

Limitations on Hospital Billing & Collections

AB 774 requires hospitals to have written financial assistance policies and caps the charges for hospital services for low-to-moderate-income Californians. It also restricts some of the collection practices that hospitals may engage in. AB 774 is codified as California Health & Safety Code § 127400 *et seq.*¹ The Office of Statewide Health Planning and Development (OSHPD)² has also set up a page on their website that provides information for hospitals and consumers.³

Who is covered under AB 774?

At a minimum, the protections of AB 774 apply to

- Uninsured patients whose family income does not exceed 350% of the Federal Poverty Level.⁴
- Patients with health care coverage under 350% FPL whose annual out-of-pocket costs exceed 10% of the patient's family income.⁵

Some rural hospitals may have lower eligibility limits if the hospital is struggling financially.⁶ Of course, hospitals may choose to offer discounts or free care to persons above these limits as well.

What bills are covered?

AB 774 only covers bills from the hospital, not from other providers who may bill for services provided in the hospital. Advocates must ensure that clients understand that even if a hospital gives free or reduced-cost care, there will likely be other bills that the patient is responsible for. On the other hand, AB 774 is not limited to emergency services like many hospital's previous charity care policies, thus all inpatient and outpatient services are covered.

How much can a hospital charge under AB 774?

Hospitals have considerable flexibility in creating their own financial assistance policies. For example, hospitals may offer a combination of free care, a sliding scale, or a flat rate for services. The maximum that a patient who qualifies may be charged, however, is the reimbursement rate of any government-sponsored health programs in which the hospital participates.⁷ For most hospitals, this means that the most hospitals can charge is the Medicare rate.⁸ OSHPD's website defines charity care as free hospital care and discount payment policies as a discount on services received.⁹

What must patients covered under AB 774 do to receive financial assistance?

Patients who wish to receive financial assistance from a hospital must make reasonable efforts to provide a hospital with documentation of income and health benefits coverage.¹⁰ The

required documentation depends on whether a patient is applying for a discount payment policy (partial assistance) or charity care:

- Discount payment policy: only recent pay stubs or income tax returns may be required to determine a patient's eligibility
- Charity care: information on monetary assets and waivers to obtain account information from financial or other entities to verify their value may be required to determine a patient's eligibility.¹¹

Thus, if a patient is only getting a discount, monetary assets do not matter and the patient should not have to divulge such information. Property, such as a patient's home, should never matter.

What must a hospital do to notify people of its financial assistance policies?

Hospitals must post conspicuous notices of their financial assistance policies in locations visible to the public such as emergency departments, billing offices, admissions offices, and other outpatient settings.¹²

Hospitals must give individual notice to uninsured persons inquiring as to the cost of care or to patients receiving emergency or outpatient care who may be billed but were not admitted.¹³ Hospitals must also include notice of financial assistance as part of the bill when billing patients who have not provided proof of third-party coverage, along with a contact person or office and phone number that patients may use to obtain information on applying.¹⁴ The hospital must also notify them of the existence of government health programs and provide applications.¹⁵

Written notices must be in the language spoken by the patient for all languages spoken by 5% or more of the patients served by the hospital.¹⁶

How can the public find out what a hospital's financial assistance policies are?

Hospitals must have written policies regarding discount payments and charity care that clearly state the eligibility criteria.¹⁷ Hospitals are required to give patients information about these policies, including eligibility criteria.¹⁸ These policies must be submitted to the OSHPD biennially or whenever a significant change is made, and OSHPD must make this information available to the public.¹⁹ OSHPD began posting hospital financial assistance policies and applications in January of 2008 on a searchable website so that consumers would have access to the policies and be able to compare them. This new resource may be found at <http://www.oshpd.ca.gov/fairpricing>.

How long must a hospital wait before submitting a bill to collections?

Hospitals may not report patients who are not covered by insurance or who have medical costs that exceed 10% of their family's annual income to a credit reporting agency or commence a lawsuit prior to 150 days after the initial bill.²⁰ Hospitals must extend this time period if the

patient is not covered due to a pending appeal with a health care service plan, a disability insurance plan, Medi-Cal, or Medicare until a final determination is made.²¹

Hospitals cannot send a bill to a collection agency or other assignee if the patient is attempting to qualify for financial assistance, negotiate a payment plan, or is making regular partial payments unless that entity complies with AB 774.²²

Are there other limitations on how a hospital may attempt to collect on a bill?

Hospitals or their assignees may not begin collection activities against a patient without first giving a statement of the availability of credit counseling services and a short written description of the patient's rights under state and federal fair debt collection laws.²³

Hospitals and their affiliates are not permitted to use wage garnishments and liens on primary residences as a means of collecting hospital bills against patients who qualify for financial assistance.²⁴ Collection agencies, however, may use wage garnishments if they provide a declaration showing that the patient has the ability to make payments on the judgment and a court holds a hearing regarding the patient's ability to pay in light of other obligations and medical services needed.²⁵ Collection agencies may also force the sale of a primary residence, but only after the patient and his or her spouse dies and the patient's children have reached age 18 and are able to care for themselves outside of the residence.²⁶

A hospital is also obligated to have a written policy governing the standards and practices of debt collection, and any agency that collects for a hospital must agree in writing to follow this policy.²⁷

What happens if a hospital does not follow these guidelines?

If the client has not been told about or screened for the hospital's financial assistance policy, advocates or clients should send a letter to the hospital requesting an application for financial assistance.

