing and reimbursement. However, we are neither for nor against this bill and offer the considerations detailed below.

The Department interprets this bill as restricting hospitals from billing, charging, or collecting a facility fee for off campus services when the facility is outside of 250 yards from the hospital, or for services provided at a facility that includes a hospital's emergency department or emergency services provided at a freestanding emergency facility. To our knowledge there are no freestanding emergency departments in Maine.

MaineCare presently pays a reduced claims payment for facility fees for off campus acute care hospital outpatient services except for services rendered at:

- a) A dedicated emergency department;
- b) Remote locations of a hospital (where inpatient services are furnished) and locations that are within 250 yards of a remote location of a hospital; and
- c) A location that was billing as an outpatient department of a hospital prior to November 2, 2015.

In addition, MaineCare restricts separate acute care hospital outpatient facility fees for outpatient diagnostic services and admission-related outpatient non-diagnostic services for wholly owned and wholly operated outpatient services if these services are delivered within 1-3 days of an inpatient admission (dependent on type of admission). The technical/facility component of these fees is

bundled within the inpatient reimbursement instead of paid additionally/separately via outpatient reimbursement.

Presently, MaineCare is aligned with the Centers for Medicare & Medicaid Services (CMS) on its policy for facility fee payment for acute care hospitals, except that MaineCare has not required the use of a claim modifier that would also reduce facility fee payments for the off campus site exceptions listed in a) through c) above. Additionally, beginning in October 2015, MaineCare reduced facility payment for non-emergency use of the emergency department.

If this bill passes, MaineCare would need to change current reimbursement practices for acute care hospitals to cease facility fee reimbursement for outpatient evaluation and management services, and applicable labs, diagnostic, and imaging services. The Department would need to evaluate whether, given MaineCare billing configurations across settings, the elimination of the outpatient facility fees for labs, diagnostics, and imaging services would result in non-payment versus a targeted reduction in facility-based fees.

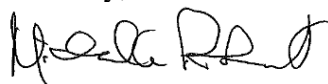
The Department is unclear whether this bill also pertains to Critical Access Hospitals and Psychiatric Hospitals. These hospitals do bill for outpatient services, including off-campus outpatient services, but do not bill for distinct “facility fees.” MaineCare currently does reimburse for facility costs for these off-campus outpatient services and costs associated with Critical Access Hospitals and Psychiatric Hospitals through a cost settlement process, regardless of whether those services are provided at locations outside of 250 yards from the facility, or when the location began billing for outpatient services. We recommend that the Committee clarify the hospitals to which this bill would apply if they are to move forward.

The rate reform system established last year in PL 2021 Ch. 639 created a process for ensuring data-driven, equitable, adequate, and sustainable provider reimbursement that incents high value care. The schedule calls for hospital-related payments to undergo this process in the near term. Implementation of the proposed changes in this bill simultaneously with the rate reform process established in law would require additional clarification, time, rulemaking, changes to the claims processing system, and a state plan amendment with CMS.

Lastly, the reporting requirements and oversight/compliance aspects of this bill would require additional resources, staff, and infrastructure.

We wanted you to be aware of the above information as you consider this bill going forward. If you have any further questions, please feel free to contact us.

Sincerely,



Michelle Probert
Director
MaineCare Services