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Seventy-fourth General Assembly
STATE OF COLORADO

PREAMENDED

This Unofficial Version Includes Committee Amendments Not Yet Adopted on Second Reading

LLS NO. 23-0404.01 Brita Darling x2241

HOUSE BILL 23-1215

HOUSE SPONSORSHIP

Sirota and Boesenecker,

SENATE SPONSORSHIP

Mullica and Cutter,

House Committees
Health & Insurance
Appropriations

Senate Committees

A BILL FOR AN ACT

CONCERNING LIMITATIONS ON HOSPITAL FACILITY FEES, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://leg.colorado.gov.)

The bill defines "health-care provider" as a person that is licensed or otherwise authorized in this state to furnish a health-care service, which includes a hospital and other providers and health facilities.

The bill prohibits a health-care provider (provider) affiliated with or owned by a hospital or health system from charging a facility fee for health-care services furnished by the provider for:

- Outpatient services provided at an off-campus location or through telehealth; or
- Certain outpatient, diagnostic, or imaging services identified by the medical services board as services that may be provided safely, reliably, and effectively in nonhospital settings.

The bill:

- Requires a provider that charges a facility fee to provide notice to a patient that the provider charges the fee and to use a standardized bill that includes itemized charges identifying the facility fee, as well as other information;
- Requires the administrator of the all-payer health claims database to prepare an annual report of the number and amount of facility fees by payer, codes with the highest total paid amounts and highest volume, and other information; and
- Makes it a deceptive trade practice to charge, bill, or collect a facility fee when doing so is prohibited.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** 6-20-102 as follows:

6-20-102. Limits on facility fees - rules - definitions. (1) **Definitions.** AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "AFFILIATED WITH" MEANS:

(I) EMPLOYED BY A HOSPITAL OR HEALTH SYSTEM; OR

(II) UNDER A PROFESSIONAL SERVICES AGREEMENT, FACULTY AGREEMENT, OR MANAGEMENT AGREEMENT WITH A HOSPITAL OR HEALTH SYSTEM THAT PERMITS THE HOSPITAL OR HEALTH SYSTEM TO BILL ON BEHALF OF THE AFFILIATED ENTITY.

(b) "CAMPUS" MEANS:

(I) A HOSPITAL'S MAIN BUILDINGS;

(II) THE PHYSICAL AREA IMMEDIATELY ADJACENT TO A HOSPITAL'S

MAIN BUILDINGS AND STRUCTURES OWNED BY THE HOSPITAL THAT ARE NOT STRICTLY CONTIGUOUS TO THE MAIN BUILDINGS BUT ARE LOCATED WITHIN TWO HUNDRED FIFTY YARDS OF THE MAIN BUILDINGS; OR

(III) ANY OTHER AREA THAT THE FEDERAL CENTERS FOR MEDICARE AND MEDICAID SERVICES IN THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES HAS DETERMINED, ON AN INDIVIDUAL-CASE BASIS, TO BE PART OF A HOSPITAL'S CAMPUS.

(c) "CRITICAL ACCESS HOSPITAL" MEANS A HOSPITAL THAT IS FEDERALLY CERTIFIED OR UNDERGOING FEDERAL CERTIFICATION AS A CRITICAL ACCESS HOSPITAL PURSUANT TO 42 CFR 485, SUBPART F.

(d) "FACILITY FEE" MEANS ANY FEE A HOSPITAL OR HEALTH SYSTEM CHARGES OR BILLS FOR OUTPATIENT HOSPITAL SERVICES THAT IS:

(I) INTENDED TO COMPENSATE THE HOSPITAL OR HEALTH SYSTEM FOR ITS OPERATIONAL EXPENSES; AND

(II) SEPARATE AND DISTINCT FROM A PROFESSIONAL FEE CHARGED OR BILLED BY A HEALTH-CARE PROVIDER FOR PROFESSIONAL MEDICAL SERVICES.

(e) "FREESTANDING EMERGENCY DEPARTMENT" MEANS A HEALTH FACILITY AS DEFINED IN AND REQUIRED TO BE LICENSED UNDER SECTION 25-1.5-114.

