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December 7, 2021

The Honorable Lorig Charkoudian
226 Lowe House Office Building
Annapolis, Maryland 21401-1991

Dear Delegate Charkoudian:

You have asked for advice concerning the status of provisions of Chapter 770 (House Bill 565) of 2021, "Health Facilities - Hospitals - Medical Debt Protection,"[1] that prohibit acute care hospitals and chronic care hospitals ("hospitals") from bringing legal action against patients for medical debt until the hospital has adopted a payment plan policy that complies with guidelines that the bill provides should be adopted by the Health Services Cost Review Commission ("the Commission") by January 1, 2022.[2] Your question arises from the fact that it has become clear that the guidelines will not be in effect by January 1, 2022, making it impossible for hospitals to meet the requirement of a payment plan that complies with the guidelines. It is my view that this provision of Chapter 770 can be given partial effect until such time as the guidelines are in place. All other provisions in the bill can be given full effect on the January 1, 2022 effective date.[3]

[1] And its crossfile Chapter 769, Senate Bill 514 of 2021.

[2] The substantive portions of the bill take effect January 1, 2022. *See* Chapter 770, Section 6.

[3] Chapter 770 makes a variety of changes in the responsibilities of hospitals to adopt financial assistance policies for providing free and reduced cost care to patients who lack health care coverage or whose health care coverage does not pay the full cost of the hospital bill, HG § 19-214.1; creates additional requirements for hospital policies on the collection of debt, including a prohibition on reporting debt to a consumer reporting agency or filing suit within 180 days of the initial bill, HG § 19-214.2(b)(5); requires hospitals to offer payment plans that meet certain standards, HG § 19-214.2(e), and adds a variety of requirements to protect patients from predatory collection processes. Included among these changes are a prohibition on collection of additional fees in an amount that exceeds the approved charge for the hospital service for patients who are eligible for free or reduced cost care under the hospital's financial assistance policy, HG § 19-214.2(b)(11); an extension of the period of time during which a hospital cannot report adverse information about a patient to a credit reporting company from 120 to 180 days, HG § 19-214.2(f)(1); a prohibition of the disclosure of any adverse information for patients who are uninsured or eligible for free or reduced cost care, HG § 19-214.2(f)(3); a prohibition on requesting a lien on a patient's

The answer to this question requires a determination of what the intent of the General Assembly would have been had it known that the guidelines would not be in place in time. *Cf. Turner v. State*, 299 Md. 565, 576 (1984) (considering hypothetical legislative intent in the separate context of severability). Chapter 770 requires hospitals to make installment payment plans available for medical debt and that those plans comply with the guidelines developed by the Commission. HG § 19-214.2(e)(1). It further requires that a hospital cannot seek legal action against a patient on a debt owed until a payment plan that complies with the guidelines is in place. HG § 19-214.2(e)(3)(ii). In addition, a hospital that files an action against a patient to collect a debt must file an affidavit with the complaint that demonstrates compliance with the law including a good faith effort to comply with the payment plan requirements. HG § 19-214.2(j). A hospital must also demonstrate that it attempted in good faith to comply with the payment plan provisions and the guidelines before it delegates collection activity to a debt collector for a debt owed on a hospital bill by a patient. HG § 19-214.2(e)(5)(i)2.

While it is clear that the intent behind Chapter 770 is to protect patients from overreaching by hospitals in their debt collection efforts, it is not clear that the General Assembly would have intended a complete moratorium on the ability of hospitals to file actions against patients during the time between the law's effective date and the adoption of the required guidelines if the guidelines were not complete by January 1, 2022. The Legislature's decision to delay the effective date of the bill until January 1, 2022, and the specific statement that the guidelines were to be complete by that same date suggest an intent that the promulgation of the guidelines and the requirement of compliance with them in order to file suit would occur together.

It is my view that the best approach (and what the Legislature would have intended if it had known that the guidelines would not be in place by January 1) is to implement the bill to the greatest extent possible until the Commission can issue the required guidelines. Large parts of the bill can be implemented without regulations setting forth the required guidelines, though the Commission may ultimately adopt some. *See, for example,* footnote 3. Some of these provisions will cause delay in the filing of suits. For example, HG § 19-214.2(i)(1) provides that a hospital has to give written notice to a patient at least 45 days before it files an action, and HG § 19-214.2(g)(3)(i) provides that a hospital can't file an action or give written notice of intent to file an action within 180 days of the issuance of the initial bill. Chapter 770 also prohibits the filing of actions during appeals of insurance actions. HG § 19-214.2(f)(4). The combination of these provisions could significantly limit the number of actions filed long enough that the guidelines will be in place by the time they can be filed.

Finally, some of the provisions that have to be included in the hospitals' income-based payment plans are clearly stated in the law itself, even before the Commission has issued its final guidelines. For example, the law requires that a hospital provide certain information about its payment plan to patients, their family, their authorized representative, or their legal guardian. HG

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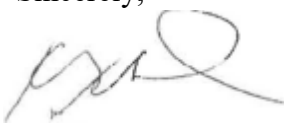
house, HG § 19-214.2(g)(2); and a prohibition on seeking body attachments or arrest warrants, from seeking a writ of garnishment from a patient who is eligible for free or reduced cost care, and restricts the ability of a hospital to make a claim against the estate of a deceased patient, HG § 19-214.2(g)(3) through (5).

§ 19-214.2(e)(1) and (2).[4] The payment amount cannot exceed 5% of the patient's adjusted monthly income and shall consider financial hardship. HG § 19-214.2(e)(3)(i)4. The plan cannot impose interest on patients who qualify for free or reduced care, HG § 14-214.2(e)(3)(i)5B, and may not be charged to other patients within 180 days after the due date of the first payment, HG § 19-214.2(e)(3)(i)5A. The plan also may not impose fees for prepayment or early payment. HG § 19-214.2(e)(3)(i)7. Finally, the payment plan must deem a patient to be in compliance if they make at least 11 payments in a 12-month period. HG § 19-214.2(e)(4)(i). And the hospital shall demonstrate that it attempted in good faith to meet the statutory requirements, even if the Commission's guidelines have not yet been developed, before filing an action or delegating collection activity to a debt collector. HG § 19-214.2(e)(5)(i). It is my view that the intent of the General Assembly would be best served if a hospital is required to meet these requirements that are clearly set out in the law itself in order to file suit, until the Commission's guidelines become effective, at which time all of the statutory requirements can be given effect.

Sincerely,



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[4] Federal law requires that nonprofit hospitals have payment plans. 26 U.S.C. § 501(r)(1)(B). As a result, hospitals should be able to comply with the information requirement.