



The Hospital + Healthsystem
Association of Pennsylvania

Leading for Better Health

June 8, 2020

TO: Members of the House Human Services Committee

FROM: The Hospital and Healthsystem Association of Pennsylvania

SUBJECT: Oppose House Bill 2352 PN 3811 and House Bill 2355 PN 3511

On behalf of the Hospital and Healthsystem Association of Pennsylvania (HAP) and the 240 plus hospitals and healthsystems that employ over 650,000 health care employees who are working together to treat and prevent COVID-19 while maintaining access to quality health care Pennsylvanians have come to expect, HAP **opposes** House Bill 2352 PN 3811 as currently drafted and House Bill 2355 PN 3511 as currently drafted.

Pennsylvania's hospital community works hard to prevent fraud and does not condone

Oppose House Bill 2352—State False Claims Act

House Bill 2352 implements a State False Claims Act that is duplicative and places unfounded financial and administrative burdens on Pennsylvania's hospital community, which is also facing an unprecedented health care crisis during COVID-19 and will take years to recover from. This crisis has already caused massive financial losses, and the hospital community is projected to face a financial shortfall in excess of \$10 billion by the end of 2020. The legislation, as drafted, allows for lawsuits to be brought against hospitals and health systems for mere billing errors. The sheer cost to defend unnecessary lawsuits would threaten the viability of already struggling hospitals, especially rural providers already operating in the red *before* COVID-19. Responding to these kinds of predatory lawsuits is never the best use of hospital resources, time, or money, but it would be particularly challenging during a national public health crisis and in the years to come.

Pennsylvania's hospitals work hard to prevent billing and payment error by working with state and federal compliance entities. All hospitals maintain corporate compliance programs—which include written policies, a compliance officer and committee, education programs, a compliance hotline, and ongoing monitoring/auditing—to ensure that dollars go to patient care.

Rural areas, whose residents are generally older, poorer, and sicker than suburban or urban residents, housed more than a quarter of all Pennsylvanians during 2018—almost 3.4 million people, according to the Center for Rural Pennsylvania. Beyond delivering critical health care to residents, rural hospitals are often the economic engine of their communities, supporting more than 88,000 jobs for Pennsylvanians, nearly 50,000 of which were directly funded by hospitals.

Aside from escalating the unprecedented dire fiscal situation faced by Pennsylvania's hospital community, the bill also:



Leading for Better Health

Page 2

- Is duplicative of the current Federal False Claims Act, and state law also provides for the ability of the State Attorney General to seek criminal and civil penalties and allows for double damages
- Allows for a ten year statute of limitations which does not reflect hospital record retention policies. For example, Medicaid/Medicare require providers to retain records for seven years
- Allows for the award of 3 times the actual damages using the lowest burden of proof and not by clear and convincing evidence

Oppose House Bill 2355—Provider Preventable Conditions Legislation

This bill requires Medicaid managed care organizations (MMCO) to enter into an agreement with Department of Human Services (DHS) that would, among other things, require MMCOs to cease payments for “provider preventable conditions,” establish mechanisms to deny payments for these conditions, and reimburse DHS for payments that should not have been made to providers. The bill also requires DHS to adjust capitated payment rates for MMCOs to reflect improper payments in future years.

HAP believes this bill is duplicative of current practice. Currently, DHS works with its contracted actuary to establish payment rates to MMCOs. As part of the rate setting process, the actuary employs a process which reduces MMCO capitated payments to account for preventable conditions and other inefficiencies identified by the actuary through comprehensive claims analysis. In addition, the agreement between DHS and MMCOs requires MMCOs to establish a comprehensive utilization review, as well as integrity programs designed to prohibit and retrospectively recover improper payments.

However, more problematic is the definition of “preventable condition” which is very broad and could easily be construed to hold a hospital accountable for issues that occurred completely outside of the hospital’s control.

Thank you for your consideration of the hospital community’s concerns regarding this legislation.