(f) "HEALTH-CARE PROVIDER" MEANS ANY PERSON, INCLUDING A HEALTH FACILITY, THAT IS LICENSED OR OTHERWISE AUTHORIZED IN THIS STATE TO FURNISH A HEALTH-CARE SERVICE.

(g) "HEALTH-CARE SERVICE" HAS THE MEANING SET FORTH IN SECTION 10-16-102 (33).

(h) "HEALTH FACILITY" MEANS A FACILITY LICENSED OR CERTIFIED

PURSUANT TO SECTION 25-1.5-103 OR ESTABLISHED PURSUANT TO PART 5 OF ARTICLE 21 OF TITLE 23 OR ARTICLE 29 OF TITLE 25.

(i) "HEALTH SYSTEM" HAS THE MEANING SET FORTH IN SECTION 10-16-1303 (9).

(j) "HOSPITAL" MEANS A HOSPITAL CURRENTLY LICENSED OR CERTIFIED BY THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT PURSUANT TO THE DEPARTMENT'S AUTHORITY UNDER SECTION 25-1.5-103 (1)(a) OR ESTABLISHED PURSUANT TO PART 5 OF ARTICLE 21 OF TITLE 23 OR ARTICLE 29 OF TITLE 25.

(k) "MEDICARE" MEANS THE "HEALTH INSURANCE FOR THE AGED ACT", TITLE XVIII OF THE FEDERAL "SOCIAL SECURITY ACT", AS AMENDED BY THE SOCIAL SECURITY AMENDMENTS OF 1965, AND AS LATER AMENDED.

(l) "OFF-CAMPUS LOCATION" HAS THE MEANING SET FORTH IN SECTION 25-3-118.

(m) "OWNED BY" MEANS OWNED BY A HOSPITAL OR HEALTH SYSTEM WHEN BILLED UNDER THE HOSPITAL'S TAX IDENTIFICATION NUMBER.

(n) "PAYER TYPE" MEANS COMMERCIAL INSURERS; MEDICARE; THE MEDICAL ASSISTANCE PROGRAM ESTABLISHED PURSUANT TO ARTICLES 4 TO 6 OF TITLE 25.5; INDIVIDUALS WHO SELF-PAY; A FINANCIAL ASSISTANCE PLAN; OR THE "COLORADO INDIGENT CARE PROGRAM", ESTABLISHED IN PART 1 OF ARTICLE 3 OF TITLE 25.5.

(o) "SOLE COMMUNITY HOSPITAL" HAS THE MEANING SET FORTH IN 42 CFR 412.92.

(p) "TELEHEALTH" HAS THE MEANING SET FORTH IN SECTION

10-16-123 (4)(e).

(2) **Limitations on charges.** (a) ON AND AFTER JULY 1, 2024, A HEALTH-CARE PROVIDER OR HEALTH SYSTEM SHALL NOT CHARGE, BILL, OR COLLECT A FACILITY FEE THAT IS NOT COVERED IN FULL BY A PATIENT'S INSURANCE, REGARDLESS OF PAYER TYPE, FOR:

(I) PREVENTIVE HEALTH-CARE SERVICES, AS DESCRIBED IN SECTION 10-16-104, THAT ARE PROVIDED IN AN OUTPATIENT SETTING;

(II) HEALTH-CARE SERVICES PROVIDED THROUGH TELEHEALTH; OR

(III) PRIMARY CARE SERVICES PROVIDED IN AN OUTPATIENT SETTING, AS DESCRIBED IN 3 CCR 702-4, RULE 4-2-72.

(b) THIS SUBSECTION (2) DOES NOT PROHIBIT A HEALTH-CARE PROVIDER FROM CHARGING A FACILITY FEE FOR:

(I) HEALTH-CARE SERVICES PROVIDED IN AN INPATIENT SETTING;

(II) HEALTH-CARE SERVICES PROVIDED AT A HEALTH FACILITY THAT INCLUDES A LICENSED HOSPITAL EMERGENCY DEPARTMENT; OR

(III) EMERGENCY SERVICES PROVIDED AT A LICENSED FREESTANDING EMERGENCY DEPARTMENT.

