M|H|A

Maine Hospital Association

MAINE'S LEADING
VOICE FOR HEALTHCARE

COMMENTS OF THE MAINE HOSPITAL ASSOCIATION

In Opposition To

LD 1795 - *An Act to Protect Patients by Prohibiting Certain Medical Facility Fees*

May 11, 2023

Senator Bailey, Representative Perry and members of the Heath Care, Insurance and Financial Services Committee, my name is Jeffrey Austin and I am here on behalf of the Maine Hospital Association to testify in opposition to LD 1795.

It is a very significant bill and would be financially devastating to hospitals. This bill essentially attempts to instill rate regulation on hospitals for the benefit of carriers.

The problem is that it sets the reimbursement rate for many hospital services at zero. This will close numerous services all across the state.

The Legislation

Page 1, line 12 creates a definition of "facility fee." It declares that a facility fee is reimbursement "*that is intended to* ***compensate the health care provider for the operational expenses of the health care provider****, separate and distinct from a professional fee.*"

Page 1, line 36 then bans facility fees for most outpatient services. It states, "*A health care provider* ***may not charge, bill or collect a facility fee****, except for....*"

These two parts of the legislation combine to ban hospitals from charging for their operational expenses. That is unreasonable and essentially bans hospitals from providing all the services covered by this bill.

Facility Fees

Most billing related to hospitals is split between a professional fee (for the doctor) and the facility fee (for everything else). Historically, physicians were not employed by hospitals. So, the two bills reflected the fact that they were two separate entities.

That is still true in a lot of cases today – the physician practice is independent of the hospital. We understand that the public is not always aware of this fact.

Nevertheless, even if the physician is employed by the hospital, there is nothing hidden or inappropriate about hospitals charging for operational expenses such as:

the hospital, the nurses, the electricity, the supplies, all of the administrative costs related to billing, collections, regulatory compliance, medical malpractice, data collection and reporting, community relations and so forth.

Whether that is called a facility fee, hospital fee, nurse fee or any other label, hospitals should be allowed to cover our operational costs.

Financial Impact

This legislation would eliminate hospital reimbursement for both outpatient services that are not "on campus" with the hospital and even for some outpatient services that occur inside the hospital itself.

We do not have an exact estimate of the impact because we don't have an inventory for which outpatient services are performed on campus vs. off campus as identified in this bill.

Our rough estimate is that the impact is between $250-$750 million per year.

All Payers

This bill appears to apply to all payers, commercial, self-insured, Medicare and Medicaid. This legislation places the facility fee prohibition in Title 22 – meaning it is regulating hospitals; rather than Title 24 – which regulates some carrier plans. As such, hospitals are prohibited from imposing the facility fee, presumably on anyone, including Medicare and Medicaid. We see no limiting language in the bill to just state-regulated commercial carriers.

As we have testified to this committee before, this committee should not regulate hospitals in such a broad fashion since you can not regulate all these payers.

Medicare is run by the federal government and the state should not prohibit reimbursement that is expressly allowed by the Medicare program.

Medicaid is run by the state government. However, the state of Maine established a rate setting process and the committee that oversees Medicaid reimbursement is the HHS Committee. My experience is that all reimbursement questions should flow through both the new process and the HHS Committee.

To put a finer point on it, **this bill prohibits us from billing Medicaid and Medicare as we are instructed and required to do by those government programs.** We are prohibited from charging anything other than a professional fee as part of the professional fee; we can't "load" the operational charges into the professional fee.

Finally, self-insured plans (ERISA plans) are beyond your reach and you can not impose regulation on their activity. As such, you shouldn't regulate our activity with respect to them.

Rate Regulation

With respect to the commercial plans for which you normally establish rates, we strongly oppose this bill because it is essentially a form of rate regulation.

In fact, it's terrible rate regulation because it uses state law to prohibit hospitals from charging for their operational expenses but does not guarantee anything in its place.

Banning our ability to cover our costs is absurd public policy.

