

SENATE BILL 538

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9lr0837

By: **Senators Lam, Ellis, Klausmeier, Washington, and Young**

Introduced and read first time: February 4, 2019

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Health – Hospital–Based Facilities – Disclosure of Facility Fees**

3 FOR the purpose of requiring certain hospitals and health systems to provide each patient
4 with a written notice that includes certain information related to facility fees that
5 are charged for outpatient services provided at hospital–based facilities; requiring
6 that each initial billing statement to a patient from a hospital or health system that
7 includes a facility fee include certain information; requiring that a certain written
8 notice be provided to certain patients in a certain manner and at a certain time;
9 requiring that a certain notice be provided to a certain patient representative under
10 certain circumstances; requiring a hospital–based facility to display a certain written
11 notice in certain locations; requiring a hospital–based facility to hold itself out to the
12 public and payors as being hospital–based; requiring a hospital or health system that
13 purchased a group practice to provide a certain notice regarding facility fees to
14 certain patients within a certain time period; prohibiting hospitals, health systems,
15 or hospital–based facilities from collecting a certain facility fee until at least a certain
16 number of days after a certain notice is mailed to the patient; requiring that certain
17 notices be in plain language and in a certain form; providing that a violation of this
18 Act is an unfair or deceptive trade practice; providing for the application of this Act;
19 defining certain terms; and generally relating to hospital–based facilities and the
20 disclosure of facility fees.

21 BY adding to

22 Article – Health – General

23 Section 19–349.2

24 Annotated Code of Maryland

25 (2015 Replacement Volume and 2018 Supplement)

26 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
27 That the Laws of Maryland read as follows:

28 **Article – Health – General**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **19-349.2.**

2 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
3 INDICATED.

4 (2) "AFFILIATED PROVIDER" MEANS A PROVIDER THAT IS:

5 (I) EMPLOYED BY A HOSPITAL OR HEALTH SYSTEM;

6 (II) UNDER A PROFESSIONAL SERVICES AGREEMENT WITH A
7 HOSPITAL OR HEALTH SYSTEM THAT PERMITS A HOSPITAL OR HEALTH SYSTEM TO
8 BILL ON BEHALF OF THE PROVIDER; OR

9 (III) A CLINICAL FACULTY MEMBER OF A MEDICAL SCHOOL THAT
10 IS AFFILIATED WITH A HOSPITAL OR HEALTH SYSTEM IN A MANNER THAT PERMITS
11 THE HOSPITAL OR HEALTH SYSTEM TO BILL ON BEHALF OF THE CLINICAL FACULTY
12 MEMBER.

13 (3) "CPT E/M CODE" MEANS CURRENT PROCEDURAL TERMINOLOGY
14 EVALUATION AND MANAGEMENT CODE.

15 (4) "FACILITY FEE" MEANS A FEE CHARGED OR BILLED BY A
16 HOSPITAL OR HEALTH SYSTEM FOR OUTPATIENT HOSPITAL SERVICES PROVIDED IN
17 A HOSPITAL-BASED FACILITY THAT IS:

18 (I) INTENDED TO COMPENSATE THE HOSPITAL OR HEALTH
19 SYSTEM FOR THE OPERATIONAL EXPENSES OF THE HOSPITAL OR HEALTH SYSTEM;
20 AND

21 (II) SEPARATE AND DISTINCT FROM A PROFESSIONAL FEE.

22 (5) "HEALTH SYSTEM" MEANS:

23 (I) A PARENT CORPORATION OF ONE OR MORE HOSPITALS AND
24 ANY ENTITY AFFILIATED WITH THE PARENT CORPORATION THROUGH OWNERSHIP,
25 GOVERNANCE, MEMBERSHIP, OR OTHER MEANS; OR

26 (II) A HOSPITAL AND ANY ENTITY AFFILIATED WITH THE
27 HOSPITAL THROUGH OWNERSHIP, GOVERNANCE, MEMBERSHIP, OR OTHER MEANS.

