Kentucky Hospitals and Health Systems Working Together to form . . .

ONE Powerful Voice

Issues for Governor Andy Beshear

Maintain Medicaid Expansion

Kentucky hospitals **strongly support** maintaining the Medicaid expansion. It has improved access to care and helped to reduce hospital charity care. Further, Medicaid expansion helps support hospitals which are continuing to receive federal Medicare payment cuts from the ACA which help fund expanded coverage nationally. KHA and its members look forward to working with the Beshear administration to preserve this important program.

Kentucky hospitals have been doing their part to support the Medicaid program. Hospitals have paid a provider tax every year since 1994, and pay $183 million in taxes annually, which generates about $830 million each year for the Medicaid program. Only about seventeen percent of that tax is used to directly benefit hospitals as matching funds for Medicaid disproportionate share (DSH) payments, with the balance going to the general Medicaid program that benefits all providers, including those that pay no tax. Federal provider tax rules allow eighteen categories of providers to be taxed, and CMS has proposed to add health insurers as a permissible tax class.[1] If additional provider tax funding is considered necessary in the future, KHA urges the Beshear administration to look to the remaining taxable categories of providers and MCOs which currently pay no tax yet benefit from the Medicaid expansion.

Continue to work with KHA on Implementation of HB 320 (Medicaid Hospital Rate Improvement Payment Program)

Earlier this year, the Kentucky General Assembly unanimously enacted HB 320, creating the Medicaid Hospital Rate Improvement Program (HRIP). This program is designed to provide supplemental Medicaid payments to all Kentucky hospitals (excluding university hospitals, which separately receive supplemental payments, and state mental hospitals) to cover the gap between regular inpatient Medicaid payments and Medicare allowable costs.[2] These funds are particularly needed in light of federal Medicare and Medicaid DSH cuts. The amount hospitals receive will be determined annually prior to each state fiscal year. The supplemental payments will be made quarterly in the next year, based on paid claims (under both fee-for-service and managed care), with the state matching funds coming from a new assessment on hospitals every quarter.

KHA has worked closely and collaboratively with the Department for Medicaid Services to implement the program, which was approved by CMS with a July 1, 2019, start date. In state fiscal year 2020, the program is projected to bring $130 million in additional hospital payments which will net hospitals $100 million after the new assessment. KHA will be assisting the state with ongoing implementation by acting as a clearinghouse for receipt of the hospital payments and collecting assessments from hospitals and transmitting them to the state, thereby keeping the Cabinet's administrative costs to a minimum. KHA looks forward to continuing this collaboration with the Beshear administration for program administration and annual updating of the program to CMS.

[1] Included in CMS's Proposed Rule on Medicaid Fiscal Accountability, November 12, 2019

[2] Medicaid inpatient hospital payments cover 75%, on average, of allowable costs.

Kentucky Hospital Association

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Preserve Certificate of Need (CON)

Kentucky is one of 36 states (including the District of Columbia) that maintains a CON program. This year, a national CON expert produced a comprehensive research and impact analysis (attached) for KHA documenting that Kentucky's CON program provides substantial benefits and is delivering value for Kentuckians. The report found that CON states outperform no-CON states in access to, and prices of, healthcare services. **KHA encourages the Beshear administration to support the following:**

- **Defend the State's Motion to Dismiss the litigation filed by Legacy Medical Transport in Aberdeen, Ohio, and its owner, Phillip Truesdell, challenging the entire CON program**

  The Cabinet's current position is to defend the state's CON program against the lawsuit. KHA recommends a continuation of this policy.

- **Retain the existing CON program and services covered under CON**

  According to a national CON expert, Kentucky outperforms no-CON states by any number of measures:

  Access is Strong: Kentucky provides better access to most health care services than no-CON states.

  Costs are Low: Kentucky has lower prices and costs than no-CON states – Kentucky has the sixth lowest price (net payment) per inpatient discharge in the U.S. and the cost per unit of outpatient service is 40 percent lower than states with no CON laws.

  Value is High: Kentucky hospitals provide better value than no-CON states, considering Kentucky serves a more vulnerable population that uses more services. Kentucky's total per capita healthcare costs are less than the national average, on par with the average of states that have no CON laws and lower than nearby no-CON states (IN, OH, PA).

  Adverse Impact of CON Repeal: Repeal would likely cause hospitals to close, costs to rise and access to worsen, particularly in rural communities. KHA's study identified at least thirteen hospitals vulnerable to closure, and all are the sole provider in their communities. Closure would eliminate jobs, which provide economic benefit, and require thousands of patients, who are typically older, poorer and more dependent on public assistance, to travel further for hospital and emergency care. Moreover, if Kentucky were to mirror the no-CON state statistics, it would **lose 12 hospitals and Kentuckians (and payors) would pay $600 million more per year for inpatient services.**

There are inherent features of the U.S. health care system that limit competition:

- Health care is not a free market – seventy percent of Kentucky hospital patients, on average, are covered by Medicare and Medicaid, where government sets payment rates that are below actual cost, requiring cross subsidization for hospitals to maintain essential services.
- Federal EMTALA laws require hospitals to treat all patients, regardless of ability to pay; society sees health care as a "right."
- Insurance continues to insulate consumers from the true cost of care