Outpatient Facility Fees

Currently, most hospital operations are billed as a department of the hospital, even if those operations are off-campus. When hospitals decide to treat a particular medical practice as a department of the hospital, that decision has both upsides for the hospital and downsides.

The upside is largely revenue: the hospital uses the same billing practices as are done for the hospital proper, including facility fees. The outpatient practice has overhead expenses just as the hospital does.

There are downsides for the hospital as well. The medical practice gets treated as if it were a part of the hospital for public reporting purposes, for hospital tax purposes, for free care policy purposes, for giving Medicaid recipients access, and a number of other regulatory requirements.

Existing Maine Law

Maine's law governing commercial reimbursement, requires hospitals to bill carriers using a standard claim form for office visits and expressly leaves other visits to contract negotiations. For office visits, that single claim form covers both professional services and overhead costs.

It is not clear to us if the prohibition in the legislation prevents hospitals from seeking "operational expenses" as part of the standard claim we make today.

THEMHA. ORG | (207) 622-4794 | 33 FULLER ROAD | AUGUSTA, ME 04330

The Real Problem

As we look back at some of the media coverage on public frustration surrounding facility fees, we are surprised that this kind of legislation is viewed as the solution.

One of the lead stories in the Portland Press Herald on this topic was of a gentleman who called Harvard Pilgrim Healthcare for an advanced quote on the price of a cardiac stress test. Harvard Pilgrim incorrectly informed the gentleman that the price was only $45 (the professional fee) and did not disclose to him the facility fee. That is not the fault of the hospital. Cardiac stress tests are not $45 services.

When the $800 facility fee was charged, we assume properly from the media coverage, Harvard Pilgrim simply denied the claim and refused to pay. Why? Because they can. There is no repercussion to denying claims following a service being provided. Overwhelmingly people do not appeal and when carriers lose appeals the Bureau of Insurance does not impose penalties. So why not deny claims for valid, covered services?

Care will get delivered, its payment that is denied.

Why is banning facility fees the result of Harvard Pilgrim incorrectly quoting the price of the service and then improperly denying the claim? This bill entirely misses the mark.

What If

If this kind of legislation were to pass, hospitals would not 'do nothing.' Most of them would close the service. Take the above example of a cardiac stress test. The bill would ban a fee for the operational cost of the hospital for delivering the service. The hospital would get zero for the cardiac tech who conducted the test, the treadmill, the EKG monitor, the building, the electricity, the billing department, the regulatory compliance department, legal, IT, accounting and other administrative services etc. The service would immediately end.

If somehow a facility could survive on the professional fee alone, hospitals would immediately flip these practices to "private" practices and they would no longer be subject to free care policies, the hospital tax and the myriad other hospital-level regulations.

During the question and answer period of the public hearing two weeks ago on the "right to shop" legislation, the representative for the private physical therapists (PTs) was asked about the practice of private PTs not accepting Medicaid patients. She explained that private PTs don't get "the higher, hospital-level" compensation from commercial carriers to offset the losses experienced due to Medicaid rates being low and Medicaid patients frequently 'no showing' their appointments. So, the private PTs don't take Medicaid. Well, if hospitals don't get the higher, hospital-level compensation, what do you expect us to do?

Furthermore, if the concept of the "facility fees" is so objectionable to policy makers, so be it. You could enact this legislation that is revenue neutral to hospitals and carriers by instructing carriers that they must increase hospital practice fee schedules by the amount cut by this bill.

