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Commonwealth of Massachusetts

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Representative Kane supports health care reform legislation to preserve patient care in Massachusetts

House action spurred by Steward bankruptcy filing, plan to sell off hospitals; Rep. Kane amendment on rare diseases accepted

BOSTON – Citing the need to protect patient access to health care, State Representative Hannah Kane (R-Shrewsbury) recently voted to support comprehensive hospital oversight legislation that would change how regulators monitor and contain costs, strengthen financial data reporting requirements, and require notice to patients before the discontinuation of essential health services.

House Bill 4643, *An Act enhancing the market review process*, was engrossed by the House of Representatives on a vote of 152-1 on May 16.

Representative Kane noted the House bill was developed largely in response to the unfolding crisis at Steward Health Care, a multi-state organization that operates nine community hospitals in Massachusetts. Steward filed for Chapter 11 bankruptcy protection on May 6 and is looking to sell or auction its hospitals, a development which has raised concerns about potential closings and loss of services for patients.

In a direct nod to the Steward situation, House Bill 4643 prohibits licenses from being issued to an acute care hospital if the main campus of the hospital is leased from a health care real estate investment trust. Steward sold its properties to a real estate investment trust in 2016 and now leases them.

Representative Kane said House Bill 4643 seeks to provide protections to consumers and to prevent similar problems in the health care industry in the future, partly through increased oversight and financial data reporting requirements. Some of the reforms contained in the bill include:

Notice of the Discontinuation of Health Services, Closure, Sale or Relocation – Hospitals would be required to provide the Department of Public Health (DPH) with 90 days' notice prior to the closure of the hospital or the discontinuation of an essential health service, while clinics and physician practices would need to notify DPH not less than 180 days prior to any sale, relocation, or closure. Representative Kane said clinics and physician practices would also be required to notify their patients in writing within 90 days of the transaction to provide information on finding a new health care provider and the contact information for the entity assuming responsibility for the patient's medical records.

Essential Service Closure Impact Assessment – The Health Care Policy Commission (HPC) would be authorized to conduct an essential service closure impact assessment to analyze the impact of the proposed essential service closure on health care access, cost, quality or market function. DPH is also authorized to hold a hearing no less than 90 days before such a transaction to consider the impacts of the proposal such as the potential loss or change in access to services, alternative providers, and available options to DPH to mitigate the impacts of the closure.

Increased Financial Data Reporting Requirements – House Bill 4643 enhances hospital and provider organization reporting requirements through various means including:

- Requiring hospitals to report their audited financial statements of the parent organization’s out-of-state operations, significant equity investors, health care real estate investment trusts and management services organizations to the Center for Health Information and Analysis (CHIA);
- Requiring financial statements submitted by provider organizations to CHIA to include information on parent entities including their out-of-state operations, and corporate affiliates, including significant equity investors, health care real estate investment trusts and management services organizations; and
- Allowing CHIA to collect information from provider organizations regarding other assets and liabilities that may affect the organization’s financial condition or their facilities, including, but not limited to, real estate sale-leaseback arrangements with health care real estate investment trusts.

Representative Kane noted that the bill also requires CHIA, as a part of its data analysis in monitoring the financial conditions of acute hospitals, to conduct an analysis of margins, including margins by payer type; investments; and information on any relationships with significant equity investors, health care real estate investment trusts and management service organizations. CHIA must also share a confidential list of health care entities with HPC whose contribution to health care spending growth is considered excessive and a threat to the state’s ability to meet the health care cost growth benchmark.

According to Representative Kane, the legislation also increases the fines that CHIA may assess on a health care entity for failure to timely report information from \$1,000 to \$25,000 per week for each week of delay. It also removes the current maximum annual penalty of \$50,000 for such a violation.

Expanding the Attorney General’s Office Authority in Health Care Market Oversight – The legislation enhances the Attorney General’s Office’s (AGO) power in health care market oversight by allowing the AGO to obtain information from significant equity investors, health care real estate investment trusts and management services organizations. It also permits the AGO to seek injunctive relief upon a referral from the HPC concerning a material change notice or cost market impact review.

Establishment of the Division of Health Insurance – House Bill 4643 establishes a Division of Health Insurance with the authority to oversee the health insurance market in the Commonwealth. The division will be overseen by a commissioner whose responsibilities will include protecting the interests of consumers, enhancing the accessibility and affordability of health care, and prioritizing the affordability of health insurance products during rate review. The commissioner will also be responsible for developing affordability standards for the approval of rates subject to rate review.

Establishment of a Health Resource Planning Council – Representative Kane noted that House Bill 4643 establishes a Health Resource Planning Council to develop a state health plan that will identify: the anticipated needs of the Commonwealth for health care services and facilities; the existing health care resources available to meet those needs; the projected resources, including the health care workforce, necessary to meet those anticipated needs; and the priorities for addressing those needs

Representative Kane said House Bill 4643 also extends liability for False Claims Act (FCA) violations to people who: have an ownership or investment interest in any person who violates the FCA, knows about the violation, and fails to disclose it to the state within 60 days.

During floor debate, the House adopted several amendments, including a proposal filed by Representative Hannah Kane (R-Shrewsbury) requiring the state health plan developed by the Health Resource Planning Council to include rare diseases care within the scope of specialty care units. Another adopted amendment, filed by Representative Marjorie Decker (D-Cambridge), directs the Health Policy Commission to conduct an

analysis and report on the use of prior authorization for health care services and its impact on cost, quality and access.

House Bill 4643 now moves to the Senate for its consideration.

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