

Chapter 297 (2022 Acts of Assembly) Study

September 7, 2022

Time 2:30 p.m.

Board Room 2, Perimeter Center

9960 Mayland Drive, Henrico, VA 23233

ATTENDEES (alphabetical by last name): *Rebekah E. Allen*, Senior Policy Analyst, Office of Licensure and Certification, Virginia Department of Health; *James B. Andrews III*, Vice President of Financial Policy, Virginia Hospital & Healthcare Association; *Kimberly Beazley*, Director, Office of Licensure and Certification, Virginia Department of Health; *Sara Cariano*, ENROLL Virginia! Policy Specialist and Lead Health Insurance Navigator, Virginia Poverty Law Center; *David DeBiasi*, Associate State Director – Advocacy and Outreach, AARP Virginia; *Julie Dime*, Vice President of Government Affairs, Virginia Hospital & Healthcare Association; *Heidi Dix*, Senior Vice President of Policy, Virginia Association of Health Plans *Nicole Fawcett*, Data Services Manager, Virginia Health Information; *Jim Jusko*, Founder, FireLight Health; *Kevin Morra*, Co-Founder, Power to the Patients; *R. Brent Rawlings*, Senior Vice President and General Counsel, Virginia Hospital & Healthcare Association; *Ruthanne Risser*, Deputy Director, Office of Licensure and Certification, Virginia Department of Health; *Ilaria Santangelo*, Director of Research and Communications, Patient Rights Advocates; *Katy Talento*, CEO, Allbetter Health; *Kat Thames*, Chief of Staff, Office of Delegate Dan Helmer; *James Williams*, Deputy Secretary Office of the Secretary of Health and Human Resources

1. Call to Order and Introductions

Deputy Secretary Williams called the meeting to order at 2:35 p.m., welcomed those in attendance, and offered opening remarks about his involvement in the development of the federal hospital price transparency rule and the goal of the meeting to discuss what can be learned from the federal hospital price transparency rule implementation and how the recommendations of the group can help patients and make the information more clear.

Deputy Secretary Williams then asked everyone in the room to introduce themselves and the organization they were with.

2. Review of Agenda

Ms. Allen reviewed the agenda.

3. Study Mandate and Goals

Deputy Secretary Williams reviewed both the forthcoming statutory requirement (effective July 1, 2023) and the deliverables and timeline for the workgroup. He reminded the group that its discussions should consider what specificity could be added to the state hospital price transparency requirements, including how it could be enforced. Mr. Rawlings noted that the legislation did not include any additional enforcement beyond what the Virginia Department of Health (VDH) already has and questioned whether it was necessary, stating his belief that additional

enforcement options were not contemplated in Chapter 297 (2022 Acts of Assembly). Deputy Secretary Williams asked Ms. Allen to review what the price transparency requirements are, both state and federal.

4. Presentations and Discussion

4.1. Overview of Current State and Federal Requirements about Hospital Price Transparency – Department of Health

Ms. Allen presented a summary of state and federal price transparency requirements, what enforcement powers the Virginia Department of Health currently has for state hospital price transparency requirements, what enforcement powers the Centers for Medicare and Medicaid Services (CMS) has for federal hospital price transparency, and the known enforcement actions taken since January 1, 2021 by CMS.

Ms. Allen noted that Chapter 297 (2022 Acts of Assembly) has a specific definition of “hospital” that overrides the definition that VDH normally uses, which is found in Code of Virginia § 32.1-123, but that in any case, it would apply to all hospitals licensed by VDH, which includes outpatient surgical hospitals (OSHS). Ms. Allen shared that the State Health Commissioner only has three enforcement options currently for noncompliance: plan of correction, suspending a hospital license, or revoking a hospital license.

Ms. Allen’s discussion of the federal hospital price transparency requirements focused on the machine-readable file and not the requirements for the consumer-friendly list of standard charges since that requirement had not been pulled into Virginia law by Chapter 297 (2022 Acts of Assembly). Ms. Allen pointed out that the federal rule gives hospitals discretion in what accounting or billing code the hospitals use in their machine-readable file. Ms. Allen also mentioned that CMS had the authority to impose civil monetary penalties on noncompliant hospitals.