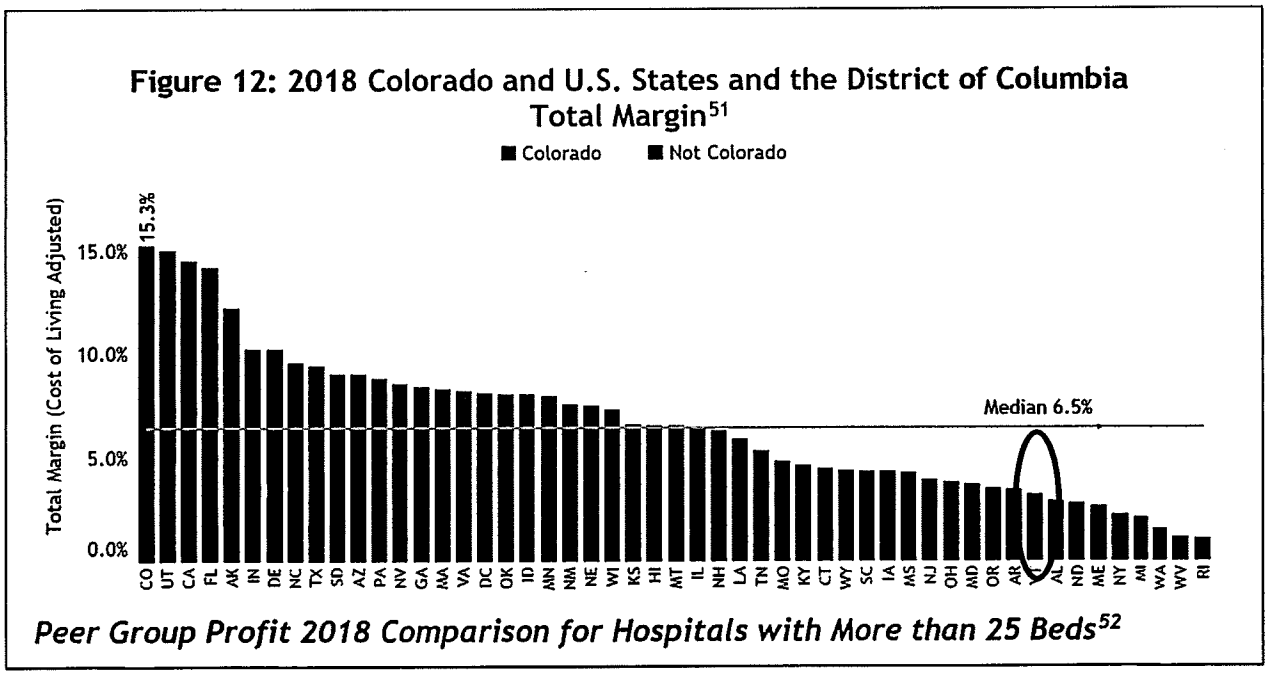
For example, FQHCs often get total reimbursement equal to that of hospitals for the services that we provide which are similar, yet, they don't bill a 'facility fee.'

However, your regulation of commercial rates would not be enough to hold us harmless due to the potential negative impacts from Medicaid and Medicare and ERISA plans.

Worst Operating Year Ever

The rating agency Fitch just called 2022 the "worst operating year we've ever seen" for hospitals. Following the federal financial rescue packages in 2020 and 2021, which enabled hospitals to survive, hospitals faced inflationary costs in 2022 on their own. And since hospitals don't control their prices, they were slaughtered financially.

The State of Colorado published an analysis of hospital costs, charges and profitability before the pandemic.



Maine Hospitals are average in terms of cost, but quite low in terms of profit.

Whether the fees are called facility fees, overhead fees, nursing fees or simply hospital fees, they – in combination with all other hospital revenues – are not producing excess profits for hospitals.

As you can see from another state's review of hospital profits from 2018, Maine hospitals are some of the least profitable in the country. Keep in mind, this chart shows "total" margins that includes income from non-operating sources. Margins that exclude investment income and only include reimbursements for services are generally even lower.

Also, please remember, that 2018 was a pretty good year.

Conclusion.

The total dollar amount of the loss, while significant, is not the real issue. For those practices that are impacted, the percentage loss is potentially 100%. Those practices can't survive.

Rate regulation is a serious issue and should not be conducted in the fashion proposed by this bill.

Please oppose LD 1795.

THEMHA. ORG | (207) 622-4794 | 33 FULLER ROAD | AUGUSTA, ME 04330