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OPPOSITION to Raised Bill No. 1074
LCO NO. 4160
AN ACT CONCERNING WORKERS' COMPENSATION AND LIABILITY
FOR HOSPITAL SERVICES

TO: THE HON. CATHERINE A. OSTEN, CO-CHAIRPERSON, THE HON. PETER A. TERCYAK, CO-CHAIRPERSON, THE HON. TERRY B. GERRATANA, VICE CHAIRPERSON, THE HON. EZEQUIEL SANTIAGO, VICE CHAIRPERSON, THE HON. JOE MARKLEY, RANKING MEMBER, THE HON. RICHARD A. SMITH, RANKING MEMBER, THE HON. LOUIS P. ESPOSITO, MEMBER, THE HON. DAVID W. KINER, MEMBER, THE HON. BRANDON L. MCGEE, MEMBER, THE HON. CRAIG A. MINER, MEMBER, THE HON. SEAN J. WILLIAMS, MEMBER

Contained herein is a statement concerning my opposition to Raised Bill No. 104⁷⁴, An Act Concerning Workers' Compensation and Liability for Hospital Services. I am the President and CEO and former General Counsel for 26 years to Hospital of Saint Raphael.

Since the mid-2000s, Hospital of Saint Raphael has experienced significant losses associated with the underpayment of claims for hospital services provided to workers' compensation patients. These losses are particularly associated with workers' compensation carriers and employers who use the re-pricing services of a Texas company, Fairpay Solutions. It should be noted that neither the workers' compensation carriers and companies who use Fairpay, nor Fairpay itself, have a reimbursement agreement with the Hospital. These losses have been caused by Fairpay's unilateral re-pricing and reduction of the amounts paid to the Hospital for services provided in connection with workers' compensation cases. In 2011, the average reimbursement rate was 27% of the price master charges. We experienced similar underpayment in the other years we have dealt with Fairpay, which obviously caused very significant losses to the Hospital, given the volume of cases in which Fairpay has been involved.

During my tenure at Hospital of Saint Raphael, efforts were made to engage Fairpay in a dialogue concerning the reimbursement rates for workers' compensation claims. Hospital of Saint Raphael, in accordance with the letter and spirit of existing Connecticut law, believed that the resolution for underpayments was to engage Fairpay in negotiations to reach an agreement as to reimbursement rates hospital goods and services delivered to workers' compensation patients. We made this effort even though the statutes require this negotiation to take place in advance not after the services have been provided and the carrier or employer has disallowed an enormous amount of the bill. Such efforts resulted only in substantial delay, failure to disclose the methodology or basis by which it claims to have computed actual cost, and steadfast refusal to negotiate any reasonable settlement, necessitating our decision to participate in the litigation before the workers compensation commissioners.

We view the proposed legislation as perhaps the only means by which Fairpay thinks it can preserve its relevance and its very business model. Much is at stake. Through this legislation, Fairpay looks to obtain a legislative bail out and protection from liability for crippling underpayments to Connecticut hospitals for services associated with workers' compensation cases. Currently, thousands of cases are pending where Hospital of Saint Raphael has been underpaid. We anticipate that this extremely large volume of claims could be resolved if the legal process is allowed to proceed to its conclusion or Fairpay came belatedly to the negotiation table. On the other hand, the passage of this legislation would enrich an out-of-state company at the expense of Connecticut consumers.

Accordingly, this Bill should be rejected for the following reasons:

1. The Bill is inconsistent with the current structure and method for setting Hospital rates.

The requirements governing hospital reimbursement are set forth in Section 19a-646 of the Connecticut General Statutes. Hospitals are to be reimbursed based on freely negotiated rate agreements or published charges ("price master"). However, this bill sets up a dual payment system, under which the liability of employers and insurers to compensate hospitals for care provided to injured or ill workers differs from the general system utilized to determine rates of reimbursement for hospitals for treatment of everyone else.

The substance of the proposed bill is directly contrary to the general trend which the legislature has taken since the mid-1990s to deregulate hospital rates. For twenty years, the state has encouraged employers to negotiate contracts for discounts of Hospital charges before services are provided, or set up managed care plans which function on the basis of negotiated rates, just as health insurance companies have negotiated payment arrangements with hospitals and other providers. It would be inconsistent to carve out a special exception for workers' compensation.

2. The Bill would place the burden of deciding the "actual costs" of hospital services on a case-by-case basis to the Workers' Compensation Commission.

This bill would require the Workers' Compensation Commission to become a ratemaking agency and force the Commissioners to determine in thousands of individual cases from hospital to hospital and year to year, the "amount it actually costs the hospital to render the service." The bill provides no definition of that term or other guidance for the Commissioners. There is no basis to believe that the Commission has the desire, the staff or the expertise to perform the highly complex task of determining what it actually costs a hospital in each case to treat an injured worker. Fairpay has refused to disclose its methodology for determining the alleged "actual cost" and has argued that the methodology is proprietary information. Meanwhile, the Hospital's charges are entirely transparent by virtue of the state law requirements for price masters to be published. This bill would result in uncertainty and confusion for employers, employees, providers and payers because the workers' compensation Commissioners would not decide the "actual costs" until after the services are provided.

3. It would be unfair to employees and Hospitals to retroactively impose a statute of limitations.

The bill also seeks to impose an arbitrary 18 month statute of limitations on claims for services provided before July 1, 2013. The impact of this provision would be to cut off hundreds if not thousands of existing claims before they could be resolved and in some instances before they were even filed. The bill overlooks the fact that the workers' compensation statutes already contain a statute of limitations for employees to seek benefits, including reimbursement of hospital charges. The provisions in the bill limiting the claims period retroactively is patently unfair.

4. If passed, the General Assembly will inadvertently rubber stamp the unfair business practices of an out-of-state re-pricing company.

The pending dispute between Fairpay and several hospitals in Connecticut arose because Fairpay disregarded Connecticut law, significantly underpaid thousands of claims for Hospital services provided to injured employees, refused to disclose its formula for reimbursement and refused to negotiate in good faith to reach reimbursement agreements with the hospitals. The legislature should be investigating the tactics which Fairpay has been using for years to underpay Connecticut hospitals for services. In many cases, the amounts which Fairpay determines should be paid to hospitals for services based on its evaluations are less than the amount which an uninsured person would pay to a Connecticut hospital, even though law governing discounts to uninsured persons specifically excludes those whose care is provided for by the workers' compensation system. In many cases, the payments are even less than we would receive for care provided to indigent patients under the Medicaid program. In fact, until the recent Commission ruling against them, Fairpay had used a variety of unusual tactics to stall or avoid any detailed analysis of the payments made for services.

The arbitrary claims' settlement methods of Fairpay should be examined by the Labor and Public Employees Committee or the Insurance Committee, not rewarded by special retroactive legislation. If the legislation is passed and Fairpay gets its legislative bailout, it will be at the expense of the taxpayer and ratepayer. All of the huge shortfalls to the hospitals will need to be made up from somewhere. Most of our Connecticut hospitals are not-for-profit and the costs of uncompensated care will be shifted in order to provide the care that injured employees need. It should not be at the expense of Connecticut consumers.

The Labor and Public Employees Committee and the Legislature Should Reject Raised Bill No. 1074.

Sincerely,



J.C. Lubin-Szafranski

President and CEO

Saint Raphael Healthcare System