

Chapter 8: Options for Hospital Bills

Chapter 8: Options for Hospital Bills

A. The Hospital Fair Pricing Act

1. Bills that are Eligible for Financial Assistance
2. Charity Care and Discount Payment Plans
3. Minimum Standards for Financial Eligibility
4. Financial Assistance Notification Requirements
 - a. The Written Policy
 - b. Finding Hospital Financial Assistance Policies
 - c. Requirements for Emergency Physicians
5. Applying for a Discount
6. Reasonable Payment Plans
7. Collection Practices

B. New IRS Regulations for Non-Profit Hospitals on Hospital Financial Assistance

8. Options for Hospital Bills

A. The Hospital Fair Pricing Act

Uninsured or underinsured patients who are struggling to pay their hospital bills and who are not eligible for Medi-Cal or a county indigent program should consider seeking assistance under the Hospital Fair Pricing Act.¹ The Hospital Fair Pricing Act requires hospitals and emergency physicians to offer discount payment plans or charity care to patients in need. A hospital is required to make an effort to inform the patient of all discount payment programs available and negotiate a payment plan if necessary. If the patient and hospital are not able to come to an agreement, then the hospital must follow the reasonable payment plan formula identified in the statute.

1. Bills That are Eligible for Financial Assistance

Both hospital bills and bills from emergency physicians are covered in the Hospital Fair Pricing Act.² The law applies to all hospital bills, not just those for emergency services; thus outpatient and scheduled services provided in a hospital setting should also be covered. Advocates should be aware, however, that unless there is an emergency situation, hospitals are not required to treat patients who cannot show that they can pay for services.³ Bills from physicians who are not emergency physicians (anesthesiologists, cardiologists, etc.) are not covered by the Hospital Fair Pricing Act regardless of whether those bills relate to emergency services.

-
1. Health & Safety Code § 127400 *et seq.* Patients who are Medi-Cal eligible should be directed to apply for Medi-Cal, even if they have already received hospital services as Medi-Cal can cover services received up to three months prior to the month of application. Most county programs under Welf. & Inst. Code § 17000 also cover services received in the month of application.
 2. “Emergency physicians” are defined in Health & Safety Code § 127450(c) and include physicians contracted to provide emergency medical service in the emergency room, not other specialists who may be called in.
 3. The Emergency Medical Treatment & Active Labor Act (EMTALA) (aka the Patient Anti-Dumping Law) requires hospitals to treat anyone presenting in the emergency department with an emergency medical condition or in active labor. Hospitals that do not comply with EMTALA risk losing Medicare or Medicaid reimbursements. 42 U.S.C. § 1395dd. Nearly all hospitals depend on Medicare and Medicaid reimbursement, save for some military hospitals and Shriners hospitals that provide free children’s services.

2. Charity Care and Discount Payment Plans

Once a hospital makes a determination that a patient is eligible for financial assistance, the hospital may then offer the patient either charity care or a discount payment plan. Hospitals generally use the term charity care to describe full charity care or free hospital care.

A discount payment plan is offered when the hospital has determined that the patient does not qualify for full charity care (or the hospital does not offer full charity care), but is eligible for a discount and is required to pay only a part of the bill. A patient who qualifies is not required to pay more than the amount a government-sponsored health program (e.g. Medicare) would pay.⁴

The maximum amount an emergency physician may charge is 50% of the median of billed charges.⁵ If the emergency physician has sought reimbursement from the Maddy Emergency Medical Services Fund, then the physician may not continue billing or attempting to collect any amount for the bill.⁶

3. Minimum Standards for Financial Eligibility

All uninsured patients or patients with high medical costs *who are at or below 350 percent of the federal poverty level* are eligible for a hospital's charity care or discount payment policy.⁷ While uninsured patients are easy enough to identify, the protections also extend to insured patients with high medical costs, meaning those who have medical bills that exceed 10% of the patient's family income in the prior 12 months.⁸ If these expenses are not incurred at the hospital, the patient will have to show evidence of payment of other medical bills that bring the total amount billed to over 10% of the family income.⁹ The insured patients most likely to meet these

4. Health & Safety Code § 127405(d).

5. Health & Safety Code § 127452(b). The median of billed charges must be based on the FAIR Health, Inc. database: <http://fairhealthconsumer.org/medicalcostlookup.php>.

6. Health & Safety Code § 127452(c). The Maddy Fund is a fund to reimburse physicians for emergency services provided to patients who do not pay. Health & Safety Code § 1797.98a.

7. Health & Safety Code §§ 127405(a)(1)(A), 127452(a).

8. Health & Safety Code § 127400(g)(1)-(2).

9. Health & Safety Code § 127400(g)(2).

criteria are those with catastrophic type policies or high deductible policies such as Covered California Bronze policies.

