

Department of Legislative Services
 Maryland General Assembly
 2020 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 875
 Finance

(Senator Feldman, *et al.*)

Hospitals - Financial Assistance Policies and Bill Collections

This bill alters required elements of hospital financial assistance policies, including the threshold for providing free medically necessary care. Each hospital must annually submit its policy and report specified information about patients who receive financial assistance to the Health Services Cost Review Commission (HSCRC). HSCRC must post each such policy and report on its website, compile them, and issue a hospital financial assistance report by December 1 each year. HSCRC must also establish a process for anyone to file a complaint against a hospital, medical creditor, or outside collection agency regarding the collection of a patient’s hospital bill. By January 1, 2021, HSCRC must model the impact of specified additional changes to hospital financial assistance policies and report its findings and recommendations regarding any impact on (1) the amount of hospital uncompensated care included in hospital rates and (2) the total cost of care for Medicare, the Medicaid, commercial insurers, and self-pay individuals.

Fiscal Summary

State Effect: Special fund expenditures increase by *as much as* \$372,500 in FY 2021; out-years reflect annualization and elimination of one-time costs. Special fund revenues increase beginning in FY 2021 to the extent higher or more fines are imposed on hospitals. To the extent hospital rates increase from additional uncompensated care, Medicaid expenditures (63% federal funds, 37% general funds) and associated federal matching fund revenues increase beginning in FY 2021 (not reflected below).

| (in dollars) | FY 2021 | FY 2022 | FY 2023 | FY 2024 | FY 2025 |
|----------------|-------------|------------|------------|------------|------------|
| SF Revenue | - | - | - | - | - |
| SF Expenditure | \$372,500 | \$86,800 | \$88,900 | \$92,000 | \$95,100 |
| Net Effect | (\$372,500) | (\$86,800) | (\$88,900) | (\$92,000) | (\$95,100) |

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:

Financial Assistance Policies

The bill expands the minimum requirements for each hospital's financial assistance policy to include (1) free medically necessary care to patients with a family income at or below 200% of the federal poverty level (FPL); (2) a payment plan available to uninsured patients with family income between 200% and 500% FPL; and (3) a mechanism for a patient to request the hospital reconsider a denial of free or reduced-cost care.

The financial assistance policy must provide presumptive eligibility for free medically necessary care to a patient who (1) lives in a household with children enrolled in the free and reduced-cost meal program; (2) receives Supplemental Nutrition Assistance Program (better known as SNAP) benefits; (3) receives Energy Assistance Program benefits; (4) receives Primary Adult Care Program benefits; (5) receives Special Supplemental Food Program for Women, Infants, and Children (better known as WIC) benefits; or (6) receives benefits from any other social service program as determined by the Maryland Department of Health and HSCRC.

Each hospital must provide oral notice of the hospital's financial assistance policy to the patient, the patient's family, or the patient's authorized representative before discharge and in each oral communication regarding collection of the hospital bill.

The notice each hospital must post informing patients of their right to apply for financial assistance must be in simplified language and provided in the patient's preferred language or other languages, as specified. Additionally, each hospital must include in its information sheet on the hospital's financial assistance policy a statement informing patients of the right to request and receive a written estimate of the total charges for nonemergency services, procedures, and supplies that are expected to be provided. The information sheet must be written in simplified language and provided in the patient's preferred language or other languages, as specified, and must be provided to the patient in each written communication regarding collection of the hospital bill.

Financial Assistance Eligibility

Each hospital must develop a procedure to determine a patient's eligibility for financial assistance, as specified. In addition to income-based criteria, hospitals may consider specified household monetary assets in determining eligibility for free and reduced-cost care under the financial assistance policy. Certain monetary assets that are convertible to cash must be excluded, and the amount excluded must be adjusted annually for inflation.

The bill specifies how a hospital must define household size and which individuals must be considered in determining the family income of a patient.

A hospital may not (1) ask or require a patient to disclose or verify their citizenship or immigration status to receive or apply for financial assistance; (2) withhold or deny financial assistance on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, gender identity, genetic information, or disability; or (3) impose a time limit to submit an application for free or reduced-cost care or to submit evidence of eligibility for free or reduced-cost care.

Patient Complaint Process and Civil Actions

HSCRC must establish a process for a patient or any member of the public to file a complaint against a hospital, medical creditor, or outside collection agency regarding the collection of a patient's hospital bill. Filing a complaint does not prevent an individual from exercising any right or seeking any remedy to which the individual may otherwise be entitled or filing a complaint with any other agency or a court.

An individual may bring an action in a court of competent jurisdiction (1) to recover for injury or loss sustained as the result of a violation of specified provisions of or any regulation adopted under the bill and (2) for injunctive or other equitable relief, as specified.

An individual who brings an action may also seek reasonable attorney's fees and costs and punitive damages. These remedies are in addition to any other statutory, legal, or equitable remedies that may be available. An individual or a governmental unit is not required to exhaust the administrative remedy before filing suit.