28 (6) "HOSPITAL" HAS THE MEANING STATED IN § 19-301 OF THIS
29 SUBTITLE.

1 **(7) “HOSPITAL–BASED FACILITY” MEANS A FACILITY THAT IS OWNED**
2 **OR OPERATED, IN WHOLE OR IN PART, BY A HOSPITAL OR HEALTH SYSTEM WHERE**
3 **HOSPITAL OR PROFESSIONAL MEDICAL SERVICES ARE PROVIDED.**

4 **(8) “PROFESSIONAL FEE” MEANS A FEE CHARGED OR BILLED BY A**
5 **PROVIDER FOR PROFESSIONAL MEDICAL SERVICES PROVIDED IN A**
6 **HOSPITAL–BASED FACILITY.**

7 **(9) “PROVIDER” MEANS A PERSON WHO IS LICENSED, CERTIFIED, OR**
8 **OTHERWISE AUTHORIZED UNDER THE HEALTH OCCUPATIONS ARTICLE TO**
9 **PROVIDE HEALTH CARE SERVICES IN THE STATE.**

10 **(B) THIS SECTION DOES NOT APPLY WITH RESPECT TO A PATIENT WHO IS:**

11 **(1) INSURED BY MEDICARE OR MEDICAID; OR**

12 **(2) RECEIVING SERVICES UNDER A WORKERS’ COMPENSATION PLAN**
13 **ESTABLISHED TO PROVIDE MEDICAL SERVICES.**

14 **(C) IF A HOSPITAL OR HEALTH SYSTEM CHARGES A FACILITY FEE WITHOUT**
15 **USING A CPT E/M CODE FOR OUTPATIENT SERVICES PROVIDED AT A**
16 **HOSPITAL–BASED FACILITY, THE HOSPITAL OR HEALTH SYSTEM SHALL PROVIDE**
17 **EACH PATIENT WITH A WRITTEN NOTICE THAT INCLUDES:**

18 **(1) A STATEMENT THAT THE HOSPITAL–BASED FACILITY IS PART OF**
19 **A HOSPITAL OR HEALTH SYSTEM;**

20 **(2) A STATEMENT AT THE HOSPITAL OR HEALTH SYSTEM CHARGES A**
21 **FACILITY FEE THAT MAY BE SEPARATE FROM THE PROFESSIONAL FEE;**

22 **(3) (I) IF PROFESSIONAL MEDICAL SERVICES ARE PROVIDED BY**
23 **AN AFFILIATED PROVIDER, ANY PROFESSIONAL FEE LIKELY TO BE CHARGED; OR**

24 **(II) IF THE EXACT TYPE AND EXTENT OF THE PROFESSIONAL**
25 **MEDICAL SERVICES NEEDED ARE NOT KNOWN OR THE TERMS OF A PATIENT’S**
26 **HEALTH INSURANCE COVERAGE ARE NOT KNOWN WITH REASONABLE CERTAINTY,**
27 **AN ESTIMATE OF THE PATIENT’S FINANCIAL LIABILITY BASED ON TYPICAL OR**
28 **AVERAGE CHARGES FOR VISITS TO THE HOSPITAL–BASED FACILITY, INCLUDING THE**
29 **FACILITY FEE;**

30 **(4) A STATEMENT THAT THE PATIENT’S ACTUAL FINANCIAL**
31 **LIABILITY WILL DEPEND ON THE PROFESSIONAL MEDICAL SERVICES ACTUALLY**

1 PROVIDED TO THE PATIENT;

2 (5) AN EXPLANATION THAT THE PATIENT MAY INCUR FINANCIAL
3 LIABILITY THAT IS GREATER THAN THE PATIENT WOULD INCUR IF THE
4 PROFESSIONAL MEDICAL SERVICES WERE NOT PROVIDED IN A HOSPITAL-BASED
5 FACILITY; AND

6 (6) A STATEMENT THAT A PATIENT COVERED BY A HEALTH
7 INSURANCE POLICY SHOULD CONTACT THE HEALTH INSURER FOR ADDITIONAL
8 INFORMATION REGARDING THE HOSPITAL'S OR HEALTH SYSTEM'S CHARGES AND
9 FEES, INCLUDING THE PATIENT'S POTENTIAL FINANCIAL LIABILITY, IF ANY, FOR
10 THE CHARGES AND FEES.

