



TO: House Financial Institutions and Insurance

FROM: Shannan Flach, Vice President Finance and Reimbursement

DATE: March 18, 2024

RE: House Bill 2825

The Kansas Hospital Association appreciates the opportunity to provide comments in opposition to House Bill 2825. Today, we appear before you on behalf of our 122 community hospitals throughout the state, we stand in opposition to HB 2825. I will be joined throughout the hearing today by some of those very members, including some of whom will be familiar to many of you having met them in your communities. These are the hospitals on the front lines serving your constituents through some very challenging times, including complying with the growing number of government and payer data and information demands that range from those ever-changing metrics focusing on cost as well as quality.

We appreciate the opportunity to discuss HB 2825 and help inform how hospitals have already been leaders in the area of transparency for many years. Kansas hospitals are committed to empowering patients with access to accurate and timely pricing information so they can make informed decisions when seeking care. We want to make it very clear, that KHA's opposition to House Bill 2825 should not be misconstrued or misrepresented as opposition to price transparency. With the complexity of the hospital financial process, this proves to be more difficult than one would expect. With over 150,000 financial codes listed in the ICD-10 coding manual, it creates uncertainty and complexity in estimating a patient's completed final bill until the care service is performed. Towards that end, hospitals are striving to deliver as much information upfront to the patient and continue to improve upon the availability and the accuracy of the data.

Kansas hospitals are proud to serve our communities and patients 24 hours a day, each and every day, regardless of payment, regardless of insurance company co-pays or bureaucratic process to collect payment for services rendered. Many times the hospitals serve as de facto health care anchor as well as housing and food resources in communities across our state. These hospitals provide services and deliver care in communities across Kansas that would likely be unavailable if the hospital wasn't there. Hospitals do all of this in an environment of stagnant reimbursement, increasing labor, drug and supply costs, and growing amounts of federal, state, and payer bureaucracy, including never ending and changing requirements for data and information requirements. Over the past several years, the Centers for Medicare and Medicaid Services has implemented pricing and quality transparency requirements. In 2022, the federal government increased the penalties associated with non-compliance with the federal transparency law. We are happy to highlight that to date no CMS fines have been administered to any hospitals in Kansas for non-compliance to the federal regulations related to price transparency. According to the CMS.gov price transparency website, thirty-eight hospitals in Kansas were audited for price transparency compliance in 2023. While a few of those hospitals were sent warning letters, the issues were quickly resolved within the 90 day timeframe. An example of how a hospital could be deemed non-compliant is as simple as a website host issue that had an incorrect ".txt." extension file on its website. As our small, rural hospitals face dwindling resources, these requirements could cause additional challenges that may disrupt their ability to providing needed access to care. Currently, our hospitals across the country have just experienced a severe catastrophic consequence due to a cyber attack that occurred to a healthcare vendor owned by an insurance payer. This bill would potentially increase fines against a hospital that becomes non-compliance to its own cyber attack. For example, if a cyber attack disrupts a hospital's website, this legislation would expose the hospital to more than just the federal fines associated with the provisions of this law, thus compounding the penalties. Since CMS already is overseeing hospital pricing and enforcement for Kansas hospitals, we believe the appropriate arbitrator of compliance should be CMS and we see no reason for the Kansas to duplicate these requirements.

Related to the added compounding fines from differing levels of government, this proposal would be most problematic for our small, rural hospitals that continue to struggle financially. According to a Becker's article, Kansas ranks the second highest in the nation for the number of hospitals at financial risk. At KHA, our studies show that while nationally hospitals on average keep 265 days of cash on hand, in Kansas our hospitals average only 64 days cash of hand. Those hospitals likely couldn't sustain the compounding of such fines if something were to go wrong with their public website or are victims of cyber attacks.

*We would suggest that if the committee works this bill, you strike New Sect. 3.*

Further, we would caution the committee that health care for humans is not exactly like other business transactions. In the course of providing care, situations change related to patient's condition. Health care providers can't anticipate a person going through treatments for complicated medical conditions won't need extra medications, treatments or care based on how their individual body is dealing with treatments. Similarly, if during an operation our specialized healthcare providers find cancer that needs removed while doing a different procedure, most patients will want the provider to proceed with the care needed without delaying the care due to the need to provide a new cost estimate of their treatment. Because health care is so highly individualized, it is imperative that the oversight of these provisions allow flexibility and not be dealt with in a manner that other industries handle consumer transactions.