For bills from emergency physicians, patients only qualify as underinsured if they both meet the 10% test described above and their coverage provides no discount on services from the emergency physician.¹⁰

Advocacy Tip: These are the minimum standards that hospitals and emergency physicians must incorporate into their policies. Hospital can, and many do, allow those with incomes over 350% FPL to qualify for their charity care or discount payment policies.¹¹ Similarly, hospitals have discretion to set what income levels, if any, get free care via charity care, what income levels get a discount, and what percentage of a discount is available. Hospitals are free to set their own policies provided they follow these minimum guidelines and the guidelines are available in a written policy. Some emergency physicians and even doctors not subject to the Hospital Fair Pricing Act will discount or write off a bill if the hospital has already found the patient eligible for financial assistance. Sending the other physicians the notification from the hospital that the bill has been drastically reduced or written off can help in the negotiation of these other bills since many of these other providers do not have billing staff who can make assessments of financial need.

4. Financial Assistance Notification Requirements

Hospitals and emergency physicians are required to make all reasonable efforts to obtain from the patient information on any insurance that may cover the patient's hospital bills.¹² If the patient does not provide evidence of third party coverage by the time of billing, the hospital or emergency physician (or assignee) must provide the patient with clear and conspicuous notices describing the charges, how to apply for government health care benefits, and the hospital's or physician's financial

10. Health & Safety Code § 127450(i). Most insurance policies do provide a discount, even those with high deductibles.,

11. Health & Safety Code § 127405(a)(1)(A).

12. Health & Safety Code §§ 127420(a), 127454(a).

assistance policies. The notices must also include a contact person or office and phone number that patients may use to obtain information on applying.¹³ Such notice must be provided in the language spoken by the patient if that language is spoken by 5% or more of the patients served by the hospital.¹⁴ Hospitals and emergency physician must also provide patients with a referral to a local consumer assistance center housed at legal services offices.¹⁵

a. The Written Policy

Each hospital must have an understandable written policy regarding discount payment plans and charity care.¹⁶ The written policy must include:

- A description of the process for determining patient eligibility, clearly stating the criteria based on income as a percentage of the federal poverty level;
- An extended payment plan option to allow discounted payments to be made over time;
- Notification that the terms of the payment plan can be negotiated between the hospital and patient, and that the hospital will use the reasonable payment plan formula if the hospital and patient are unable to agree on the terms (see section 6 below);
- The name of the designated executive level staff person to contact if a dispute arises;
- Notification that emergency physicians must also provide discounts to uninsured and underinsured patients with incomes below 350% FPL.¹⁷

b. Finding Hospital Financial Assistance Policies

Advocates who are having difficulty obtaining the policy from the hospital itself should know that these policies must be submitted to the Office of Statewide Health

13. Health & Safety Code §§ 127420(b), 127454(b).

14. See Health & Safety Code § 127410(a) referring to Insurance Code § 12693.30 which incorporates the Dymally-Alatorre Bilingual Services Act. See Government Code § 7290 et seq., specifically § 7296.2.

15. Health & Safety Code §§ 127420(b)(4), 127454(b)(4)(A).

16. Health & Safety Code § 127405(a)(1)(A).

17. Health & Safety Code § 127405(a)(1)(A)-(B).

Planning and Development (OSHPD) biennially or whenever a significant change is made, and OSHPD must make this information available to the public.¹⁸ OSHPD posts hospital financial assistance policies and applications on a searchable website so that patients can have access to the policies and compare them. This resource may be found at <https://syfphr.oshpd.ca.gov/>.

Advocacy Tip: If a hospital claims that its financial assistance policy has changed, you should hold them to the policy posted on the OSHPD website as this public posting is legally required.

c. Requirements for Emergency Physicians

Emergency physicians must also provide notice of their offered discounts. If the emergency physician uses the following notice in any billing, that emergency physician has complied with required notice requirement: “If you are uninsured or have high medical costs, please contact ____ (name of person responsible for discount payment policy) at ____ (area code and phone number) for information on discounts and programs for which you may be eligible, including the Medi-Cal program. If you have coverage, please tell us so that we may bill your plan.”¹⁹

Alternatively, the emergency physician can comply with the notice requirement by providing information about discounts upon request and printing on the bill the following in 14-point bold type: “If uninsured or high medical bill, call re: discount.”²⁰

5. Applying for a Discount

Patients do need to cooperate with the hospital to be eligible for discounted payments and provide documentation of income and health care coverage.²¹

18. Health & Safety Code § 127435. OSHPD has enacted regulations that govern how hospitals must submit their financial assistance policies and applications to the department. They may be found at 22 CCR § 96040 et seq.

