



**Ohio Hospital Association and Ohio Children's Hospital Association  
Ohio Senate Small Business and Economic Opportunity Committee  
Interested Party Testimony  
Substitute House Bill 49  
June 12, 2024**

Chairman Lang, Vice Chair Wilkin, Ranking Member Sykes and members of the Ohio Senate Small Business and Economic Opportunity Committee, on behalf of the Ohio Hospital Association and the Ohio Children's Hospital Association, thank you for the opportunity to comment on the Senate version of House Bill 49.

Please know that Ohio hospitals support efforts for increased price transparency and our members remain committed to providing patients with useful and meaningful pricing information for services provided in our facilities. Additionally, hospitals have worked diligently to become compliant with the federal rules that went into effect in January 2021.

We would like to express our sincere appreciation to Chairman Lang and Senate leadership for engaging in a fair, constructive and deliberative process on this important legislation.

Throughout the course of our discussions, we have had many productive conversations allowing the hospital community to pinpoint the differences between the proposed regulations in the bill and federal price transparency requirements.

We appreciate the bill sponsors' intention to codify federal regulations to ensure Ohio hospitals are in full compliance and our goal has consistently been to work toward aligning the contents of the House passed version of the bill to the federal price transparency requirements. Despite the assertions of the House bill sponsors, and the laudable work of the Senate to understand our concerns, the bill still differs from the federal requirements in many important respects. However, we believe the Senate's version of the bill to be a marked improvement and a step in the right direction.

Without belaboring all points of difference between this bill and the federal requirements, the most concerning differences are outlined below:

1. The current version of the bill ties Ohio's new hospital licensure requirement to compliance with this highly complex state/federal transparency law. Hospitals should not lose their license because of failure to comply with a highly technical transparency statute. Losing a license because of this is not good for the community the hospital serves. It is punitive without regard to the availability of health care services in a

community. The bill already allows for the imposition of monetary penalties by the state for violations, on top of the monetary penalties that can be imposed by the federal government. Significant monetary penalties, in addition to threats to the hospital's license, is excessively punitive.

2. The bill maintains a state enforcement structure that is duplicative of the federal enforcement structure. Federal enforcement has become more aggressive and credible reports of hospital compliance with the federal requirements make it clear that more and more hospitals are achieving compliance after an admittedly slow uptake initially. The enhanced federal penalties and enforcement have been successful in encouraging compliance, rendering duplicative and regulatorily burdensome state enforcement unnecessary.
3. The bill includes a provision that would codify into Ohio law an issue that is currently being litigated at the federal level. The federal litigation involves a challenge to a significant overreach by the federal government that plainly misapplies the federal HIPAA law. The litigation is likely to result in the federal government's position being struck down, so if this provision remains in the bill, Ohio will be a significant outlier, as it will have codified in state law an issue that was struck down at the federal level. We recommend revisiting this provision pending the outcome of litigation to allow for a more in-depth policy discussion of this complex issue.
4. Finally, the current version of HB 49 includes a provision that would limit a hospital's ability to collect a facility fee on services performed at hospital acquired physician offices. While OHA opposes any limitation on or prohibition of facility fees, we appreciate the narrowed application of this language. Further, we recognize that the language sets a delayed effective date which will allow our member hospitals time to better understand the impact of and offer feedback on the implementation of the facility fee specific provisions included in the bill.

To that end, we have identified the following concerns with the current language that we hope to address with the legislature between passage of this bill and the effective date:

- a. The language applies this facility fee prohibition to acquired independent outpatient physician facilities that were "acquired in the past." We have heard from members that it would be impossible to identify every off-campus acquired practice that was once owned by a physician, going back to the beginning of time. Hospitals will be more able to comply with this requirement if there is a defined date beyond which the provision applies – for example, January 1, 2014, or some other date in the not-too-distant past.

- b. The bill could be construed to apply to all services in an off-campus facility that was previously owned by physicians, instead of just the office visit component of those services. We would like to continue a discussion with the legislature about the scope of services to which the facility fee limitations apply.
- c. We have learned that without corrective language, patients will still receive a bill for the facility fee co-payment even though the payer is not required to pay the facility fee. This is a function of the employee's health plan structure. In the absence of corrective language, the patient will still receive two bills which we believe is an unintended consequence.

Again, we would like to thank Chairman Lang and the Ohio Senate for their willingness to dive into a complex and nuanced topic area that has many components and moving parts. We respectfully request to continue our dialogue on the issues mentioned above as we move toward our shared goal to provide Ohio's patients with accurate price information.

Thank you for the opportunity to share our feedback on Substitute House Bill 49.