TESTIMONY OF
CONNECTICUT HOSPITAL ASSOCIATION
SUBMITTED TO THE
INSURANCE AND REAL ESTATE COMMITTEE
Tuesday, February 21, 2023

SB 983, An Act Limiting Anticompetitive Health Care Practices

The Connecticut Hospital Association (CHA) appreciates this opportunity to submit testimony concerning **SB 983, An Act Limiting Anticompetitive Health Care Practices.** CHA opposes this bill.

Connecticut hospitals continue to meet the challenges posed by the COVID-19 pandemic and are now facing new challenges of treating sicker patients than they saw before the pandemic, with a dedicated but smaller workforce who are exemplary but exhausted. They are also experiencing significant financial hardships brought on by record inflation. Through it all, hospitals have been steadfast, providing high-quality care for everyone who walks through their doors, regardless of ability to pay.

SB 983 would do two things: (1) bar certain contract provisions between healthcare providers and payers, and (2) cap out-of-network payment for hospital inpatient and outpatient services at 100% of Medicare or another amount determined by the Office of Health Strategy.

Out-of-Network Payment Caps

In 2015, the Connecticut General Assembly took action to limit the medical bills patients were receiving due to out-of-network care. Connecticut's surprise billing legislation, which holds patients harmless for out-of-network emergency services and for non-emergency services provided by an out-of-network provider at an in-network facility, has largely cured the issue of out-of-network billing in Connecticut. Since then, federal legislation, the No Surprises Act, has been implemented and is a secondary means to ensuring patients no longer experience the financial consequences of out-of-network, surprise bills.

SB 983 would upend an issue that Connecticut has already successfully addressed.

As is described in the Governor's fact sheet, the real intent of SB 983 is not to protect patients at all. **Instead, the intent of SB 983 is to favor national health insurance companies over Connecticut's community hospitals in commercial contract negotiations.**

The consequences of the out-of-network price cap in SB 983 would be financially devastating to Connecticut's hospitals and health systems. **Were such a cap in place, and in-network rates pushed closer to Medicare payments due to this bad policy, hospitals would lose billions in commercial revenue.** Had this price cap been in effect in 2022, it is likely that the hospital and health system industry would have had **double-digit negative margins.**

This loss of revenue must be viewed along with the $1.12 billion in Medicare losses and $993 million in Medicaid losses Connecticut hospitals experienced in 2021 and the nearly $250 million in charity care and bad debt absorbed in the same year.

The math doesn't work.

Hospitals and health systems cannot sustain the robust healthcare delivery system that Connecticut residents enjoy if they cannot cover their costs and are in the red on every line of business – commercial, Medicare, and Medicaid. The legislation would make our state less prepared to respond to another pandemic, a response that for the last three years has been dominated by a reliance on Connecticut's hospitals and health systems.

National health insurance carriers do not need the assistance of the Connecticut state government in contract negotiations with hospitals. In 2022, the four national carriers operating in Connecticut made between $4.1 billion and $20.1 billion in profit. By comparison, **Connecticut hospitals lost $164 million** in fiscal year 2022. Nothing in SB 983 would require these companies to pass on the savings generated by these government-imposed price caps to consumers.

This legislation is an unfortunate departure from the spirit of collaboration and cooperation that has been the hallmark of statewide discussions on how to address healthcare affordability. We support the cost growth benchmark as a means to examine and address cost growth across multiple sectors of the healthcare system. It was only last year that the legislature codified the benchmark and this will be the first year of publicly reported data — we should let that process work.

We also support recent federal legislation that requires a level of price transparency among providers and payers to ensure that consumers have the information they need to make decisions about where to seek care.

Hospitals are a major contributor to the health of Connecticut's residents and to its economy. Strong hospitals were essential during the pandemic. And they provide Connecticut residents with access to the highest quality of services. Hospital and health system margins have been lean over the past 5 to 10 years, but sufficient to ensure access to world class care with the resources to recruit and retain talent, invest in advanced technologies, and remain abreast of their peers in neighboring states and the nation. We need to ensure that hospitals can continue to provide quality care to all who need it and remain a strong and vibrant force in our local and state economies.

The out-of-network price caps would devastate Connecticut hospitals and should be opposed.

Healthcare Provider/Payer Contract Provisions

Hospitals and health systems are still facing the extreme aftershocks of a staggering once in a century public health crisis and this is not the time to consider the significant changes to the healthcare delivery system that are proposed in SB 983. Sections 1 and 2 of SB 983 would bar certain contract provisions between healthcare providers and payers. We are concerned because the bill would alter patient access at a time when deferred care and regular, community-based care are still recovering from the pandemic.

Connecticut hospitals strive to provide patients with the care they need, when they need it, in a location that is both accessible and convenient to them.

SB 983 prohibit the inclusion of an "all-or-nothing" clause in contracts between healthcare providers and health insurers. Continuity of care is so important to good outcomes, especially for those patients undergoing a course of treatment that may span months or even years. The opportunity to seek care through a network of providers at locations convenient and accessible to the patient are paramount to continuity and give the best chance for clinical success. The sections of SB 983 that would bar "all-or-nothing" arrangements would mean healthcare systems would not be permitted to negotiate with payers to ensure patients will have coverage for the full spectrum of services in a care network and to ensure patients can choose their doctors and care team. That prohibition would have a negative effect on patient access and continuity of care.

With respect to the provisions related to "anti-tiering," should the Committee continue to pursue this legislation, we ask that important safeguards be added to the "tiering" language. Specifically, the legislation should require payers to be transparent with the standards that they adopt when slotting providers into tiers. To the extent these standards are updated or changed, payers should be required to notify providers of those changes 90 days prior to the changes being made. The legislation should also provide for a process by which providers are able to contest the tiering decisions made by payers. Finally, the Department of Insurance should regularly audit payer compliance with those tiering standards and processes. We are attaching language that accomplishes this transparency.

Our members have experience with tiered networks and the opaque processes that insurers use to make determinations about placement in tiers. We also know from the experience of a neighboring state where similar legislation was implemented that payers' processes became even more opaque and seemingly more random when state law stripped providers of the ability to negotiate fairly.

SB 983 seek to reach into existing contracts and make statutory changes. We respectfully ask that the legislature not interfere with existing contracts that have been negotiated between healthcare providers and health insurers. Changes in law that materially affect contractual rights should be prospective.

If the Committee decides to move forward with this bill, in addition to our two recommendations above (adding transparency language to the tiering provisions of the bill and making the changes prospective), we ask the Committee to protect hospitals from health carriers' unilateral changes in contract provisions by policy. Health carriers should not be able to unilaterally change terms of a contract by policy.

Thank you for your consideration of our position. For additional information, contact CHA Government Relations at (203) 294-7310.