19. Health & Safety Code § 127454(c)(1).

20. Health & Safety Code § 127454(c)(2).

21. Health & Safety Code §§ 127405(e), 127452(d).

However, for either charity care or discount payment plans, the hospital may only require patients to submit recent pay stubs or income tax returns.²² When determining eligibility for charity care only, hospitals may ask for information about all monetary assets, except for retirement or deferred compensation plans.²³ To verify the value of such monetary assets, a hospital may require a patient to provide authorization to obtain the patient's account information from financial or commercial institutions.²⁴ If a patient is only getting a discount from a hospital, monetary assets do not matter and the patient may not be required to divulge such information. Real property, such as a patient's home, should never matter. Additionally, hospitals may not include residency or immigration status requirements for eligibility; any requests for such information are inappropriate.

Emergency physicians may rely on the determination made by the hospital where the emergency care was provided or they may ask for recent pay stubs, income tax returns, or a self-attestation; emergency physicians are prohibited from asking for other types of documentation.²⁵

The information gathered from the documentation provided by the patient may not be used for collection activities by either the hospital or an emergency physician.²⁶

22. Health & Safety Code § 127405(e)(1).

23. Health & Safety Code § 127405(e)(2).

24. Health & Safety Code § 127405(e)(2).

25. Health & Safety Code § 127452(d)(1).

26. Health & Safety Code §§ 127405(e)(3), 127452(d)(2).

Advocacy Tip: If patients apply or have a pending application for another health coverage program at the time they apply for charity or discounted care at the hospital, the application does not, in and of itself, preclude eligibility.²⁷ Advocates should be aware though that many hospitals do require patients to apply for Medi-Cal and other programs before offering a discount and in fact are required to inform patients as to how they might apply for government sponsored programs and provide applications for such programs.²⁸ Patients who apply for Medi-Cal may still end up with a high share of cost or may be denied all together and therefore would still need assistance from the hospital.²⁹ Similarly, while it might be good practice for the hospital to inform the patient of the availability of Covered California policies, in most cases such coverage would not be available until after a plan is chosen and paid for, and therefore the plan would not cover the hospital bill in question.³⁰

6. Reasonable Payment Plans

If the hospital determines that the patient is eligible for a discount payment plan (but not eligible for charity care), the expected payment for a patient should be limited to the amount a hospital would expect to receive, in good faith, from government-sponsored health benefit programs the hospital participates in. If no established payment is provided by a government sponsored health benefit program for the service provided, the hospital should establish a discounted payment.

When the hospital and patient cannot agree on payment plan during the negotiation process, the hospital must offer a “reasonable payment plan” to all patients meeting the eligibility requirements. This payment plan will require that monthly payments do not exceed ten percent of a patient’s family income for a month, excluding

27. Health & Safety Code § 127420(b)(5)(C).

28. Health & Safety Code § 127420(b)(4). Emergency physicians must also notify patient that they may be eligible for a government-sponsored program but do not need to provide an application. Health & Safety Code § 127454(b)(3).

29. Some patients with a Medi-Cal share of cost would meet the definition of underinsured.

30. Of course, if it turns out a patient had been wrongly denied Covered California coverage recently, the patient may be able to get retroactive coverage through the appeals process.

deductions for essential living expenses.³¹

“Essential living expenses” are defined as expenses for any of the following: rent or housing payments and maintenance, food and household supplies, utilities and telephone, clothing, medical and dental payments, insurance, school or child care, child or spousal support, transportation and auto expenses (including insurance, gas and repairs), installment payments, laundry and cleaning expenses, and other extraordinary expenses.³² Once such expenses are taken into account, the remaining 10% may be very low. Patients can, however, agree to pay more if they wish to, as many patients do not want to remain in debt for a long period of time.

Emergency physicians are also required to offer a negotiable extended payment plan. If the emergency physician and patient cannot reach an agreement on the amount of the payment, then the emergency physician must instead use a reasonable payment formula, similar to the methodology used for the hospitals, when determining the amount of the monthly payment. Emergency physicians are entitled to a \$10 a month minimum payment regardless of the amount a patient has left over for essential living expenses.³³

7. Collection Practices

Hospitals and emergency physicians must have a written policy about when and under whose authority patient debt is advanced for collection.³⁴ A hospital that uses an affiliate, subsidiary or external collection agency to collect debt must have an agreement with that entity requiring them to comply with the hospital’s reasonable payment plan.³⁵

Hospitals may not report patients who are not covered by insurance or who have medical costs that exceed 10% of their family’s annual income to a credit reporting agency. Hospitals also may not commence a lawsuit prior to 150 days after the

31. Health & Safety Code §§ 127405(b), 127455(f).

32. Health & Safety Code §§ 127400(i), 127450(k).

33. Health & Safety Code § 127455(f).

34. Health & Safety Code §§ 127425(a), 127455(a).

35. Health & Safety Code §§ 127425(b), 127455(b).

initial bill.³⁶ Hospitals cannot send a bill to a collection agency or other assignee if the patient is attempting to qualify for financial assistance, attempting to negotiate a payment plan, or is making regular partial payments, unless the referral to the outside agency also complies with these collection guidelines.³⁷