11 (D) IF A HOSPITAL OR HEALTH SYSTEM CHARGES A FACILITY FEE USING A
12 CPT E/M CODE FOR OUTPATIENT SERVICES PROVIDED AT A HOSPITAL-BASED
13 FACILITY AT WHICH A PROFESSIONAL FEE IS ALSO EXPECTED TO BE CHARGED, THE
14 HOSPITAL OR HEALTH SYSTEM SHALL PROVIDE EACH PATIENT WITH A WRITTEN
15 NOTICE THAT INCLUDES:

16 (1) THE INFORMATION LISTED UNDER SUBSECTION (C) OF THIS
17 SECTION; AND

18 (2) THE AMOUNT OF THE PATIENT'S POTENTIAL FINANCIAL
19 LIABILITY, INCLUDING ANY FACILITY FEE LIKELY TO BE CHARGED.

20 (E) EACH INITIAL BILLING STATEMENT TO A PATIENT FROM A HOSPITAL OR
21 HEALTH SYSTEM THAT INCLUDES A FACILITY FEE SHALL:

22 (1) CLEARLY IDENTIFY THE FEE AS A FACILITY FEE THAT IS BILLED
23 SEPARATELY FROM ANY PROFESSIONAL FEE;

24 (2) (I) PROVIDE THE CORRESPONDING MEDICARE FACILITY FEE
25 REIMBURSEMENT RATE FOR THE SAME SERVICE AS A COMPARISON; OR

26 (II) IF THERE IS NO CORRESPONDING MEDICARE FACILITY FEE
27 FOR THE SERVICE, PROVIDE:

28 1. THE APPROXIMATE AMOUNT MEDICARE WOULD
29 HAVE PAID THE HOSPITAL OR HOSPITAL-BASED FACILITY FOR THE FACILITY FEE ON
30 THE BILLING STATEMENT; OR

31 2. THE PERCENTAGE OF THE HOSPITAL'S CHARGES
32 THAT MEDICARE WOULD HAVE PAID THE HOSPITAL OR HOSPITAL-BASED FACILITY

1 FOR THE FACILITY FEE;

2 (3) INCLUDE A STATEMENT THAT:

3 (I) THE FACILITY FEE IS INTENDED TO COVER THE HOSPITAL'S
4 OR HEALTH SYSTEM'S OPERATIONAL EXPENSES; AND

5 (II) THE PATIENT'S FINANCIAL LIABILITY MAY HAVE BEEN LESS
6 IF THE SERVICES HAD BEEN PROVIDED AT A FACILITY NOT OWNED OR OPERATED BY
7 THE HOSPITAL OR HEALTH SYSTEM; AND

8 (4) INCLUDE:

9 (I) NOTICE OF THE PATIENT'S RIGHT TO REQUEST A
10 REDUCTION IN THE FACILITY FEE OR ANY OTHER PORTION OF THE BILL; AND

11 (II) A TELEPHONE NUMBER THAT THE PATIENT MAY USE TO
12 REQUEST A REDUCTION WITHOUT REGARD TO WHETHER THE PATIENT QUALIFIES
13 FOR, OR IS LIKELY TO BE GRANTED, ANY REDUCTION.

