

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 803

(Senator Kelley, *et al.*)

Finance

Health and Government Operations

**Health Facilities - Hospitals - Disclosure of Outpatient Facility Fees (Facility Fee
Right-to-Know Act)**

This bill requires a hospital that charges an outpatient facility fee to provide a patient with a written notice containing specified information. A hospital may not charge, bill, or attempt to collect an outpatient facility fee unless the patient was given a notice in accordance with the bill's requirements. By December 1, 2019, the Health Education and Advocacy Unit (HEAU) within the Office of the Attorney General (OAG), in consultation with the Health Services Cost Review Commission (HSCRC), the Maryland Hospital Association (MHA), and other stakeholders, must develop (1) a uniform disclosure form to notify patients of outpatient facility fees and (2) a process for determining and updating a range of fees and fee estimates, as specified. By July 31, 2022, OAG, in consultation with HSCRC and MHA, must report to specified committees of the General Assembly on the development and use of the uniform disclosure form required under the bill.

Fiscal Summary

State Effect: HEAU can work with relevant stakeholders to develop the required disclosure form and a process for developing and updating the ranges of fee estimates with existing budgeted resources. HSCRC can determine the range of outpatient facility fees and fee estimates and otherwise implement the bill with existing budgeted resources. Revenues are not affected.

Local Effect: The bill is not anticipated to materially affect local government finances or operations.

Small Business Effect: None.

Analysis

Bill Summary: “Electronically” means a secure digital or electronic transmission in compliance with federal and State law, including by (1) patient Internet portal; (2) encrypted electronic mail; or (3) text message with a link to an encrypted notice.

“Outpatient facility fee” means a rate approved by HSCRC charged by a hospital for outpatient services provided in a building on the campus of a hospital in which hospital services are provided that is separate and distinct from a fee for professional services.

“Patient” includes (1) a person authorized to consent to health care for an individual consistent with any authority granted; (2) an individual who is a minor, if the minor seeks treatment to which the minor has the right to consent and has consented; (3) a parent, guardian, custodian, or representative of an individual who is a minor; and (4) a person authorized to consent to health care for an individual who is a minor consistent with any authority granted.

Required Contents of Notice

The written notice required under the bill must include the following information:

- that the patient’s appointment will take place at the hospital;
- that the hospital will charge an outpatient facility fee that is separate from the professional fee charged by the provider because the appointment is at the hospital;
- whether the same professional medical services could be obtained from the provider at a location that is not at the hospital;
- that the patient should contact the patient’s insurance carrier, if any, to determine the network status of the location that is not at the hospital at which the same professional medical services can be obtained from the provider;
- that receiving the professional medical services at the hospital may result in greater financial liability than receiving the professional medical services at a location not at the hospital;
- that the patient should contact the patient’s insurance carrier, if any, to determine the patient’s insurance coverage and estimated financial responsibility, including copayments, coinsurance, and deductible amounts for the outpatient facility fee; and

- that the patient should contact HSCRC if the patient has a complaint disputing a hospital charge for an outpatient facility fee.

The required notice must be in plain language that may be reasonably understood by a patient who does not possess special knowledge regarding medical billing or hospital facility fee charges. If a patient does not speak English or requires the notice to be in an alternative format, the hospital must provide the notice in a language or format that is understood by the patient to the extent practicable.

Beginning July 1, 2020, the written notice must include (1) the amount of the outpatient facility fee, if known, otherwise the range of outpatient facility fees the hospital may charge for the appointment, including an estimate based on typical or average facility fees for the same or similar appointments and (2) that a fee range is provided because the actual amount of the facility fee incurred will depend on the services actually provided.

HEAU and HSCRC must jointly (1) develop a uniform disclosure form to notify patients of outpatient facility fees and include the contact information for HEAU and HSCRC and (2) develop the *process* for determining the range of hospital outpatient facility fees and fee estimates to be provided. HSCRC must determine the range of hospital outpatient facility fees and fee estimates to be provided. Each hospital that charges an outpatient facility fee must (1) use the uniform disclosure form developed by HEAU and HSCRC and (2) use the range of hospital outpatient facility fees and fee estimates determined by HEAU and HSCRC.

Required Annual Report

Each hospital must annually report to HSCRC a list of the hospital-based, rate-regulated outpatient services provided by the hospital. HSCRC must annually (1) post the list on its website and (2) provide the list of the hospital-based, rate-regulated outpatient services reported by each hospital to the Maryland Insurance Administration and HEAU.

Required Form and Timing of Notice and Acknowledgement of Receipt

When an appointment is made in person or by telephone, *oral* notice must be given at the time the appointment is made. When an appointment is made electronically or using a website, *written* notice must be provided at that time. Regardless of how the appointment is made, written notice also must be sent to the patient *electronically* at the time the appointment is made. However, if a patient refuses electronic communication, written notice must instead be sent to the patient by first-class mail.

Before professional medical services are provided on the date of the appointment, the patient must acknowledge in writing that the notice required under the bill was provided at the time the appointment was made.

Current Law/Background: Statute does not require a hospital that charges an outpatient facility fee to provide a patient with a written notice. Generally, a hospital must provide oral and written notice to a patient of the patient's outpatient status, the billing implications of the outpatient status, and the impact of the outpatient status on the patient's eligibility for Medicare rehabilitation services if (1) the patient receives on-site services from the hospital for more than 23 consecutive hours; (2) the on-site services received by the patient include a hospital bed and meals that have been provided in an area of the hospital other than the emergency room; and (3) the patient is classified as an outpatient at the hospital for observation rather than an admitted inpatient.

Additionally, on request of a patient made before or during treatment, a hospital must provide a written estimate of the total charges for the hospital services, procedures, and supplies that reasonably are expected to be provided and billed to the patient by the hospital. The written estimate must state clearly that it is only an estimate and actual charges could vary. A hospital may restrict the availability of a written estimate to normal business office hours.

Additional Information

Prior Introductions: None.

Cross File: HB 849 (Delegate R. Lewis, *et al.*) - Health and Government Operations.

Information Source(s): Maryland Department of Health; Office of the Attorney General; Department of Legislative Services

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