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STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION

February 23, 2021

To: The Honorable Shane E. Pendergrass
Chair, Health and Government Operations Committee

From: Patricia F. O'Connor, Health Education and Advocacy Unit

Re: House Bill 836 (COVID-19 Testing, Contact Tracing, and Vaccination Act of 2021): Support with Amendments

The Office of the Attorney General's Health Education and Advocacy Unit (HEAU) supports House Bill 836. We look forward to actively participating in the bill's workgroup sessions in order to achieve the best possible testing access and coverage for consumers because the numerous hotline calls and complaints about COVID-19 testing costs we have received throughout the pandemic establish that many consumers are confused about testing coverage and costs and may be in financial distress.

Early in the pandemic, there was clarity that the federal relief bills mandated coverage of COVID-19 diagnostic testing, broadly defined, and related items and services without cost sharing or medical management requirements. In late June 2020, however, the past Administration issued restrictive guidance that eliminated clarity and has exposed consumers to demands for upfront payments; cost sharing; upcoding or incorrect coding by providers; and other problems listed in Exhibit A, attached. We believe specific provisions in statute or emergency regulations are required to address such problems that may persist even if this bill becomes law and will work with stakeholders on this issue.

Consumers have been inundated with federal and state messaging to get tested and that testing was free. Yet, more and more distressed consumers are reaching out to the HEAU seeking assurance that the tests required to rule infection in or out, or for travel, work, and school, will be covered with no out-of-pocket costs. Other consumers are seeking help from the HEAU after they have been billed for testing or have been sent to

collections for unpaid COVID testing invoices. Currently there is only one reliable assurance we may offer consumers: that the free state and local jurisdictional governmental testing sites listed on the Department of Health’s website do not ask for insurance information and will provide free testing. Based on the number and nature of the consumer calls and complaints, we believe it is vitally important to maintain unconditional access to testing with no out-of-pocket costs, upfront or after the fact, for consumers. We are concerned the bill’s requirement that private insurance be billed for testing provided by state and local governmental providers (page 4, lines 2-12) will interfere with access due to the risk of after the fact cost sharing by private insurance. While we recognize the goal is to have private insurance and not taxpayers pay for covered testing costs, most privately insured Maryland consumers are not insured by the state-regulated plans that would be required under this bill to provide full COVID testing coverage with no out-of-pocket costs.

Because of the billing issues highlighted in attachment A, we also urge the sponsors to amend the bill to require that the Department, in consultation with the HEAU, the MIA, healthcare providers and other relevant stakeholders, include in the testing plan (1) billing standards for COVID testing providers, including when and what providers may charge, (2) mandatory pre-testing notification about potential out-of-pocket costs to patients, when applicable, and (3) to provide an enforcement mechanism for failure to abide by the standards.

We also support accelerating access to and use of at-home collection kits and tests as noted on page 5 of the bill, but urge the sponsors to include the attached amendment requiring direct-to-consumer testing providers to provide an itemized receipt with the information necessary for consumers to submit claims to their carriers. We are aware of at least one direct-to-consumer lab that will not provide the information even if requested.

We support the coverage mandate in the bill and believe it is comprehensive, much like the coverage mandate in the federal relief bills. We recommend, however, that the definition of “COVID-19 test” throughout the bill be amended to mirror the federal law, which covers testing “approved, cleared or authorized under section 510(k), 513, 515 or 564 of the Federal Food, Drug, and Cosmetic Act, and the administration of such [] products.” And, we further recommend mirroring the federal language by adopting their reference to “related items and services,” which would clearly delineate the more inclusive scope of covered services than this bill’s language, “tests and associated costs for the administration of COVID-19 tests,” and ask that a substitution be considered.¹

¹ For a detailed discussion of applicable federal and state laws, see pp. 7-9 of the Annual Report on the Changes in the Affordable Care Act on Maryland by the Maryland Insurance Administration, the Maryland Health Benefit Exchange, and the Health Education and Advocacy Unit – Office of the Attorney General (#MSAR 12765, December 31, 2020).

The HEAU also notes that this emergency bill would become effective the date it is enacted but, as drafted, would not apply to policies, contracts, and health benefit plans issued, delivered or renewed before the effective date. A coverage gap could exist should current federal and state coverage protections end in the interim.

We urge the committee to give this bill a favorable report.

cc: Sponsor

EXHIBIT A

Office of the Attorney General, Health Education and Advocacy Unit
Letter of Support with Amendments, House Bill 836
February 23, 2021

1. Providers are requiring patients to pay upfront for COVID-19 testing when consumers present for testing without symptoms or known exposure because they believe it will not be covered by insurance. And in some cases, they are subsequently billing patients for testing-related services and for amounts they did not disclose to the consumer in advance.

Consumer needed a test to rule-out COVID to assist his elderly aunt. He googled free testing and presented to a hospital-affiliated urgent care center for testing. When he answered negatively to symptom and exposure screening questions, he was told he had to pay \$125 out-of-pocket for the test. He reluctantly paid for the test. He was later billed an additional \$245 for the billing code 99203 New Patient, Level 3 office visit; an amount he was not told might be later charged.

2. Providers are billing for COVID tests ordered to rule-out COVID prior to the patient undergoing needed medical treatment.

Consumer was told that because her daughter was experiencing allergy symptoms, she needed to be negatively screened for COVID before her pediatrician would see her. She presented to an urgent care clinic for testing and was told she had to pay \$139 for the test and that it would not be submitted to her carrier for coverage.

3. Providers are submitting claims with CPT Code 99203 New Patient, Level 3 office visit for COVID testing of asymptomatic patients with no known exposure.
4. Providers are refusing to test uninsured consumers unless they are willing to pay upfront for testing.

One patient reported that he saw a symptomatic patient turned away from a hospital-affiliated urgent care center for COVID testing because the patient was uninsured and could not pay the \$125 demanded upfront for the test. The reporting-patient paid for the uninsured patient's test.