14 (F) (1) FOR NONEMERGENCY CARE, THE WRITTEN NOTICE REQUIRED
15 UNDER SUBSECTION (C) OR (D) OF THIS SECTION SHALL:

16 (I) IF A PATIENT'S APPOINTMENT IS SCHEDULED TO OCCUR 10
17 OR MORE DAYS AFTER THE APPOINTMENT IS MADE, BE SENT TO THE PATIENT BY
18 FIRST-CLASS MAIL, ENCRYPTED E-MAIL, OR A SECURE PATIENT INTERNET PORTAL
19 NOT LESS THAN 3 DAYS AFTER THE APPOINTMENT IS MADE; OR

20 (II) IF A PATIENT'S APPOINTMENT IS SCHEDULED TO OCCUR
21 LESS THAN 10 DAYS AFTER THE APPOINTMENT IS MADE OR THE PATIENT ARRIVES
22 WITHOUT AN APPOINTMENT, BE HAND DELIVERED TO THE PATIENT WHEN THE
23 PATIENT ARRIVES AT THE HOSPITAL-BASED FACILITY.

24 (2) FOR EMERGENCY CARE AND SUBJECT TO PARAGRAPH (3) OF THIS
25 SUBSECTION, THE WRITTEN NOTICE REQUIRED UNDER SUBSECTION (C) OR (D) OF
26 THIS SECTION SHALL:

27 (I) BE PROVIDED TO THE PATIENT AS SOON AS PRACTICABLE
28 AFTER THE PATIENT IS STABILIZED IN ACCORDANCE WITH THE FEDERAL
29 EMERGENCY MEDICAL TREATMENT AND ACTIVE LABOR ACT; OR

30 (II) IF THE PATIENT IS DETERMINED NOT TO HAVE AN
31 EMERGENCY MEDICAL CONDITION, BE PROVIDED BEFORE THE PATIENT LEAVES

1 THE HOSPITAL-BASED FACILITY.

2 (3) IF THE PATIENT IS UNCONSCIOUS, UNDER GREAT DURESS, OR FOR
3 ANY OTHER REASON UNABLE TO READ AND UNDERSTAND THE NOTICE PROVIDED
4 UNDER PARAGRAPH (2) OF THIS SUBSECTION, THE NOTICE SHALL BE PROVIDED TO
5 THE PATIENT'S REPRESENTATIVE AS SOON AS PRACTICABLE.

6 (G) A HOSPITAL-BASED FACILITY SHALL PROMINENTLY DISPLAY A
7 WRITTEN NOTICE IN LOCATIONS THAT ARE READILY ACCESSIBLE TO AND VISIBLE
8 BY PATIENTS, INCLUDING PATIENT WAITING AREAS, STATING THAT:

9 (1) THE HOSPITAL-BASED FACILITY IS PART OF A HOSPITAL OR
10 HEALTH SYSTEM; AND

11 (2) IF THE HOSPITAL-BASED FACILITY CHARGES A FACILITY FEE, THE
12 PATIENT MAY INCUR A FINANCIAL LIABILITY GREATER THAN THE PATIENT WOULD
13 INCUR IF THE PROFESSIONAL MEDICAL SERVICES WERE NOT PROVIDED IN A
14 HOSPITAL-BASED FACILITY.

15 (H) A HOSPITAL-BASED FACILITY SHALL CLEARLY HOLD ITSELF OUT TO
16 THE PUBLIC AND PAYORS AS BEING HOSPITAL-BASED, INCLUDING BY STATING THE
17 NAME OF THE HOSPITAL OR HEALTH SYSTEM IN ITS SIGNAGE, MARKETING
18 MATERIALS, WEBSITES, AND STATIONERY.

19 (I) (1) IF A GROUP PRACTICE IS PURCHASED BY A HOSPITAL OR HEALTH
20 SYSTEM RESULTING IN THE ESTABLISHMENT OF A HOSPITAL-BASED FACILITY AT
21 WHICH FACILITY FEES WILL LIKELY BE BILLED, WITHIN 30 DAYS AFTER THE
22 PURCHASE, THE HOSPITAL OR HEALTH SYSTEM THAT PURCHASED THE GROUP
23 PRACTICE SHALL PROVIDE WRITTEN NOTICE, BY FIRST-CLASS MAIL, OF THE
24 PURCHASE TO EACH PATIENT SERVED BY THE FORMER GROUP PRACTICE WITHIN
25 THE IMMEDIATELY PRECEDING 3 YEARS.