Protect 340B for Kentucky's Hospitals and Patients

- **Delay and re-review changes to the Pharmacy Manual for Identification of 340B claims at outpatient pharmacies**

  The prior administration recently issued a significant change to the Medicaid pharmacy billing manual, with an April 1, 2020, effective date. This change was not promulgated as an administrative regulation under the KRS 13A process and legislative oversight. The change will require all outpatient pharmacies dispensing drugs purchased under the 340B program to include a modifier on the claim submitted for payment to identify which drugs are 340B so the state can exclude them from rebates. While KHA does not dispute the need to identify 340B drugs to prevent duplicate rebates, 340B-covered entities overwhelmingly objected to the specific method being implemented of placing a modifier on the claim. KHA urges that this billing manual change be put on hold and that the Beshear administration meet with KHA and other 340B-covered entities to discuss alternative means being used in other states to achieve compliance which are less burdensome to providers and do not jeopardize the 340B program.

- **Keep Medicaid outpatient pharmacy benefits under MCOs for managed care enrollees**

  KHA and its members are opposed to removing outpatient pharmacy for managed care enrollees from Medicaid managed care organizations (MCOs) and placing administration under the fee-for-service program. This would be damaging for thousands of Kentuckians who receive discounted drugs through the savings generated by 340B covered entities from required Pharma discounts (not tax dollars), along with removing the ability from MCOs to manage a patient's medication regime which is an integral part of care and cost management. Moreover, carving pharmacy benefits back into fee-for-service Medicaid would place the Medicaid program and the commonwealth at an unpredictable financial risk of escalating costs in light of rising drug costs and given that the outpatient pharmacy benefit consumes 25 percent of total benefit spending.

Medicaid Managed Care

- **Support and retain the MCO Appeals Process**

  Kentucky is one of only a few states with an independent external appeals process through which providers can challenge improper Medicaid managed care organization (MCO) denials. Retaining this process is critical to prevent egregious MCO policies that deny coverage and payment. KHA looks forward to working with the Beshear administration to preserve this important process while assuring it works as intended.

- **Reduce the Number of MCOs**

  Kentucky hospitals continue to experience administrative and payment problems from Medicaid MCOs, and those are increased five-fold by having five MCOs, each with different sets of rules for preauthorization, appeals and payments. MCO data reported to the Department for Medicaid Services (DMS) shows significant differences in denial rates, grievances and appeals, contract compliance, quality and medical loss ratios. Reducing the number of MCOs would decrease the administrative burden on providers and DMS in terms of oversight. Since all MCOs receive the same actuarially determined capitation rates, reducing the number of MCOs would not increase state costs.

- **Work jointly with KHA and MCOs to design any value based payment (VBP) program**

  The proposed new MCO contract that would take effect in July 2020, indicates Medicaid will require MCOs to implement value based payment. KHA has been leading several hospital quality improvement initiatives for the past seven years under the CMS "Partnership for Patients" program. Currently, KHA works with 94 Kentucky hospitals to reduce infections, pressure ulcers, falls and readmissions. KHA looks forward to working with the Beshear administration to integrate these existing quality efforts into any Medicaid VBP program to reduce administrative costs and burden on hospitals.

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Continue Existing Cabinet for Health & Family Services Contracts with KHA

- **Data Collection**

  KHA has been partnering with the Cabinet for Health and Family Services (CHFS) as the state's data vendor for the collection of administrative claims data for 20 years. In 2010, KHA's state data contract was expanded to cover data collection from all covered ambulatory facilities. The data KHA collects and processes for the Cabinet has grown substantially from 4.3 million discharges in 2010 to 10.8 million discharges in 2019. KHA has continued to complete this work without increasing costs to the state since 2010. The data produced is of the highest quality due to KHA's edits (more than 300) and the association's relationship with facilities to ensure accuracy of coding and reporting.

- **Statewide Opioid Stewardship (SOS)**

  Last year, KHA partnered with the University of Kentucky and the Department for Behavioral Health to develop a statewide opioid stewardship program for hospitals. The program's purpose is to reduce opioid overprescribing, improve safe opioid use and provide a mechanism for hospitals to demonstrate their actions to their communities. KHA received approximately two years of funding for the program through the Kentucky Opioid Response Effort (KORE) to recruit hospitals, develop model standards and provide education, training and technical assistance along with data collection to measure progress. Currently, 116 Kentucky hospitals have committed to participate. This program is the first of its kind in the nation, and KHA seeks to continue and expand the program through additional opioid grant funding from the Cabinet.

- **Hospital Emergency Preparedness Program (HPP)**

  KHA has continuously had HPP contracts with Kentucky Department for Public Health (KDPH) for eighteen years, beginning in 2001 when the association assisted with implementation of the original HRSA HPP grant programs post September 11. Since then, KHA has been a strategic partner to the Preparedness Branch, acting as the state's fiscal agent and lead contractor in direct support of statewide health care regional coalitions and assisting with implementation of regional and statewide preparedness programs, training, development of cached stockpiles, resources and warehousing capability, and alert and notification systems. This special relationship has been a model for other states, and has built a trust within the health care system that is one of the commonwealth's strengths.

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