*We also would suggest that if the committee works this bill, you change the oversight agency from the Kansas Attorney General to the Kansas Insurance Commissioner in the following parts of the legislation: Page 2 New Sec. 3, Page 3 (B), and delete language related to the consumer protection act in the following: title, Page 1 Line 11, Page 6 line 1.*

Further, as this committee considers how to operationally implement this policy we would encourage the importance of the experts in health agencies determine compliance. Consumer complaints are reviewed currently by CMS and we believe that is the best place for those consumer complaints to be filed.

*We would suggest that if the committee works this bill you delete New Sec. 4 on pages 2 and 3.*

Kansas hospitals are committed to transparency but if the national implementation of the policy has taught us anything at all, it's that consumers cannot have true transparency without knowing what is actually covered by their health insurance policy. Without that information, the out of pocket estimates are oftentimes confusing to patients. If patients are truly seeking to understand what they will pay for procedures, we urge this committee to include an amendment to include insurance payer compliance:

*Beginning July 1, 2024, a carrier shall comply with carrier price transparency laws and shall make available an internet-based self-service tool that provides real-time responses to each individual enrolled in a health benefit plan who requests cost-sharing information that is accurate at the time of the covered person's request. The service tool must also provide:*

- (1) Searchable cost-sharing information for a covered item or service provided by a specific in-network provider; and*
- (2) Searchable information for an out-of-network allowed amount, percentage of billed charges, or other rate that provides a reasonably accurate estimate of the amount a carrier will pay for a covered item or service provided by an out-of-network provider.*
- (3) If a covered person can demonstrate that the covered person relied on cost-sharing or price information provided through the service tool, a carrier shall not charge the covered person an amount greater than the cost-sharing or price information reflected in the service tool for covered health-care items or services provided or performed within thirty days after the covered person found the cost-sharing or price information through the use of the service tool.
  - a. The Kansas Insurance Commission may adopt rules and regulations to implement this subsection.**
- (4) Beginning July 1, 2025 each carrier shall make publicly available, in a form and manner determined by the Commissioner of Insurance, three price-transparency files. The files must include information regarding:
  - a. Negotiated rates for all covered items and services between the health benefit plan or carrier and in-network providers;**

- b. *Unique Out-Of-Network allowed amounts and billed charges for covered items and services furnished by out-of-network providers; and*
- c. *In-Network negotiated rates and historical net prices for all prescription drugs covered by the health benefit plan or carrier.*
  - i. *The Commissioner of Insurance shall conduct a stakeholder engagement process to create a standardized template for price-transparency files.*
  - ii. *Each carrier shall update the price-transparency files and information at a minimum of a monthly basis. Each carrier shall clearly indicate the date that the files were most recently updated.*
  - iii. *A carrier that violates this section shall be fined...*

*(5) Beginning January 1, 2025, and on or before each January 1 thereafter, each carrier shall submit to the Insurance Commissioner, in the same form and manner as submitted to The United States Secretary of Health and Human Services, information required by Federal Pharmacy Benefit and Drug Cost Reporting Laws.*

Some additional items to highlight that are not a portion of House Bill 2825 include:

1. "Price" for a service is dependent on the patient's insurance benefits. This will require insurance companies to comply with these rules as well.
2. To a patient, "price" is the out-of-pocket amount owed for a service provided after insurance.
3. What is the deterrent for a patient, their family or insurance company to appeal every estimate? There are no limits or protections here from automatically filing against a hospital on every estimate.
4. What is the penalty for appealing every estimate and filing civil action? i.e. will the person filing action pay attorney and court fees for the hospital if they are found to be incorrect? And, if the patient/family/insurance is wrong, will they have to pay immediately via court order?

As mentioned above, Kansas hospitals recognize the importance of pricing transparency. We also recognize that we are only one piece of the equation and other stakeholders, including insurance carriers, have a responsibility in pricing transparency. Kansas hospitals are meeting the federal transparency requirements, and in many cases, are going above and beyond to ensure access to reliable, accurate estimates. For example, Kansas hospitals offer a pricing estimator tool or process to enable estimates to be provided to patients. We respectfully request that the Kansas legislature not duplicate the transparency requirements already enforced on the federal level.

Thank you for your consideration of our comments. We urge this committee to reject House Bill 2825.