

## Hospital Charity Care and Discount Payment Plan Obligations

Thanks to the impassioned advocacy of legal services and other health advocates in the [press](#) and at hearings convened by the state Attorney General, the Attorney General recently denied requests by Verdugo Hills and two other California hospitals to reduce their charity care levels. Western Center will continue to work with our partners to ensure this success will help prevent or discourage requests from other hospitals to weaken their charity care and discount payment plan obligations given the over 3 million Californians who lack health insurance or who have inadequate insurance that saddles them with medical bills that they cannot afford. We thought it timely to review charity care consumer protections in this month's Health Tip.

**California's Hospital Fair Pricing Act** (Health and Safety Code Sections 127400, *et seq.*), requires hospitals and emergency physicians to offer charity care to patients in need. The Act, its requirements, and specific citations to its provisions are provided in detail in Chapter 8 of [WCLP's 2016 California Health Coverage Guide](#). Here is a summary of the Act's main provisions:

- All uninsured patients or underinsured patients whose **incomes are at or below 350** percent of the federal poverty level qualify (but hospitals can and some do use a higher income cap);
- **All hospital bills are covered**, not just those for emergency services;
- Hospitals must offer financially eligible patients either **charity care (free hospital care) or a discount payment plan** that limits the patient payment to whatever the hospital would receive from the highest paying government-sponsored program such as Medicare;
- Hospitals must have an **understandable written policy** regarding discount payment plans and charity care; the written policy must include:
  - A detailed description of the criteria and process for determining patient eligible for charity care/discount payment plans;
  - An extended payment plan option allowing discounted payments over time;
  - Notification that the hospital and patient can negotiate the terms of the payment plan and that the hospital will use a "reasonable payment plan" standard as defined in Health & Safety Code § 127400(i) which limits monthly payments to not more than 10 percent of a patient's family income *excluding* deductions for essential living expenses such as rent or housing payments, food and transportation expenses;
  - The name of the executive level hospital staff person to contact if a dispute arises;

- Notification that emergency physician must also provide discounts to eligible patients.
- NOTE: The Office of Statewide Health Planning and Development (OSHPD) posts hospital financial assistance policies and applications at <https://syfphr.oshpd.ca.gov/>.
- Hospitals are required to make all reasonable efforts to obtain from a patient information on any insurance that may cover the patient's bills. If the patient does not provide evidence of coverage by the time of billing or if the patient requests information about charity care or a discounted payment plan, the hospital must provide the patient with a **clear and conspicuous notice** containing the following information:
  - The charges;
  - How to apply for government health care benefits;
  - The hospital's financial assistance policies;
  - The contact person or office and phone number for applying for financial assistance; and
  - A referral to a local consumer assistance center housed at a legal services office.

If 5 percent or more of the patients served by the hospital speak the patient's language, the hospital must provide that notice to the patient in that language.

- Hospitals must have a **written policy on its collection practices** and a hospital that uses an affiliate or external collection agency must have an agreement with that entity obligating the entity to comply with the hospital's reasonable payment plan. **Hospitals may NOT:**
  - Report patients who are covered by insurance or who have medical costs that exceed 10 percent of the family's annual income to credit reporting agencies;
  - Start a lawsuit earlier than 150 days after the initial medical bill;
  - Refer a bill to a collection agency if, among other things, the patient is attempting to qualify for financial assistance or negotiate a payment plan, unless the referral also complies with the foregoing limits;
  - Begin collection activities without first giving the patient a statement of the availability of credit counseling services and a short written description of the patient's rights under state and federal law;
  - Use wage garnishments or liens on the patient's primary residence except in certain prescribed circumstances.

**Most of these charity care/discount payment plan rules apply to bills from emergency physicians** as well, with some important differences. For example, emergency physicians may not charge more than 50% of the median of billed charges to patients eligible for financial assistance.

As part of the Affordable Care Act, the **IRS adopted regulation 26 C.F.R. § 1.501(r)** regarding hospital financial assistance policies. But the IRS regulation **only applies to non-profit hospitals** and is not as prescriptive as

the California Hospital Fair Pricing Act. Still, some additional requirements the IRS regulation imposes on non-profits hospitals are:

- A time period –240 days after the first bill is sent—during which a hospital must consider an application for financial assistance;
- Maintaining a list of any providers delivering emergency or other medically necessary care specifying which are covered by the hospital financial assistance policy and which are not;
- Maintaining a list of all the actions a hospital may take to collect on a bill; and
- Forbidding a hospital from requiring payment before providing medically necessary care due to a patient’s previous nonpayment of one or more bills covered under the hospital’s financial assistance policy.

Hospitals assert that the aforementioned 240 days period is the outer limit, but since California law is silent on a deadline, we view the 240 days as the *minimum* time period during which hospitals must consider a financial assistance application, except to the extent non-profits hospitals must comply with IRS non-profit rules.

Don’t forget to share [HCA’s consumer brochure on charity care](#) with clients and community partners.

NOTE: Applying for Medi-Cal at the same time as charity care/discount payment plan does not, in and of itself, preclude eligibility for either. Remember to check clients with hospital bill debt for Medi-Cal eligibility given Medi-Cal’s three month retroactive applicability.

We know that many legal services health advocates around the state regularly battle with hospitals on behalf of their clients over the foregoing requirements and other consumer protection laws like the federal Fair Debt Collection Practices Act, usually in the context of defending debt collection lawsuits. And many advocates succeed in reducing patients’ high hospital debts and help save patients from bankruptcy. We will continue to support you in this important work and look forward to partnering with you on ways to protect and enforce hospital charity care and discount payment plan obligations on a more systemic basis.