(3) **Transparency.** (a) ON AND AFTER JULY 1, 2024, A HEALTH-CARE PROVIDER AFFILIATED WITH OR OWNED BY A HOSPITAL OR HEALTH SYSTEM THAT CHARGES A FACILITY FEE SHALL:

(I) (A) PROVIDE NOTICE IN PLAIN LANGUAGE TO PATIENTS THAT A FACILITY FEE MAY BE CHARGED, INDICATE IN THE NOTICE THE AMOUNT OF THE FACILITY FEE, AND REQUIRE THE HEALTH-CARE PROVIDER TO PROVIDE THE NOTICE TO A PATIENT AT THE TIME AN APPOINTMENT IS SCHEDULED AND AGAIN AT THE TIME THE HEALTH-CARE SERVICES ARE RENDERED; AND

(B) POST A SIGN, IN ENGLISH AND SPANISH AND THAT IS PLAINLY

VISIBLE AND LOCATED IN THE AREA WITHIN THE HEALTH FACILITY WHERE AN INDIVIDUAL SEEKING CARE REGISTERS OR CHECKS IN, THAT STATES THAT THE PATIENT MAY BE CHARGED A FACILITY FEE IN addition TO THE COST OF THE HEALTH-CARE SERVICE. THE SIGN MUST ALSO INCLUDE A LOCATION WITHIN THE HEALTH FACILITY WHERE A PATIENT MAY INQUIRE ABOUT FACILITY FEES AND AN ONLINE LOCATION WHERE INFORMATION ABOUT FACILITY FEES MAY BE FOUND.

(II) PROVIDE TO A PATIENT A STANDARDIZED BILL THAT:

(A) INCLUDES ITEMIZED CHARGES FOR EACH HEALTH-CARE SERVICE;

(B) SPECIFICALLY IDENTIFIES ANY FACILITY FEE;

(C) IDENTIFIES SPECIFIC CHARGES THAT HAVE BEEN BILLED TO INSURANCE OR OTHER PAYER TYPES FOR HEALTH-CARE SERVICES; AND

(D) INCLUDES CONTACT INFORMATION FOR FILING AN APPEAL WITH THE HEALTH-CARE PROVIDER TO CONTEST CHARGES.

(b) THE HEALTH-CARE PROVIDER SHALL PROVIDE THE REQUIRED NOTICE AND STANDARDIZED BILL IN A CLEAR MANNER AND, TO THE EXTENT PRACTICABLE, IN THE PATIENT'S PREFERRED LANGUAGE.

(4) SUBSECTION (2) OF THIS SECTION DOES NOT APPLY TO A CRITICAL ACCESS HOSPITAL, A SOLE COMMUNITY HOSPITAL IN A RURAL OR FRONTIER AREA, OR A COMMUNITY CLINIC AFFILIATED WITH A SOLE COMMUNITY HOSPITAL IN A RURAL OR FRONTIER AREA.

(5) SUBSECTION (2) OF THIS SECTION DOES NOT APPLY TO A HOSPITAL ESTABLISHED PURSUANT TO ARTICLE 29 OF TITLE 25.

SECTION 2. In Colorado Revised Statutes, 25.5-1-204, **add** (3)(d) as follows:

25.5-1-204. Advisory committee to oversee the all-payer health

claims database - creation - members - duties - legislative declaration - rules - report - definitions. (3) (d) (I) BEGINNING IN THE 2024-25 STATE FISCAL YEAR, AND ANNUALLY THEREAFTER, SUBJECT TO AVAILABLE APPROPRIATIONS AND AVAILABILITY OF DATA AT THE TIME OF REPORTING, THE ADMINISTRATOR SHALL PROVIDE A REPORT THAT AGGREGATES THE FOLLOWING DATA FROM THE COLORADO ALL-PAYER HEALTH CLAIMS DATABASE AND OTHER SOURCES FOR ALL PAYERS THAT REIMBURSE FACILITY FEES:

(A) THE NUMBER OF PATIENT VISITS FOR WHICH FACILITY FEES WERE CHARGED;

(B) THE TOTAL ALLOWED AMOUNTS COLLECTED IN FACILITY FEES;

(C) THE TOP TEN MOST FREQUENT CPT CODES AND THE TOP TEN CPT CODES WITH THE HIGHEST TOTAL ALLOWED AMOUNTS FROM FACILITY FEES; AND

(D) MEDIAN ALLOWED AMOUNTS, TWENTY-FIFTH AND SEVENTY-FIFTH PERCENTILE ALLOWED AMOUNTS, AND THE PERCENTAGE OF CLAIMS AND VOLUME OF CLAIMS WITH NO ALLOWED AMOUNTS.

(II) TO FACILITATE REPORTING PURSUANT TO THIS SUBSECTION (3)(d), THE ADMINISTRATOR SHALL:

(A) IDENTIFY PAYER DATA SOURCES THAT ARE AFFILIATED WITH OR OWNED BY A HOSPITAL; AND

(B) IDENTIFY FACILITY FEES BY LOCATION, OR, IF NOT PRACTICABLE, BY FACILITY TYPE INDICATED ON THE PROFESSIONAL FEE OUTPATIENT CLAIM.

(III) AS USED IN THIS SUBSECTION (3)(d), UNLESS THE CONTEXT OTHERWISE REQUIRES:

(A) "AFFILIATED WITH" HAS THE MEANING SET FORTH IN SECTION

6-20-102 (1)(a).

(B) "CPT CODE" HAS THE MEANING SET FORTH IN SECTION 25.5-1-204.7 (1)(d).

(C) "FACILITY FEE" HAS THE MEANING SET FORTH IN SECTION 6-20-102 (1)(d).

(D) "HOSPITAL" HAS THE MEANING SET FORTH IN SECTION 6-20-102 (1)(j).

(E) "OWNED BY" HAS THE MEANING SET FORTH IN SECTION 6-20-102 (1)(m).

SECTION 3. In Colorado Revised Statutes, 6-1-105, **add** (1)(uuu) as follows:

6-1-105. Unfair or deceptive trade practices. (1) A person engages in a deceptive trade practice when, in the course of the person's business, vocation, or occupation, the person:

(uuu) CHARGES, BILLS, OR COLLECTS A FACILITY FEE OR FAILS TO COMPLY WITH OTHER PROVISIONS RELATING TO FACILITY FEES IN VIOLATION OF SECTION 6-20-102 (2) OR (3).

SECTION 4. In Colorado Revised Statutes, **add** 25.5-4-216 as follows:

25.5-4-216. Report on impact of hospital facility fees in Colorado - definitions. (1) AS USED IN THIS SECTION:

(a) "AFFILIATED WITH" HAS THE MEANING SET FORTH IN SECTION 6-20-102 (1)(a).

(b) "CPT CODE" HAS THE MEANING SET FORTH IN SECTION 25.5-1-204.7 (1)(d).

(c) "FACILITY FEE" HAS THE MEANING SET FORTH IN SECTION 6-20-102 (1)(c).

(d) "HEALTH-CARE PROVIDER" HAS THE MEANING SET FORTH IN SECTION 6-20-102 (1)(e).

(e) "HEALTH SYSTEM" HAS THE MEANING SET FORTH IN SECTION 10-16-1303 (9).

(f) "HOSPITAL" HAS THE MEANING SET FORTH IN SECTION 6-20-102 (1)(i).

(g) "OWNED BY" HAS THE MEANING SET FORTH IN SECTION 6-20-102 (1)(n).

