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August 6, 2019

The Honorable Benjamin L. Cardin
509 Hart Senate Office Building
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The Honorable Christopher Van Hollen
110 Hart Senate Office Building
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The Honorable Andy Harris, M.D.
2334 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Steny Hoyer
1705 Longworth House Office Building
Washington, D.C. 20515

The Honorable C.A. Dutch Ruppersberger
2206 Rayburn House Office Building
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The Honorable David Trone
1213 Longworth House Office Building
Washington, D.C. 20515

The Honorable John Sarbanes
2370 Rayburn House Office Building
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The Honorable Elijah Cummings
2163 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Anthony Brown
1323 Longworth House Office Building
Washington, D.C. 20515

The Honorable Jamie Raskin
412 Cannon House Office Building
Washington, D.C. 20515

Dear Members of the Maryland Congressional Delegation:

On behalf of the Maryland Health Services Cost Review Commission (HSCRC), I am writing regarding H.R. 3630, "No Surprises Act" (now amended into H.R. 2328) and S. 1895, "Lower Health Care Cost Act." The purpose of this letter is to seek your assistance in obtaining a limited amendment, which would assure that this legislation does not adversely impact the Maryland All-Payer system or the 10-year agreement between the State and the federal government under the Total Cost of Care Model. The HSCRC applauds the efforts in Congress to address the issue of "surprise bills," while it recognizes that most in Congress are unaware of the unique Maryland rate system. The purpose of this letter is to address potential adverse effects on Maryland's hospital rate-setting system. We ask that any remedies that are developed in H.R. 3630, or in similar legislation generally, do not have unintended adverse impacts on the Maryland rate setting system.

Background:

Maryland has a longstanding history of operating a healthcare system that is designed to achieve better quality, improved healthcare outcomes, and lower costs in our State. Our All-Payer hospital rate program, which has protections in place for consumers, has operated since July 1, 1977. Our All-Payer system achieves unparalleled equity and access among all purchasers of hospital services because Maryland hospitals can only charge rates as approved by the HSCRC (Maryland Code, Health-General Article §19-219(b)(2)(i)), and all payers reimburse hospitals in accordance with those approved rates, regardless of network participation status. Since its inception, these rates have applied to all private plans operating in the State, including both fully-insured and self-insured plans. Medicare and Medicaid have also participated in this program through a series of waivers, the most recent one of which was granted effective January 1, 2019, resulting in the 10-year Total Cost of Care Model Agreement between the State and the Centers for Medicare and Medicaid Services. The rates are approved for both inpatient and outpatient services rendered at the hospital, and all payers pay the same amount for the same service at a specific hospital, although rates take into account a range of hospital-specific variables and, thus, vary by facility.

To be clear, under the Total Cost of Care Model Agreement, and consistent with Maryland law, the Maryland Model does not regulate physician reimbursement or network participation. Even so, the combination of our unique hospital rate-setting system and a strong consumer protection law creates an environment that we want to preserve in Maryland.

The Issue:

H.R. 3630/2328 and S. 1895, among other things, seek to protect patients in certain circumstances from so-called surprise bills – receiving unexpected substantially higher charges for an out-of-network provider. In H.R. 3630/2328, this is accomplished through the use of the "median contracted rate" (defined as the "median of the negotiated rates") that a plan sponsor or issuer calculates as the median amount contracted for "…the same or a similar item or service that is provided by a provider in the same or similar specialty and provided in the geographic region in which the item or service is furnished." The Senate bill takes a similar approach. Furthermore, the House bill, which acknowledges that some states have surprise billing laws that also address these issues, stipulates that providers will be paid the lesser of the federally required "median contracted rate" or state law.

While we appreciate the spirit of these bills as they aim to protect consumers, Maryland's system has existing protections that we want to preserve. In Maryland, because of the rate system, there is no hospital "median contracted rate" – i.e., there are no privately negotiated rates. Hospitals may only charge those rates set by the HSCRC, and payers are required to pay those rates. Therefore, patients and the sponsors or issuers of their health coverage will be charged the same rate regardless of whether the hospital services are in or out-of-network, although out-of-pocket requirements imposed on the patient by the plan may vary by network status. Changing hospital payments in Maryland to an area-wide median, even just for out-of-network services, would threaten the very integrity of the rate setting system and upset the balance that has been obtained in Maryland in containing hospital costs while preserving the financial viability of effective and efficient hospitals. Because of the rate setting system, per capita hospital spending in recent years has increased less than the rate of growth of the Maryland economy (U.S. Bureau of Economic Analysis, Annual Gross Domestic Product (GDP) by State, May 2019), and Medicare hospital spending per capita in Maryland has increased substantially less than the nation as a whole (CMMI Monthly Reports from the Chronic Conditions Data Warehouse (CCW)). These results help keep employer and insurance costs lower than they

would be otherwise, while ensuring the viability of both community hospitals and leading academic medical centers. Given that the impetus for the federal legislation is not an issue within Maryland for hospital services, we request that those payments be exempt from the federal proposals.

Requested Amendment:

Maryland is seeking a very limited amendment that would clarify that hospital rates that are set and regulated by the State are exempt from the application of the median contracted rate calculation throughout H.R. 3630/2328 and S. 1895. The amendment can be written specific to Maryland or generically to reflect any all-payer state rate setting system. As always, the HSCRC greatly appreciates your assistance. If you have any questions, please contact me at katie.wunderlich@maryland.gov or (410) 764-2591, or Tequila Terry, Deputy Director, at tequila.terry1@maryland.gov or (443) 462-8632.

Sincerely,

Katie Wunderlich
Executive Director, HSCRC