

Chapter 142

(Senate Bill 1103)

AN ACT concerning

Hospitals and Related Institutions – Outpatient Facility Fees

FOR the purpose of ~~altering the definition of “hospital” to require a hospital located outside the State that provides outpatient services to patients in the State to provide a certain written notice regarding outpatient facility fees under certain circumstances;~~ altering the required contents of the written notice regarding outpatient facility fees; requiring the Maryland Health Services Cost Review Commission, in consultation with certain entities, to study and make recommendations regarding hospital outpatient facility fees; requiring the Commission to convene a workgroup on outpatient facility fees notices; and generally relating to hospital outpatient facility fees.

BY repealing and reenacting, with amendments,
Article – Health – General
Section 19–349.2
Annotated Code of Maryland
(2023 Replacement Volume)

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

Article – Health – General

19–349.2.

(a) (1) In this section the following words have the meanings indicated.

(2) “Electronically” means a secure digital or electronic transmission in compliance with federal and State law, including by:

- (i) Patient Internet portal;
- (ii) Encrypted e-mail; or
- (iii) Text message with a link to an encrypted notice.

~~(3) “HOSPITAL” MEANS AN INSTITUTION THAT:~~

~~(i) HAS A GROUP OF AT LEAST FIVE PHYSICIANS WHO ARE ORGANIZED AS A MEDICAL STAFF FOR THE INSTITUTION;~~

~~(II) MAINTAINS FACILITIES TO PROVIDE, UNDER THE SUPERVISION OF THE MEDICAL STAFF, DIAGNOSTIC AND TREATMENT SERVICES FOR TWO OR MORE UNRELATED INDIVIDUALS;~~

~~(III) ADMITS OR RETAINS THE INDIVIDUALS FOR OVERNIGHT CARE; AND~~

~~(IV) IF LOCATED OUTSIDE THE STATE, PROVIDES OUTPATIENT SERVICES TO PATIENTS IN FACILITIES LOCATED IN THE STATE.~~

~~[(3)] (4)~~ (i) “Outpatient facility fee” means a ~~hospital outpatient charge approved by the Commission for an] FEE CHARGED BY A HOSPITAL FOR outpatient [clinic service] SERVICES PROVIDED IN THE STATE IN COMPENSATION FOR THE USE OF A HOSPITAL’S FACILITY, CLINIC,~~ supply, or equipment, including the service of a ~~PHYSICIAN OR~~ nonphysician clinician.

(ii) “Outpatient facility fee” does not include:

1. A charge billed for services delivered in an emergency department; or
2. A ~~physician] fee [billed] CHARGED SEPARATELY BY A PHYSICIAN OR NONPHYSICIAN CLINICIAN~~ for professional services provided at the hospital.

~~[(4)] (5)~~ (i) “Patient” means an individual who receives health care.

(ii) “Patient” includes:

1. A person authorized to consent to health care for an individual consistent with the authority granted, including a guardian, surrogate, or person with a medical power of attorney;
2. An individual who is a minor, if the minor seeks treatment to which the minor has the right to consent and has consented under Title 20, Subtitle 1 of this article;
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 the authority granted.

(b) Subject to subsections (c), (d), [and] (e), **AND (F)** of this section, if a hospital charges an outpatient facility fee, the hospital shall provide the patient with a written notice, separate from any other forms or notices, in the following form or a substantially similar form:

IMPORTANT FINANCIAL INFORMATION

(Patient Name)_____ Appointment Date:_____

Notice Of Hospital Outpatient Facility Fee And Billing Disclosure

a. Your appointment with (provider, practice, or [clinic] **OUTPATIENT FACILITY** name) will take place in an outpatient department of (hospital name).

b. (Hospital name) will charge an outpatient facility fee that is separate from and in addition to the bill you will receive from (provider).

c. You will receive two charges for your visit:

- 1. a provider services bill from (provider); and
- 2. a hospital facility bill from (hospital name).

Expected Fee

(if known) The amount of the facility fee that will be charged by (hospital name) for your appointment is \$ _____. or

(if unknown) (Hospital name’s) facility fee is likely to range from \$_____ to \$_____. **[or] AND**

(if unknown) Based on appointments like the one you are scheduled for, we estimate the facility fee to be \$_____. **AND**

(if unknown) We are providing you with a range of fees and an estimate because the actual amount of the facility fee will depend on the hospital services that are actually provided. The fee could be higher if you require services during your appointment that we cannot reasonably predict today.

Financial help for your portion of the outpatient facility fee bill may be available. If you need financial help with the outpatient facility bill, please contact (hospital financial assistance office, with telephone number and direct website address).

