

Department of Legislative Services
 Maryland General Assembly
 2024 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 1103

(The President)(By Request - Office of the Attorney
 General)

Finance

Health and Government Operations

Hospitals and Related Institutions – Outpatient Facility Fees

This bill requires the Health Services Cost Review Commission (HSCRC), in consultation with specified entities, to study and make recommendations regarding hospital outpatient facility fees and submit a preliminary report to the Senate Finance Committee and the House Health and Government Operations Committee by December 1, 2024, and December 1, 2025, respectively. HSCRC must also convene a workgroup with specified entities to advise and make recommendations on expanding the application of the hospital outpatient facility fees notice requirement and submit a report to the Senate Finance Committee and the House Health and Government Operations Committee by December 1, 2024. The bill specifies that Division II of the State Finance and Procurement Article does not apply to HSCRC when completing the required study and convening the required workgroup. The bill also alters the required contents of the hospital outpatient facility fee notice. **The bill takes effect July 1, 2024.**

Fiscal Summary

State Effect: HSCRC special fund expenditures increase by \$75,000 in FY 2025 and 2026 only for contractual services to complete the required reports. The Maryland Department of Health (MDH), the Maryland Insurance Administration (MIA), and the Health Education and Advocacy Unit (HEAU) within the Office of the Attorney General can provide specified input with existing budgeted resources. Revenues are not affected.

(in dollars)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Revenues	\$0	\$0	\$0	\$0	\$0
SF Expenditure	75,000	75,000	0	0	0
Net Effect	(\$75,000)	(\$75,000)	\$0	\$0	\$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: Uncodified language requires HSCRC, in consultation with specified entities, to study and make recommendations, including legislative recommendations, regarding:

- the nature of costs underlying hospital outpatient facility fees and how similar costs are recovered in other health care settings;
- the drivers of hospital facility costs that are unique to hospitals and are not reflected in other health care settings;
- the magnitude and impact of hospital facility fee charges for hospitals, payers, and consumers;
- industry practices for seeking authority for an outpatient location to be approved as “at the hospital” and thereby subject to rate regulation;
- alternative mechanisms or revisions to the billing of the facility fees that would allow hospitals to recover costs while protecting individual consumers from high facility fee bills, maintaining access to health care services, and addressing health equity concerns;
- the interaction of the alternative mechanisms or revisions (1) with the State’s Total Cost of Care (TCOC) model obligations to the federal government, including any impact on Medicare total cost of care savings if outpatient facility fees are eliminated or reduced and (2) on Medicaid, Medicare, and commercial insurance, including consumer out-of-pocket costs, with a particular focus on the interaction with high-deductible commercial insurance products;
- published material on efforts in other states, by federal Medicare and Medicaid regulatory agencies, and by national advocacy organizations related to the regulation or minimization of facility fees, and the potential effects that similar efforts may have on health care costs in the State, including consumers’ out-of-pocket costs;
- the regulation of fees charged by out-of-state hospital outpatient facilities located in the State; and
- the effectiveness of the notice of hospital outpatient facility fees that is provided to consumers.

HSCRC must consult with MDH, MIA, HEAU, health care payers, consumer advocacy groups and representatives of (1) hospitals, including out-of-state hospitals providing
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outpatient services to patients in facilities in the State; (2) physician practices that provide services in hospital outpatient settings; and (3) employer groups.

Uncodified language also requires HSCRC, in consultation with specified entities, to convene a workgroup to (1) advise HSCRC on expanding the application of the hospital outpatient facility fees notice requirement to all outpatient services, including services provided by out-of-state hospitals at outpatient locations in the State and (2) consider the impact of expanding the facility fee notice requirement on consumers, including Medicaid recipients and consumers with recurring appointments, with consideration given to the impact on providers and payers.

The workgroup must convene MDH, HEAU, health care payers, consumer advocacy groups and representatives of (1) hospitals, including out-of-state hospitals providing services to patients in facilities in the State; (2) physician practices that provide services in hospital outpatient settings; and (3) employer groups.

Current Law: “Outpatient facility fee” means a hospital outpatient charge approved by HSCRC for an outpatient clinic service, supply, or equipment, including the service of a nonphysician clinician. “Outpatient facility fee” does not include a charge billed for services delivered in an emergency department or a physician fee billed for professional services provided at the hospital.

Notice – Required Form, Timing, and Acknowledgement of Receipt

Chapters 365 and 366 of 2020 require 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 specified notice. Due to the COVID-19 pandemic, Chapters 29 and 31 of 2021 delayed the implementation of these requirements until January 1, 2022.

The required written notice must include (1) relevant identifying information (for both the facility and patient); (2) the expected fee; (3) another location that does not charge a facility fee, if applicable; (4) insurance information regarding facility fees; (5) procedures for complaints; and (6) a section for the patient to acknowledge, by signature, receipt of the information on facility fees and related 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.

A hospital must determine the range of hospital outpatient facility fees and fee estimates to be provided in the required notice. The facility fees and fee estimates must be based on

typical or average facility fees for the same or similar appointments, consistent with the hospital's most recent rate order as approved by HSCRC. Each hospital that charges an outpatient facility fee must use the range of hospital outpatient facility fees and fee estimates determined by the hospital.

When an appointment is made in person or by telephone, oral notice of information available in the form 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.

When lack of notice is alleged in a consumer complaint, HSCRC must give consideration in its investigatory and audit procedures as to whether notice was not feasible due to circumstances beyond the hospital's control.

Required Reporting

Each year, each hospital must report to HSCRC a list of hospital-based, rate-regulated outpatient services provided by the hospital. HSCRC must post on its website and provide MIA and HEAU the list of hospital-based, rate-regulated outpatient services provided by each hospital.

Health Services Cost Review Commission

HSCRC is an independent commission within MDH charged with constraining hospital growth and establishing hospital rates to promote cost containment, access to care, equity, financial stability, and hospital accountability. HSCRC oversees acute and chronic care hospitals. HSCRC is responsible for implementing TCOC, the successor to the Maryland All-Payer Model Contract, under which it regulates hospital population-based revenues (commonly referred to as global budgets).

State Finance and Procurement

Division II of the State Finance and Procurement Article addresses general procurement laws. Division II also addresses rules governing source selection, procurement preferences, contract administration and dispute resolution, suspension and debarment of contractors,

and State and local subdivisions. Although the procurement law applies broadly to the executive branch, for various policy reasons, certain types of procurement and certain units of State government are exempt from its provisions.

State Expenditures: Under the bill, HSCRC must (1) study and make recommendations regarding hospital outpatient facility fees and submit a preliminary report by December 1, 2024, and a final report by December 1, 2025, and (2) convene a workgroup to advise and make recommendations on expanding the application of the hospital outpatient facility fees notice requirement and submit a report by December 1, 2024.

HSCRC advises that the study cannot be absorbed within existing resources and that contractual services are required to complete the study and submit the required reports. HSCRC estimates that the total cost for these contractual services is approximately \$150,000. Therefore, HSCRC special fund expenditures increase by \$75,000 in fiscal 2025, and \$75,000 in fiscal 2026 only.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 1149 (The Speaker)(By Request - Office of the Attorney General) - Health and Government Operations.

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

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