November 21, 2024

Health Insurance & Long Term Care Issues Committee
National Council of Insurance Legislators
616 5th Avenue, Suite 106
Belmar, NJ 07719

RE: NCOIL Improving Affordability for Patient Model Act

Dear Chair Dunnigan, Vice Chair Nuccio, and Members of the Health Insurance & Long Term Care Issues Committee:

Thank you for the opportunity to provide comments in response to the National Council of Insurance Legislators' (NCOIL) draft "Improving Affordability for Patients Model Act" to lower high hospital costs by addressing facility fees charged by hospital outpatient facilities. We appreciate the work done by the drafting committee to prioritize both proven and unique solutions to lower the cost of care for both people and the health care system more generally.

United States of Care (USofCare) is a non-partisan, non-profit organization working to ensure everyone has access to quality, affordable health care, regardless of health status, social need, or income. We uplift the voices of people whose perspectives on their experiences with the health care system shape our advocacy work. Through our work in the states, we are able to identify unique perspectives from people on the ground to amplify on both the state and federal levels.

We work with state partners across the country to improve health care affordability for people by addressing the high cost of care, largely driven by high hospital prices. Increasing health care consolidation has incentivized health systems to purchase independent facilities nationwide, increasing the number of people exposed to facility fees, which can only be charged when care is delivered by a hospital-affiliated provider. These fees have increased faster than professional fees (which cover the cost of care provided by physicians and other health care professionals), increasing costs to people and the system more generally. Despite claims made to the contrary, increased spending – through facility fees or other charges – has not led to any clear improvement in care quality or outcomes. In fact, these and other fees may even negatively affect peoples' access to needed health care services by forcing them to delay or skip medical care entirely.

Because of this, more than three in four voters, including majority support among both parties, support policies to eliminate facility fees for outpatient services, regardless of where the care is provided. To date, 18 states from across the political spectrum have passed legislation to protect people from unfair facility fees, and Congress is considering legislation on the federal level to restrict facility fees for certain services, such as telehealth – however, it's notable that no state or federal policy is as robust as the NCOIL draft model act.

To that end, United States of Care's policy principles to protect people from unfair facility fees offer a roadmap for policymakers looking to comprehensively address this issue, and many of our policy principles align seamlessly with those found in the NCOIL model. With this in mind, we offer the following comments that outline provisions of the model act that we strongly support and areas to further strengthen the model:

Areas of USofCare support:

- **Facility fee prohibitions:** USofCare strongly supports targeted restrictions on the ability for providers to charge facility fees, which will lower health care costs for people and the system more generally. We appreciate that the model includes site-based, service-based, *and* billing-based prohibitions on facility fees to allow states maximum flexibility to pursue restrictions that best fits their individual needs. Several states, including Connecticut, have established facility fee prohibitions for evaluation and management services regardless of care setting, while others, such as Indiana, have modified their billing processes to prohibit insurers from accepting the form used to bill facility fees. *We strongly encourage NCOIL to keep these provisions in the final version of the model act.*
- **Patient notification and transparency:** Far too often, facility fees come as a surprise to patients; for this reason, we strongly support the model's patient transparency and notification requirements. These provisions will ensure patients are aware of these charges while scheduling an appointment and require signs in the facility announcing that facility fees are charged, such as required in Colorado's law. We also support the model's standardized billing requirements to make it easier for patients to identify facility fee charges where present and understand the process for how they can file an appeal. *We strongly encourage NCOIL to keep these provisions in the final version of the model act.*
- **Enforcement mechanisms:** USofCare is pleased to see the model include mechanisms for enforcement to ensure hospitals comply and patients are protected. We appreciate the model including a variety of ways states can approach enforcement, such as stronger financial penalties, loss of state licensure or certification, and the ability for the state to recover from providers and/or hospitals the costs associated with investigations into these actors. These provisions allow for this policy to be tied to existing state cost containment strategies, such as cost-growth benchmark policies, which we believe is an important and innovative tactic to ensure the success of programs seeking lower health care expenditures in states while also lowering people's individual health care costs. *We strongly encourage NCOIL to keep these provisions in the final version of the model act.*
- **Facility fee waiver processes:** We are pleased to see language in the model that would establish a facility fee waiver process for certain populations. In many cases, facility fees disproportionately impact specific groups. While we think it's appropriate for states to have the flexibility to determine which groups are waiver-eligible, we encourage NCOIL to provide drafting guidance encouraging states to consider including populations that have historically faced care access challenges. Furthermore, encourage NCOIL to think creatively about how it can facilitate the creation of a waiver process that is equitable, understandable, and accessible to the populations for which it is designed.

Areas for adjustment:

- **Collecting data:** Few states have comprehensive data requirements that show where, when, or how often facility fees are charged. Accessing this information, when it exists, is often difficult and puts policymakers looking to lower costs at a disadvantage compared to hospitals and health systems that have access to this information. To address this, some states have established data collection requirements to require providers to disclose certain information on facility fees publicly. USofCare strongly supports this language in the model to ensure this information is made public; however, we also encourage you to include a requirement that states complete an analysis or evaluation of the impacts of facility fees on both people's access to care and the health care system more generally. This process should include significant stakeholder engagement on topics ranging from how these fees impact health care affordability and access for certain communities. Both Indiana and Maine have pursued similar policies:
    - IN SB 325 (2020) and IN HB 1004 (2022): Requires ambulatory outpatient surgical centers to publish the standard charge for facility fees and requires each hospital to submit annual reports to the state on facility fees collected.
    - ME LD 1795 (2023): Creates a task force to study the impact of facility fees and release a report to the public.
- **Facility fee grace period:** We agree with the model's proposal to prohibit the collection of facility fees for services 30 days after a facility is purchased by a provider affiliated with or owned by a hospital or health system. Because many such appointments for services are often scheduled more than 30 days in advance, we urge you to extend this period to 60 days to reflect the reality that appointment wait times often extend beyond one month.
- **Facility fee waiver processes:** We are pleased to see language in the model that would establish a facility fee waiver process for certain populations. In many cases, facility fees disproportionately impact specific groups. While we think it's appropriate for states to have the flexibility to determine which groups are waiver-eligible, we encourage NCOIL to provide drafting guidance to states encouraging them to consider populations that have historically faced care access challenges. Furthermore, encourage NCOIL to think creatively about how it can facilitate the creation of a waiver process that is equitable and understandable to the populations for which it's designed.
- **Unique national provider identifiers (NPIs):** It's difficult to track where facility fees are charged because off-campus providers often share identical NPIs with their parent hospital or facility. We support language in the model to require unique NPIs for off-campus locations to establish this distinction. At the same time, we strongly encourage NCOIL to also create a mechanism for linking affiliated providers, facilities, and systems such as by requiring an NPI- or location-modifier to establish this connection.

As NCOIL and others consider bold solutions to lower health care costs, we understand there is an inherent link between state-level policies to restrict facility fees and national efforts to implement site-neutral, or "fair-billing," payment policy in Medicare. To that end, we encourage NCOIL to also explore ways in which it can expand site-neutral payment policy beyond public

payers to the commercial market in the states, which will further expand upon the protections found in this model legislation. Doing so may secure even more savings for people, employers, and others while also further bending the cost curve to lower overall health care spending.

Thank you for the opportunity to provide comments in support of NCOIL's innovative "Improving Affordability for Patients Model Act" to address the impact of facility fees' on people's access to care and the health care system more generally. Addressing high health care costs is critical in promoting access to affordable, comprehensive health care, and we appreciate the work NCOIL has done to support states pursuing these goals. Please do not hesitate to reach out with any questions or comments.

Sincerely,

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