4.2. Discussion on Preliminary Recommendations for Implementation of Chapter 297 (2022 Acts of Assembly)

Deputy Secretary Williams asked Ms. Allen to present a summary of VDH staff observations about the machine-readable files that it had gleaned from a sample of Virginia’s hospitals. Ms. Allen stressed that the observations presented were not determinations of noncompliance, would not identify specific hospitals/hospital systems, and were based on staff assuming the role of a hypothetical average consumer/patient trying to find or read the machine-readable files. Ms. Allen’s observations included difficulty locating the files on hospital websites, missing update dates or files not being updated annually, filenames not matching CMS requirements, inconsistent inclusion of medication, prices not being displayed in dollars, difficulty comparing prices across hospitals because of different codes and

descriptions being used, some file formats being much harder to use than others, and difficulty finding files from OSHs.

Ms. Allen stated that her speculation was that OSHs may not be aware the federal hospital price transparency rule applies to them because these facilities are federally certified as ambulatory surgery centers instead of hospitals, therefore not realizing the new federal rules are not a hospital condition of participation and define hospitals in such a way to tie it to a facility's licensure status, not certification status.

Mr. Rawlings asked Ms. Allen what she meant by prices not being displayed in dollars and she explained that some hospitals list the price as a percentage of a given rate, such as 115% of the Medicaid rate for a given service. Mr. Rawlings stated that prices charged to payers are contractual and the contract may identify the amount to be paid as percentages instead of dollars. Ms. Talento commented that percentages instead of dollars were consumer unfriendly because only hospitals would know the actual dollar amount to be paid, not consumers.

Mr. Rawlings asked Ms. Allen to share with VHHA examples of machine-readable files that had one or more the issues identified.

Deputy Secretary Williams opened the discussion by asking if everyone was in agreement that the recommendations should at a minimum include the baseline requirements established by the federal hospital price transparency rule. No attendee objected to this.

Deputy Secretary Williams asked what potential recommendations could provide additional clarity or consistency to improve consumer/patient utility of hospital pricing data. Ms. Dime stated that the Virginia Hospital & Healthcare Association (VHHA) supported recommendations that match the federal requirements. A discussion ensued about adding more specificity beyond what CMS required, such as requiring hospitals to include a README file or other instructions to help consumers/patients open .JSON files, requiring prices to be displayed in dollars, or a standardized schema for the files. Ms. Dime and Mr. Rawlings argued that it was important to stay consistent with CMS's requirements so that if and when CMS makes changes, it will be easier for all hospitals to change at the same time in the same way, especially since there are some hospital systems in Virginia that operate hospitals in other jurisdictions. Ms. Talento, Mr. Morra, Ms. Santangelo, and Mr. Jusko countered by stating that if Virginia's requirements were more specific than CMS's, Virginia hospitals would be compliant with both by complying with the more strict standard.

Deputy Secretary Williams asked whether clarifying information from the CMS FAQ document should be part of the regulatory recommendations. Mr. Rawlings pointed out that the CMS FAQ document was not a binding interpretation of the federal requirement and had not been put out for public

comment. Mr. Jusko expressed concern about adopting the CMS FAQ document in its entirety into the recommendations because he felt that it gave hospitals too many opportunities to use “N/A.” Ms. Dime reiterated that VHHA supported recommendations that match the federal requirements.

Deputy Secretary Williams asked whether the prices appearing in the machine-readable files should be estimates or binding prices. Ms. Talento argued that the price in the file should match the price the patient sees on the bill from the hospital and/or the Explanation of Benefits (EOB) from their insurance carrier. Ms. Santangelo noted that Colorado had passed a bill in 2022 that, to the best of her recollection, would not require patients to pay the difference between the pricing information in the machine-readable file and the price ultimately charged. Mr. Andrews pointed out that hospitals often do not have control over what insurance carriers ultimately determine to be the allowable charge appearing on a patient’s EOB, and the mechanisms that exist to allow patients to challenge EOBs lies with the insurance carriers, not the hospital. Ms. Dime and Mr. Rawlings objected to the concept of binding prices.