26 (2) THE NOTICE REQUIRED UNDER PARAGRAPH (1) OF THIS
27 SUBSECTION SHALL INCLUDE:

28 (i) A STATEMENT THAT THE GROUP PRACTICE IS NOW A
29 HOSPITAL-BASED FACILITY AND IS PART OF A HOSPITAL OR HEALTH SYSTEM;

30 (ii) THE NAME, BUSINESS ADDRESS, AND TELEPHONE NUMBER
31 OF THE HOSPITAL OR HEALTH SYSTEM THAT IS THE PURCHASER OF THE GROUP
32 PRACTICE;

33 (iii) A STATEMENT THAT THE HOSPITAL-BASED FACILITY BILLS

1 OR IS LIKELY TO BILL PATIENTS A FACILITY FEE THAT MAY BE SEPARATE FROM ANY
2 PROFESSIONAL FEE BILLED AT THE HOSPITAL-BASED FACILITY;

3 (IV) A STATEMENT THAT THE PATIENT'S ACTUAL FINANCIAL
4 LIABILITY WILL DEPEND ON THE PROFESSIONAL MEDICAL SERVICES PROVIDED TO
5 THE PATIENT;

6 (V) AN EXPLANATION THAT THE PATIENT MAY INCUR
7 FINANCIAL LIABILITY THAT IS GREATER THAN THE PATIENT WOULD INCUR IF THE
8 PROFESSIONAL MEDICAL SERVICES WERE NOT PROVIDED IN A HOSPITAL-BASED
9 FACILITY;

10 (VI) THE ESTIMATED AMOUNT OR RANGE OF AMOUNTS THE
11 HOSPITAL-BASED FACILITY MAY BILL FOR A FACILITY FEE OR AN EXAMPLE OF THE
12 AVERAGE FACILITY FEE BILLED AT THE HOSPITAL-BASED FACILITY FOR THE MOST
13 COMMON SERVICES PROVIDED AT THE HOSPITAL-BASED FACILITY; AND

14 (VII) A STATEMENT THAT, BEFORE SEEKING SERVICES AT THE
15 HOSPITAL-BASED FACILITY, A PATIENT COVERED BY A HEALTH INSURANCE POLICY
16 SHOULD CONTACT THE PATIENT'S HEALTH INSURER FOR ADDITIONAL
17 INFORMATION REGARDING THE HOSPITAL-BASED FACILITY FEES, INCLUDING THE
18 PATIENT'S POTENTIAL FINANCIAL LIABILITY, IF ANY, FOR THE FEES.

19 (4) A HOSPITAL, HEALTH SYSTEM, OR HOSPITAL-BASED FACILITY
20 MAY NOT COLLECT A FACILITY FEE FOR SERVICES PROVIDED AT A HOSPITAL-BASED
21 FACILITY THAT IS SUBJECT TO THE PROVISIONS OF THIS SUBSECTION FROM THE
22 DATE OF THE PURCHASE UNTIL AT LEAST 30 DAYS AFTER THE WRITTEN NOTICE
23 REQUIRED UNDER THIS SUBSECTION IS MAILED TO THE PATIENT.

24 (J) THE WRITTEN NOTICES REQUIRED UNDER THIS SECTION SHALL BE IN
25 PLAIN LANGUAGE AND IN A FORM THAT MAY BE REASONABLY UNDERSTOOD BY A
26 PATIENT WHO DOES NOT POSSESS SPECIAL KNOWLEDGE REGARDING HOSPITAL OR
27 HEALTH SYSTEM FACILITY FEE CHARGES.

28 (K) A VIOLATION OF THIS SECTION SHALL BE CONSIDERED AN UNFAIR OR
29 DECEPTIVE TRADE PRACTICE UNDER § 13-301 OF THE COMMERCIAL LAW ARTICLE.

30 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
31 October 1, 2019.