California Hospital Association

June 11, 2024

The Honorable Thomas Umberg
Chair, Senate Judiciary Committee
1021 O Street, Room 3240
Sacramento, CA 95814

SUBJECT AB 2297 (Friedman) – Oppose Unless Amended

Dear Senator Umberg:

California is a national leader in protecting low-income uninsured and underinsured Californians from potentially devastating medical bills. Each year, California hospitals proudly provide more than $8.8 billion in charity care and discounted care to low-income Californians. Without these services, many would go without high-quality health care. Hospitals share Assembly Member Friedman's goal of easing the financial and emotional strain medical bills can place on un- or underinsured patients and recognize the importance of doing so without running afoul of existing federal law. To that end, the California Hospital Association (CHA) must respectfully oppose Assembly Bill (AB) 2297 (Friedman, D-Burbank) unless it is amended to address hospitals' existing obligations under federal law.

AB 2297 would prohibit hospitals from considering a patient's monetary assets when determining eligibility for charity care or discounted care. The bill would also prohibit hospitals from imposing time limits for patients to apply for the hospital's financial assistance program. CHA appreciates the amendments that have been negotiated thus far and looks forward to continuing to work on this bill so that it conforms to federal law.

Specifically, CHA continues to have the following concerns:

- The bill could compel hospitals to be out of compliance with federal laws and guidelines regarding consideration of patients' assets when waiving Medicare and Medi-Cal cost sharing. **The bill should be amended to comport with federal law that calls for an assessment of a patient's assets for waivers of Medicare and Medi-Cal cost sharing.**

  Background
  Federal policy allows hospitals to waive Medicare and Medi-Cal cost sharing (deductibles and copays) only after an individualized determination of a patient's financial need. Several laws govern implementation of this policy.

First, the federal antikickback statute[1] prohibits health care providers from giving patients anything of value to incentivize the use of health care services (or the services of a particular provider) that will be paid for (in whole or in part) by the federal government. Federal health care programs have a well-developed system of copays and deductibles intended to prevent unnecessary utilization of health care services paid for by the federal government. The Centers for Medicare & Medicaid Services and the Office of Inspector General (OIG) consider the waiver of copays and deductibles to be "incentives" that could lead to overutilization. The OIG allows these waivers only if certain criteria are met; one such criteria is an individualized determination of financial need that considers a patient's assets. The OIG has stated that waivers of copays and deductibles without considering a patient's full ability to pay constitutes fraud and abuse of a federal health care program.

Second, the False Claims Act (FCA)[2] prohibits hospitals from submitting false claims to the federal government for payment. To illustrate this concern in the context of writing off patient cost sharing, consider a scenario in which the total hospital bill is $1,000, and the patient's cost sharing amount is 20%. If the hospital plans to collect the copay, then the hospital can bill the full amount ($1,000) to the federal government. However, if the hospital does not plan to collect the copay, then the hospital is indicating that it only expects to receive $800 for the services — therefore, if the hospital sends a bill for $1,000, it would be considered a false claim. It would also be a false claim (sometimes called a reverse false claim) if the hospital later decided to write off the copay and did not repay the federal health care program. Again, the OIG has allowed legitimate charity care write-offs, but only if based upon an individualized assessment of the patient's ability to pay (including an asset test).

Finally, the Centers for Medicare & Medicaid Services has promulgated regulations related to Medicare patients' bad debt. Specifically, federal regulation[3] states that a hospital "must take into account the analysis of both the beneficiary's assets (only those convertible to cash and unnecessary for the beneficiary's daily living) and income" before providing a charity allowance.

The sponsors and authors of this bill recognize the federal law issues with respect to Medicare patients, but the amendments they have accepted only solve part of the problem. The bill still prohibits hospitals from considering some of the assets of Medicare patients – specifically, their 401K and IRA assets, no matter how large. The federal government does not permit hospitals to overlook a Medicare patient's $500,000 401K or IRA and forgive their bill on the basis of indigency. In addition, the sponsors and authors fail to recognize the federal limits on writing off debts for beneficiaries of other federal health care programs.

CHA recommends that this bill include language that allows hospitals to consider *all* assets for patients covered by Federal health care programs, but only so long as federal law so requires. The stakeholders may wish to request that the Biden administration revise its policy on considering assets.

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[1] 42 U.S.C. §1320a-7b(b); 42 C.F.R. §1001.952.

[2] 31 U.S.C. §3729 et seq.

[3] 42 C.F.R. §413.89(e)(2)(ii).

- The bill would prohibit hospitals from establishing a reasonable deadline for patients to apply for charity care or discounted payment. This presents two problems:
    - Setting a deadline incentivizes patients to complete the charity care application. Often, the first time a patient pays attention to their bill is when it goes to collections. **AB 2297 should be amended to permit a hospital to impose a reasonable deadline that cannot be earlier than six months after a debt is sent to collections.**
    - Existing law requires hospitals to refund any amount paid if a patient later completes an application and is found eligible for charity care/discounted payment. Rather than allowing a patient to return years later for a refund, **AB 2297 should be amended to establish a reasonable deadline — approximately four years after payment is made — after which the account would be closed.**

For these reasons, the California Hospital Association opposes AB 2297 unless it is amended to address the concerns described above. We look forward to continuing to work with the author and sponsors to resolve these issues.

Sincerely,

Vanessa Gonzalez

Vanessa Gonzalez
Vice President, State Advocacy

cc:

Assembly Member Laura Friedman
Honorable Members of the Senate Judiciary Committee
Amanda Mattson, Consultant, Senate Judiciary Committee
Morgan Branch, Consultants, Senate Republican Caucus