(2) ON OR BEFORE DECEMBER 1, 2023, THE STATE DEPARTMENT SHALL ISSUE A REPORT DETAILING THE IMPACT OF FACILITY FEES ON THE COLORADO HEALTH-CARE SYSTEM, INCLUDING THE IMPACT ON CONSUMERS, HEALTH-CARE PROVIDERS, AND HOSPITALS. IN DEVELOPING THE REPORT, THE STATE DEPARTMENT SHALL CONTRACT WITH AN INDEPENDENT THIRD PARTY TO CONDUCT ACTUARIAL RESEARCH OR ECONOMIC MODELING TO IDENTIFY AND EVALUATE THE IMPACT OF FACILITY FEES.

(3) THE REPORT SHALL INCLUDE:

(a) DATA FROM PLAN YEARS 2017 THROUGH 2022 FROM THE COLORADO ALL-PAYER HEALTH CLAIMS DATABASE AND OTHER SOURCES FOR ALL PAYERS THAT REIMBURSE FACILITY FEES, INCLUDING, BUT NOT LIMITED TO:

(I) THE NUMBER OF PATIENT VISITS FOR WHICH FACILITY FEES WERE CHARGED;

(II) THE TOTAL ALLOWED AMOUNTS COLLECTED IN FACILITY FEES;

(III) THE TOP TEN MOST FREQUENT CPT CODES AND THE TOP TEN CPT CODES WITH THE HIGHEST TOTAL ALLOWED AMOUNTS FROM FACILITY FEES; AND

(IV) MEDIAN ALLOWED AMOUNTS, TWENTY-FIFTH AND SEVENTY-FIFTH PERCENTILE ALLOWED AMOUNTS, AND THE PERCENTAGE OF CLAIMS AND VOLUME OF CLAIMS WITH NO ALLOWED AMOUNTS;

(b) AN ANALYSIS OF THE IMPACT OF FACILITY FEES ON:

(I) PATIENT COST SHARING AND ANY VARIATION BASED ON PAYER TYPE;

(II) EMPLOYERS;

(III) THE COST OF HEALTH-CARE SERVICES RENDERED BY INDEPENDENT HEALTH-CARE PROVIDERS;

(IV) THE COST OF HEALTH-CARE SERVICES RENDERED BY HEALTH-CARE PROVIDERS AFFILIATED WITH OR OWNED BY A HOSPITAL OR HEALTH SYSTEM, INCLUDING HEALTH-CARE PROVIDERS AFFILIATED WITH OR OWNED BY AN ACADEMIC MEDICAL CENTER;

(V) HEALTH INSURANCE PREMIUMS; AND

(VI) VERTICAL INTEGRATION AND CONSOLIDATION BY HEALTH SYSTEMS AND PRIVATE EQUITY FIRMS;

(c) A DESCRIPTION OF THE WAY IN WHICH HEALTH-CARE PROVIDERS MAY BE PAID OR REIMBURSED BY MEDICARE AND COMMERCIAL HEALTH INSURANCE CARRIERS FOR OUTPATIENT HEALTH-CARE SERVICES WITH OR WITHOUT FACILITY FEES:

(I) AT ON-CAMPUS LOCATIONS;

(II) AT OFF-CAMPUS LOCATIONS BY HEALTH-CARE PROVIDERS AFFILIATED WITH OR OWNED BY A HOSPITAL OR HEALTH SYSTEM; OR

(III) AT OFF-CAMPUS LOCATIONS BY INDEPENDENT HEALTH-CARE PROVIDERS NOT AFFILIATED WITH OR OWNED BY A HOSPITAL SYSTEM; AND

(d) CONSIDERATIONS OF WHETHER ADDITIONAL MEASURES MAY BE TAKEN TO ENSURE CONSUMER AFFORDABILITY, PROMOTE COMPETITION,

AND PREVENT ADVERSE IMPACTS OF HEALTH-CARE CONSOLIDATION ON INDEPENDENT HEALTH-CARE PROVIDERS AND HEALTH-CARE CONSUMERS. THE DEPARTMENT OF LAW MAY ALSO MAKE POLICY RECOMMENDATIONS RELATED TO FACILITY FEES.