Receiving services here may result in greater financial liability than receiving services at a location where a facility fee may not be charged.

(if applicable) No Facility Fee Location

You can see (provider) at another location that does not charge a facility fee.

(address and contact information)

Contact your insurance carrier to see if (provider) is a participating provider and in-network at the (address of alternative location) location.

Insurance Information

(1) The amount of the facility fee that you will be responsible for paying will depend on your insurance coverage.

(2) Insurance companies could impose deductibles or higher copayment or coinsurance amounts for services provided in hospital outpatient departments.

(3) If you have insurance, you should contact your carrier to determine your insurance coverage and your estimated financial responsibility for the facility fee, including copayments, coinsurance, and deductible amounts for the outpatient facility fee.

Facility Fee Complaints

If you have a complaint about an outpatient facility fee charge, please first contact the hospital, (hospital billing office contact information).

If the complaint is unresolved, you may then file the complaint with the Health Services Cost Review Commission, (contact information).

If you need additional information regarding your facility fee charges or if you need assistance mediating a facility fee complaint against a hospital, contact the Health Education and Advocacy Unit of the Office of the Attorney General, 1-877-261-8807 | Heau@oag.state.md.us | www.MarylandCares.org.

Acknowledgment

(1) I understand that I will be billed a hospital facility fee and a provider fee.

(2) (Hospital name) provided me with information on the facility fees that will be billed for my appointment.

(3) I understand that the fee could vary based on conditions and services provided to me that the hospital cannot reasonably predict today.

(4) I understand that my out-of-pocket costs will depend on my insurance coverage.

_____(initial here) – by initialing here, I confirm that I received the facility fee information at the time I made my appointment with (provider).

By signing this form, I acknowledge that I have received this information before receiving services today.

Signature

Date

To request this notice in an alternative format, please call (contact information) or e-mail (contact information).

(Same sentence in Spanish).

(c) If a patient does not speak English or requires the notice required under subsection (b) of this section to be in an alternative format, the hospital shall, to the extent practicable, provide the notice in a language or format that is understood by the patient.

(d) (1) A hospital shall determine the range of hospital outpatient facility fees and fee estimates, based on typical or average facility fees for the same or similar appointments, to be provided in the notice required under this section, consistent with the hospital’s most recent rate order as approved by the Commission.

(2) Each hospital that charges an outpatient facility fee shall use the range of hospital outpatient facility fees and fee estimates determined under paragraph (1) of this subsection.

(e) (1) For an appointment made in person or by telephone:

(i) Oral notice of all the information that would be provided in the form required under subsection (b) of this section shall be given at the time the appointment is made; and

(ii) Except as provided in paragraph (3) of this subsection, the written notice required under subsection (b) of this section shall be sent to the patient electronically at the time the appointment is made.

(2) For an appointment made electronically or using a website, the written notice required under subsection (b) of this section shall be:

(i) Provided at the time the appointment is made; and

(ii) Sent to the patient electronically at the time the appointment is made.

(3) If the patient refuses electronic communication under paragraph (1)(ii) of this subsection, the written notice shall be sent to the patient by first-class mail at the time the appointment is made.

(f) Before professional medical services are provided on the date of the appointment, the patient shall acknowledge in writing that the notice required under this section was provided at the time the appointment was made.

(g) A hospital may not charge, bill, or attempt to collect an outpatient facility fee unless the patient was given notice in accordance with this section.

(h) (1) On or before January 31 each year, beginning in 2022, each hospital shall report to the Health Services Cost Review Commission a list of the hospital-based, rate-regulated outpatient services provided by the hospital.

(2) On or before February 28 each year, beginning in 2022, the Health Services Cost Review Commission annually shall:

(i) Post on its website the list of the hospital-based, rate-regulated outpatient services reported by each hospital under paragraph (1) of this subsection; and

(ii) Provide the list of the hospital-based, rate-regulated outpatient services reported by each hospital to the Maryland Insurance Administration and the Health Education and Advocacy Unit in the Office of the Attorney General.

(3) When lack of notice in accordance with this section is alleged in a consumer complaint, the Commission shall give consideration in its investigatory and audit procedures as to whether notice was not feasible due to circumstances beyond the hospital's control.