Hospitals or their assignees may not begin collection activities against a patient without first giving a statement of the availability of credit counseling services and a short written description of the patient's rights under state and federal fair debt collection laws.³⁸ Hospitals, emergency physicians, and their assignees cannot report the bill to credit reporting agencies while a patient is trying to settle a bill in good faith.³⁹ Hospitals, emergency physicians and their assignees also generally cannot use wage garnishments and liens on primary residences as a means of collecting hospital bills against patients who qualify for financial assistance.⁴⁰ Wage garnishments may only be used after a noticed motion to the court demonstrating that the patient has the ability to make payments on the judgment and a court holds a hearing regarding the patient's ability to pay in light of other obligations and medical services needed.⁴¹ The sale of a primary residence may only be forced after the patient and his or her spouse dies and the patient's children have reached age 18 and are able to care for themselves outside of the residence.⁴²

If a patient fails to make consecutive payments for 90 days and the provider wants to continue to seek payments from the patient, the hospital, emergency physician, or their assignee must contact the patient, by phone and in writing, informing the patient that the extended payment plan may be declared inoperative and give the patient the chance to renegotiate a plan.⁴³ Patients who can no longer make the payments under the original payment plan are allowed to renegotiate a payment plan.⁴⁴ However, if a patient fails to renegotiate a payment plan, the patient is still required to make all payments, pursuant to the reasonable payment plan. If the

36. Health & Safety Code §§ 127425(d), 127455(c).

37. Health & Safety Code §§127425(e), 127455(d).

38. Health & Safety Code § 127430.

39. Health & Safety Code §§127425(e), 127455(d).

40. Health & Safety Code §§ 127425(f)(1), 127455(e)(1).

41. Health & Safety Code §§ 127425(f)(2)(A), 127455(e)(2)(A).

42. Health & Safety Code §§ 127425(f)(2)(B), 127455(e)(2)(B).

43. Health & Safety Code §§ 127425(h), 127455(f).

44. Health & Safety Code §§ 127425(g), 127455(f).

patient continues to fail to make payments and the hospital, collection agency, or assignee declares the extended payment plan inoperative, it may then report the information to a consumer credit reporting agency or commence a civil action against the patient.⁴⁵

B. New IRS Regulations for Non-Profit Hospitals on Hospital Financial Assistance

As part of the Affordable Care Act, the IRS recently adopted a regulation regarding the financial assistance policies of non-profit hospitals. Hospitals had until the beginning of 2016 to come into compliance with the final regulations.⁴⁶

The IRS regulations are similar to the California Hospital Fair Pricing Act, but the IRS regulations only apply to non-profit hospitals. Hospitals that fail to comply may ultimately have their tax-exempt status revoked after a thorough investigation as to the history and nature of the failure – minor errors will not cause revocation of such status.⁴⁷

In general, the Hospital Fair Pricing Act is more prescriptive and thus more helpful for advocates. There are, however, a few additional requirements in the IRS regulations that do not exist in the Hospital Fair Pricing Act.

- The IRS regulations establish a time period during which a hospital *must* consider an application for financial assistance – 240 days after the first bill is sent.⁴⁸ The Hospital Fair Pricing Act is silent on this, though advocates have convinced hospitals to accept applications much later.
- The IRS regulations require hospitals to maintain a list of any providers delivering emergency or other medically necessary care in the hospital that specifies which providers are covered by the hospital facility's financial assistance policy and which are not.⁴⁹
- The IRS regulations require hospitals to maintain a list of all the actions the

45. Health & Safety Code §§ 127425(g), 127455(f).

46. 26 C.F.R. § 1.501(r)-7.

47. 26 C.F.R. § 1.501(r)-2.

48. 26 C.F.R. § 1.501(r)-1(b)(3).

49. 26 C.F.R. § 1.501(r)-4(b)(1)(iii)(F).

hospital may take to collect on the bill.⁵⁰

- The IRS regulations forbid deferring, denying, or requiring a payment before providing medically necessary care because of a patient's previous nonpayment of one or more bills covered under the hospital facility's financial assistance policy.⁵¹

The IRS regulations also have more specifics on methods of application, methods of contact, and reasonable attempts on the part of the hospital to determine eligibility.⁵² As these regulations are brand new, it is unclear how actively the IRS will enforce them, but it is another tool advocates should be aware of.

50. 26 C.F.R. § 1.501(r)-4(b)(1)(iii)(D), (b)(4)(ii).

51. 26 C.F.R. § 1.501(r)-6(b)(1)(iii).

52. See 26 C.F.R. § 1.501(r)-6.