Penalties

If a hospital knowingly violates any provision or regulation adopted under the bill, HSCRC may impose a fine not to exceed \$100,000 per violation. A violation by a hospital or an outside collection agency is an unfair, abusive, and deceptive trade practice under the Maryland Consumer Protection Act (MCPA).

Current Law:

Hospital Financial Assistance and Hardship Policies

HSCRC requires each hospital to develop a financial assistance policy for providing free and reduced-cost care to patients who lack health care coverage or whose health care coverage does not pay the full cost of the hospital bill. Hospital financial assistance policies

must, at a minimum, provide free medically necessary care to patients with a family income at or below 150% FPL and reduced-cost medically necessary care to patients with family income above 150% FPL.

HSCRC may establish higher income thresholds for financial assistance, but financial assistance policies must provide reduced-cost medically necessary care to patients with family income less than 500% FPL who have a financial hardship. For patients eligible for reduced-cost medically necessary care, the hospital must apply the reduction that is most favorable to the patient, whether that is the reduced-cost policy or financial hardship policy.

If a patient has received reduced-cost medically necessary care due to financial hardship, the patient (or any immediate family member living in the same household) remains eligible for reduced-cost care when seeking further care at the same hospital for 12 months following the initial care. The patient or family member must inform the hospital of his or her eligibility.

Hospital Provision of Information

Each hospital must develop an information sheet that describes the financial assistance policy and a patient's right to apply for financial assistance as well as who to contact for assistance and specified additional information. This information must be provided to patients before discharge, with the hospital bill, and on request. Each hospital must ensure the availability of staff trained to work with patients, family, and authorized representatives to understand hospital bills, as well as the patients' rights and obligations regarding the bill, how to apply for Medicaid, and how to contact the hospital for additional assistance.

Penalties

If a hospital knowingly violates any provision or regulation related to financial assistance policies, HSCRC may impose a fine of up to \$50,000 per violation. Before imposing a fine, HSCRC must consider the appropriateness of the fine in relation to the severity of the violation.

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 that 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 within 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.

Background: HSCRC is an independent State agency charged with constraining hospital growth and establishing hospital rates to promote cost containment, access to care, equity, financial stability, and hospital accountability. The commission works to ensure efficient, high quality health care services are provided to individuals receiving care at a hospital in the State. HSCRC oversees acute and chronic care hospitals; the commission does not regulate physician fees.

State Revenues: HSCRC special fund revenues increase by an indeterminate amount beginning in fiscal 2021, to the extent the commission imposes existing fines (increased under the bill from \$50,000 to \$100,000) on hospitals for knowingly violating statutory provisions or regulations relating to hospital financial assistance policies. Imposition of existing penalty provisions under MCPA does not have a material impact on State finances.

State Expenditures: HSCRC special fund expenditures increase by as much as \$372,513 in fiscal 2021, which accounts for the bill’s October 1, 2020 effective date. This estimate reflects the cost of hiring one assistant chief to process patient billing complaints and compile required financial assistance policy reports from 46 hospitals. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

| | |
|--|------------------|
| Position | 1 |
| Salary and Fringe Benefits | \$67,147 |
| Contractual Services – Modeling and Report | 200,000 |
| Contractual Services – Billing Complaints | 100,000 |
| Operating Expenses | <u>5,366</u> |
| Total FY 2021 State Expenditures | \$372,513 |

HSCRC advises that contractual services will be required to establish initial processes to manage billing complaints (estimated at a one-time cost of \$100,000 in fiscal 2021). Additionally, contractual services will be required to conduct the modeling and data

analysis of potential additional changes to hospital financial assistance policies and complete the required report by January 1, 2021 (estimated at a one-time cost of \$200,000 in fiscal 2021).

Future year expenditures reflect a full salary with annual increases and employee turnover and ongoing operating expenses.

The bill expands the minimum requirements for each hospital's financial assistance policy, including requiring hospitals to provide free medically necessary care to patients with a family income of up to 200% FPL, rather than 150% FPL under current law. This may in turn increase uncompensated care and hospital rates from which uncompensated care is funded. Hospital rates are paid by all payers in the State. As such, expenditures for health insurers, Medicaid, and self-pay patients increase. However, the amount of any such impact cannot be reliably estimated. To the extent hospital rates increase, Medicaid expenditures (63% federal funds, 37% general funds) increase beginning in fiscal 2021. Federal fund revenues increase accordingly; the match is expected to decrease to 61% in fiscal 2022.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 1420 (Delegate R. Lewis, *et al.*) - Health and Government Operations.

Information Source(s): Maryland Department of Health; Department of Legislative Services

Fiscal Note History: First Reader - February 28, 2020
rh/jc

Analysis by: Amberly Holcomb

Direct Inquiries to:
(410) 946-5510
(301) 970-5510