Deputy Secretary Williams asked how compliance should be monitored at the state-level. All attendees were in agreement that VDH should be responsible for monitoring compliance. Mr. Morra and Mr. Jusko discussed whether there be an attestation by a corporate officer at the hospital about the accuracy of the contents of the machine-readable file. Mr. Rawlings disagreed with this proposition as he believed the type of attestations being described were more commonly utilized to combat fraud by making the person signing the attestation criminally liable for intentional false information. Ms. Talento asked whether compliance information was available already and Ms. Beazley responded that all inspection reports were public records. Ms. Talento suggested that VDH should post all determinations of noncompliance on its website. Ms. Dime stated that CMS was already publicizing its enforcement efforts.

Deputy Secretary Williams asked whether the machine-readable file should be submitted to Virginia Health Information (VHI) along with hospitals’ annual filings. Ms. Fawcett explained that VHI received data from insurance carriers for the All-Payers Claim Database and from hospitals for the patient level data reporting and for annual utilization and financial data. Ms. Fawcett stated that with this information, portions of the data in the machine-readable files could be “reverse engineered.” Ms. Allen asked VHI’s data included or could determine the discounted cash price for items and services, to which Ms. Fawcett responded no. Ms. Dime stated that VHHA had links to its members’ machine-readable files on a centralized webpage. Ms. Fawcett stated that VHI may be able to link to each hospital’s or VHHA’s website for the machine-readable files for inpatient hospitals since each inpatient hospital has a page on VHI’s website, but that this would not include OSHs.

Deputy Secretary Williams asked what enforcement options should there be at the state-level. Mr. Rawlings stated that VDH already had enforcement options as part of hospital licensure, that those options were sufficient, and that creating fines or other penalties specific to these new requirements was not reasonable. Ms. Talento reiterated her earlier statements about publicizing noncompliance actions taken by VDH. Ms. Talento, Mr. Morra, Ms. Santangelo, and Mr. Jusko all expressed agreement and support for taking a hospital's license away for noncompliance with this rule, to which Mr. Rawlings expressed concern since it would result in hospital closure for reasons unrelated to patient care or safety. Ms. Talento asked whether VDH published the number of hospital complaints it received and whether VDH had a way for the public to file complaints online. Ms. Beazley responded that VDH had both a complaint hotline and complaint webpage for all providers it licenses, which includes hospitals, and that it did not publish numbers of complaints received, but that complaint inspection reports were public.

Deputy Secretary Williams asked what potential recommendations, if any, could address OSHs' knowledge of the new requirements. Ms. Dime and Mr. Rawlings stated that representatives of OSHs should be at the next meeting, as very few OSHs were members of VHHA. Ms. Talento and Mr. Morra spoke about placing the onus on VDH to conduct outreach to OSHs in advance of the state hospital price transparency requirements going into effect.

Deputy Secretary Williams asked if anyone had any further recommendations to suggest. Mr. Morra stated he had a recommendation to make but his comments instead targeted Ms. Dime, alleging she had been acting in bad faith, been unprofessional, and had failed to represent the interests of both VHHA's membership and Virginians. Deputy Secretary Williams stated Mr. Morra's comments were not a recommendation. Ms. Dime stated she felt that she had to respond; Deputy Secretary Williams attempted to dissuade Ms. Dime from doing so, but Ms. Dime proceeded to rebut Mr. Morra's accusations, as well as stating she had come to the meeting unhappy with comments made by Ms. Talento during the 2022 Regular Session committee and subcommittee meetings for HB481/Chapter 297 (2022 Acts of Assembly) that allegedly called the truthfulness of Ms. Dime's answers to legislators into question.

Deputy Secretary Williams then stated that he felt everyone had already offered full extent of their public comments during the meeting and that he would ask the group to agree to waive the public comment period. Ms. Santangelo asked if she could share her planned comments, to which Deputy Secretary Williams agreed; no other public commenter asked to present their comments.

5. Public Comment

Ms. Santangelo offered public comment about a sample of Virginia hospitals that her organization believed to be noncompliant with the federal hospital price transparency requirements and the rationale for that belief.

6. Wrap Up and Next Steps

Ms. Thames confirmed that Delegate Helmer would be available on the morning of September 30, 2022 for a follow-up meeting. Deputy Secretary Williams announced the next meeting for Chapter 297 (2022 Acts of Assembly) would be held on September 30, 2022 at 10:00 a.m. at the Perimeter Center.

7. Meeting Adjournment

Deputy Secretary Williams adjourned the meeting at 5:15 p.m.

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