Department of Legislative Services

Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 538 (Senator Lam, *et al.*)
Finance

Health - Hospital-Based Facilities - Disclosure of Facility Fees

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This bill establishes numerous notice requirements for hospitals and health systems related to facility fees. A written notice required under the bill must be in plain language and in a form that may be reasonably understood by a patient who does not possess special knowledge regarding hospital or health system facility fee charges. A violation of the bill is an unfair or deceptive trade practice under the Maryland Consumer Protection Act (MCPA).

Fiscal Summary

State Effect: The bill is not anticipated to materially impact State finances or operations.

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

Small Business Effect: None.

Analysis

Bill Summary: "CPT E/M code" means the current procedural terminology evaluation and management code. "Facility fee" means a fee charged or billed by a hospital or health system for outpatient hospital services provided in a hospital-based facility that is (1) intended to compensate the hospital or health system for the operational expenses of the hospital or health system and (2) separate and distinct from a professional fee. "Professional fee" means a fee charged or billed by a provider for professional medical services provided in a hospital-based facility.

Required Notices and Content

If a hospital or health system charges a facility fee *without using* a CPT E/M code for outpatient services provided at a hospital-based facility, the hospital or health system must provide each patient with a written notice that includes:

- a statement that the hospital-based facility is part of a hospital or health system;
- a statement that the hospital or health system charges a facility fee that may be separate from the professional fee;
- if professional medical services are provided by an affiliated provider, any professional fee likely to be charged; otherwise, if the exact type and extent of the professional medical services needed are not known, or the terms of a patient's health insurance coverage are not known, an estimate of the patient's financial liability based on typical or average charges, including the facility fee;
- a statement that the patient's actual financial liability will depend on the professional medical services actually provided;
- an explanation that the patient may incur financial liability that is greater than the patient would incur if the professional medical services were not provided in a hospital-based facility; and
- a statement that a patient covered by a health insurance policy should contact the health insurer for additional information regarding the hospital's or health system's charges and fees, including the patient's potential financial liability, if any, for the charges and fees.

If a hospital or health system charges a facility fee *using* a CPT E/M code for outpatient services provided at a hospital-based facility at which a professional fee is also expected to be charged, the hospital or health system must provide each patient with a written notice that contains the information described above, as well as the amount of the patient's potential financial liability, including any facility fee likely to be charged.

For nonemergency care, if a patient's appointment is scheduled to occur 10 days or more after the appointment is made, the written notice must be sent to the patient by first-class mail, encrypted email, or a secure patient Internet portal not less than 3 days after the appointment is made. If a patient's appointment is scheduled to occur less than 10 days after the appointment is made or the patient arrives without an appointment, the written notice must be hand delivered to the patient when the patient arrives at the hospital-based facility.

For emergency care, the written notice must (1) be provided to the patient as soon as practicable after the patient is stabilized or (2) if the patient is determined not to have an emergency medical condition, be provided before the patient leaves the hospital-based

facility. If the patient is unconscious, under great duress, or for any other reason unable to read and understand the notice provided, the notice must be provided to the patient's representative as soon as practicable.

Required Content of Initial Billing Statements

Each initial billing statement to a patient from a hospital or health system that includes a facility fee must:

- clearly identify the fee as a facility fee billed separately from any professional fee;
- provide the corresponding Medicare facility fee reimbursement rate for the same service as a comparison; otherwise, if there is no corresponding Medicare facility fee, provide the approximate amount Medicare would have paid the hospital or hospital-based facility for the facility fee on the billing statement, or the percentage of the hospital's charges that Medicare would have paid the hospital or hospital-based facility for the facility fee;
- include a statement that the facility fee is intended to cover the hospital's or health system's operational expenses, and the patient's financial liability may have been less if the services had been provided at a facility not owned or operated by the hospital or health system; and
- include notice of the patient's right to request a reduction in the facility fee or any other portion of the bill and a telephone number that the patient may use to request a reduction.

Required Display of Notice

A hospital-based facility must prominently display a written notice stating that (1) the hospital-based facility is part of a hospital or health system and (2) if the hospital-based facility charges a facility fee, the patient may incur a financial liability greater than the patient would incur if the professional medical services were not provided in a hospital-based facility.

Required Notice to Patients of Group Practice Purchased by a Hospital or Health System

If a group practice is purchased by a hospital or health system resulting in the establishment of a hospital-based facility at which facility fees will likely be billed, within 30 days after the purchase, the hospital or health system must provide specified written notice, by first-class mail, of the purchase to each patient served by the former group practice within the prior three years. A hospital, health system, or hospital-based facility may not collect a facility fee until at least 30 days after the written notice is mailed to the patient.

Applicability

The bill's requirements do not apply with respect to a patient who is insured by Medicare or Medicaid, or receiving services under a workers' compensation plan established to provide medical services.

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.

Maryland Consumer Protection Act

An unfair, abusive, or deceptive trade practice under MCPA includes, among other acts, any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair, abusive, or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

The Consumer Protection Division of the Office of the Attorney General is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, issue a cease and desist order, or file a civil action in court. A merchant who violates MCPA is subject to a fine of up to $10,000 for each violation and up to $25,000 for each repetition of the same violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a

misdemeanor and, on conviction, is subject to a fine of up to $1,000 and/or imprisonment for up to one year.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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