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) The Maryland Health Services Cost Review Commission, in consultation with the Maryland Department of Health, the Maryland Insurance Administration, the Health Education and Advocacy Unit within the Office of the Attorney General, representatives of hospitals, *including out-of-state hospitals providing outpatient services to patients in facilities in the State*, representatives of physician practices that provide services in hospital outpatient settings, health care payers, consumer advocacy groups, and representatives of employer groups, shall study and make recommendations, including legislative recommendations, regarding:

~~(1) the impact of hospital outpatient facility fees on the cost of health care services, access to care, health equity, and other topics as determined necessary by the Maryland Health Services Cost Review Commission, including the impact on:~~

- ~~(i) consumers, including Medicaid recipients;~~
- ~~(ii) employers;~~
- ~~(iii) physicians and clinicians;~~
- ~~(iv) hospitals; and~~
- ~~(v) payers;~~

~~(2) the impact of eliminating or reducing hospital outpatient facility fees on the cost of health care, access to care, health equity, and other topics as determined necessary by the Maryland Health Services Cost Review Commission, including the impact on:~~

- ~~(i) consumers, including Medicaid recipients;~~
- ~~(ii) employers;~~
- ~~(iii) physicians and clinicians;~~
- ~~(iv) hospitals; and~~
- ~~(v) payers;~~

~~(3) industry practices for seeking authority for an outpatient location to be approved as “at the hospital” and thereby subject to rate regulation;~~

~~(4) how hospitals use outpatient facility fees;~~

~~(5) how hospitals charge facility fees in addition to physician fees for professional services provided in hospital outpatient departments;~~

~~(6) the interaction of outpatient facility fees with Maryland’s Total Cost of Care model obligations to the federal government, including any impact on Medicare total cost of care savings if outpatient facility fees are eliminated or reduced;~~

~~(7) 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;~~

~~(8) the licensing and regulation of fees charged by out-of-state hospital outpatient facilities located in the State; and~~

~~(9) the effectiveness of the notice of hospital outpatient facility fees that is currently provided to consumers, including any impact of the notice on the consumers' choice of location for health care services and any impact on utilization and access.~~

(1) the nature of costs underlying hospital outpatient facility fees and how similar costs are recovered in other health care settings;

(2) the drivers of hospital facility costs that are unique to hospitals and are not reflected in other health care settings;

(3) the magnitude and impact of hospital facility fee charges for hospitals, payers, and consumers;

(4) industry practices for seeking authority for an outpatient location to be approved as "at the hospital" and thereby subject to rate regulation;

(5) 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;

(6) the interaction of the alternative mechanisms or revisions studied under item (5) of this subsection with the State's Total Cost of Care model obligations to the federal government, including any impact on Medicare total cost of care savings if outpatient facility fees are eliminated or reduced;

(7) the impact of the alternative mechanisms or revisions studied under item (5) of this subsection 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;

(8) 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;

(9) the regulation of fees charged by out-of-state hospital outpatient facilities located in the State; and

(10) the effectiveness of the notice of hospital outpatient facility fees that is provided to consumers.

(b) (1) On or before December 1, 2024, the Maryland Health Services Cost Review Commission shall submit a preliminary report to the Senate Finance Committee and the House Health and Government Operations Committee, in accordance with § 2–1257 of the State Government Article, on the findings and recommendations under subsection (a) of this section.

(2) On or before December 1, 2025, the Maryland Health Services Cost Review Commission shall submit a final report to the Senate Finance Committee and the House Health and Government Operations Committee, in accordance with § 2–1257 of the State Government Article, on the findings and recommendations under subsection (a) of this section.

SECTION 3. AND BE IT FURTHER ENACTED, That:

(a) (1) The Maryland Health Services Cost Review Commission shall convene a workgroup with the Maryland Department of Health, the Health Education and Advocacy Unit within the Office of the Attorney General, and representatives of hospitals, including out-of-state hospitals providing services to patients in facilities in the State, representatives of physician practices that provide services in hospital outpatient settings, health care payers, consumer advocacy groups, and representatives of employer groups.

(2) The workgroup convened under paragraph (1) of this subsection shall:

(i) advise the Maryland Health Services Cost Review Commission 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

(ii) 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.

(b) On or before December 1, 2024, the Maryland Health Services Cost Review Commission shall submit a report to the Senate Finance Committee and the House Health and Government Operations Committee, in accordance with § 2–1257 of the State Government Article, on recommendations for expanding the application of the outpatient facility fees notice requirement to apply to all outpatient services.

SECTION ~~3~~ 4. AND BE IT FURTHER ENACTED, That Division II of the State Finance and Procurement Article does not apply to the Health Services Cost Review Commission when implementing ~~Section 2~~ Sections 2 and 3 of this Act.

SECTION ~~3~~ ~~4~~ 5. AND BE IT FURTHER ENACTED, That this Act shall take effect ~~October~~ July 1, 2024.

Approved by the Governor, April 25, 2024.