(4) IN DEVELOPING THE REPORT, THE STATE DEPARTMENT SHALL CONSULT WITH, AT A MINIMUM, THE FOLLOWING STAKEHOLDERS:

(a) HEALTH-CARE CONSUMERS AND CONSUMER ADVOCATES;

(b) HOSPITALS AND HEALTH SYSTEMS;

(c) HEALTH-CARE PROVIDERS AFFILIATED WITH OR OWNED BY A HOSPITAL OR HEALTH SYSTEM; AND

(d) INDEPENDENT HEALTH-CARE PROVIDERS NOT AFFILIATED WITH OR OWNED BY A HOSPITAL OR HEALTH SYSTEM.

(5) THE STATE DEPARTMENT MAY INCLUDE IN THE REPORT INFORMATION FROM THE STATE DEPARTMENT, THE DEPARTMENT OF LAW, STAKEHOLDERS, PUBLICLY AVAILABLE DATA SOURCES, AND HOSPITALS AND HEALTH SYSTEMS IN ACCORDANCE WITH SUBSECTION (3) OF THIS SECTION; EXCEPT THAT ANY INFORMATION THE STATE DEPARTMENT RECEIVES THAT IS PROPRIETARY OR CONTAINS TRADE SECRETS MAY NOT BE MADE PUBLIC.

(4) (a) THE STATE DEPARTMENT SHALL WORK WITH THE ALL-PAYER CLAIMS DATABASE TO IDENTIFY DATA, INCLUDING DATA FROM THE HOSPITAL EXPENDITURE REPORT, AS DESCRIBED IN SECTION 25.5-4-402.8, THAT MAY BE USED TO UNDERSTAND FACILITY FEES.

(b) EACH HOSPITAL LICENSED PURSUANT TO PART 1 OF ARTICLE 3 OF TITLE 25, OR CERTIFIED PURSUANT TO SECTION 25-1.5-103 (1)(a)(II), SHALL MAKE INFORMATION AVAILABLE TO THE STATE DEPARTMENT FOR PURPOSES OF PREPARING THE REPORT; EXCEPT THAT THE STATE

DEPARTMENT SHALL NOT REQUIRE A HOSPITAL OR HEALTH SYSTEM TO RESHARE INFORMATION ALREADY RECEIVED BY THE STATE DEPARTMENT.

(c) IF NECESSARY TO FULFILL THE REPORTING REQUIREMENTS OF THIS SECTION, THE ATTORNEY GENERAL MAY ISSUE A CIVIL INVESTIGATIVE DEMAND REQUIRING A STATE DEPARTMENT, CARRIER AS DEFINED IN SECTION 10-16-102 (8), HOSPITAL, HEALTH SYSTEM, OR HEALTH-CARE PROVIDER TO FURNISH MATERIALS, ANSWERS, DATA, OR OTHER RELEVANT INFORMATION.

(d) A PERSON OR BUSINESS SHALL NOT BE COMPELLED TO PROVIDE TRADE SECRETS, AS DEFINED IN SECTION 7-74-102(4).

SECTION 5. Appropriation - adjustments to 2023 long bill. (1) To implement this act, appropriations made in the annual general appropriation act for the 2023-24 state fiscal year to the department of health care policy and financing are adjusted as follows:

(a) The general fund appropriation for use by the executive director's office for personal services is increased by $18,326; and

(b) The general fund appropriation for use by the executive director's office for operating expenses is increased by $337.

(2) For the 2023-24 state fiscal year, the general assembly anticipates that federal funds received by the department of health care policy and financing will decrease by $18,663 to implement this act, which amount is subject to the "(I)" notation as defined in the annual general appropriation act for the same fiscal year. The appropriation in subsection (1) of this section is based on the assumption that the federal funds received by the department will decrease as follows:

(a) $18,326 for personal services; and

(b) $337 for operating expenses.

(3) For the 2023-24 state fiscal year, $622,356 is appropriated to the department of health care policy and financing for use by the executive director's office. This appropriation is from the general fund. To implement this act, the office may use this appropriation for general professional services and special projects.

SECTION 6. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.