If the client was not told whether they were eligible for financial assistance or was wrongly denied assistance, request a decision based on a completed application or a reconsideration on the previous decision.

If the bill has gone to collections, advocates or clients should send a letter to the collection agency informing the agency that the hospital is violating the law. Advocates should call the hospital with the client and request that all collection be stopped until a determination of financial assistance is made.

If the client is being sued by the hospital or a collection agency, in addition to these steps, the hospital's failure to offer financial assistance should be raised as an affirmative defense.

If the client paid more than she should have, request reimbursement for the amount overpaid. AB 774 provides that hospitals must reimburse patients who paid in excess of these guidelines,

along with interest.²⁸

If the violation is egregious enough or the same hospital or collection agency has caused problems for multiple clients, advocates should consider other causes of action, such as unfair business practices pursuant to Business & Professions Code 17200 and the Consumer Legal Remedies Act or violations of the Fair Debt Collection Practices Act, and file an affirmative lawsuit.

Violations of this law should also be reported to Licensing and Certification in the Department of Public Health as compliance with AB 774 is required for hospitals to maintain their operating licenses.²⁹

For questions or updates on the implementation of AB 774, please contact Jen Flory, Western Center on Law & Poverty, Los Angeles office.

ENDNOTES

1. AB 774 passed in 2006. Some modifications were made by SB 350 in 2007. Full text of the statute may be found at http://www.oshpd.ca.gov/HID/Products/Hospitals/FairPricing/HSC127400_CharityCarePoliciesSB350.pdf.
2. OSHPD, part of the California Health and Human Services Agency, is the state entity that handles hospital financial data and other hospital reporting in California.
3. <http://www.oshpd.ca.gov/HID/Products/Hospitals/FairPricing/>.
4. Health & Safety Code §§ 127400(c) and 127405(a)(1). A patient's family is limited to spouse or partner and dependant children under 21 years old for patients 18 years old and above. Patients under 18 only count parents, caretaker relatives, and other children of parents or caretaker relatives under 21 years old as their family. Health & Safety Code § 127400(h).
5. § 127405(a)(1). If those costs were not incurred at the hospital the patient must provide documentation. See Health & Safety Code § 127400(g)(2).
6. § 127405(a)(2).
7. § 127405(d).
8. Average Medicare rates of some common hospital procedures can be found at http://www.cms.hhs.gov/HealthCareConInit/02_Hospital.asp#TopOfPage.
9. See question 3 on the FAQ at <http://www.oshpd.ca.gov/HID/Products/Hospitals/FairPricing/FAQPublic.html>.
10. § 127405(e).
11. § 127405(e)(1)-(2). Note that retirement and deferred-compensation plans are exempt and do not need to be documented.
12. § 127410(b).
13. § 127410(a).
14. § 127420(b).
15. § 127420(b)(3)-(4).
16. See § 127410(a) referring to CA Insurance Code § 12693.30 which incorporates the Dymally-Alatorre Bilingual Services Act. CA Government Code § 7290 *et seq*, specifically § 7296.2.
17. §§ 127405(a),(b), and (c).
18. § 127410(a).
19. § 127435. OSHPD has enacted regulations that govern how hospitals must submit their financial assistance policies and applications to the department. They may be found at 22 C.C.R. § 96040 *et seq*, available at <http://www.oshpd.ca.gov/HID/Products/Hospitals/FairPricing/96000.pdf>.
20. § 127425(d).
21. § 127426.
22. § 127425(e).

23. § 127430.

24. § 127425(f)(1).

25. § 127425(f)(2)(A).

26. § 127425(f)(2)(B).

27. § 127425(a)-(b)

28. § 127440.

29. § 127401. Note that while the statutory language refers to the Department of Health Services, that department has since been split up. Licensing and Certification is now under the California Department of Public Health.

SAMPLE LETTER TO HOSPITAL

[DATE]

[YOUR NAME]
[YOUR ADDRESS]

[HOSPITAL NAME]
[HOSPITAL ADDRESS]

Dear [HOSPITAL NAME]:

I received medical care at your hospital on [DATE]. I am now receiving bills from the hospital, [and/or] receiving notices from one or more collections agencies, [and/or] being sued for collection of this bill by [INSERT NAME OF AGENCY SUING]. My family income is no more than 350% of the federal poverty level and I am uninsured [or] my out-of-pocket health care costs exceed 10% of my income. According to AB 774 (California Health & Safety Code § 127400 *et seq*), I should be eligible for charity care or a discount payment program offered by the hospital.

[Select all the circumstances which apply]

- I was not given written notice regarding the hospital's charity care or discount payment policy while in the hospital, or when I was billed, [and/or] in the language I speak.
- The hospital refused to give me an application for charity care or a discount payment program.
- I was not permitted to set up a reasonable payment plan.
- I applied for financial assistance, but the hospital refused to accept my application.
- I applied for financial assistance, but the hospital did not process my application and make a final determination.
- My application for financial assistance was improperly denied. [Explain circumstances]

Until this matter is resolved, any collection activity against me is unlawful. If I am not offered payment assistance as required by law, I will file a complaint with the Department of Health Services or seek other remedy as permitted by the laws of this state. I also ask that you assist me in repairing any damage that may have been done to my credit. Please notify me immediately as to how you intend to resolve this.

Sincerely,

[YOUR NAME]

cc: [OTHER ENTITIES ATTEMPTING TO COLLECT ON THE BILL]

SAMPLE LETTER TO COLLECTION AGENCY

[DATE]

[YOUR NAME]
[YOUR ADDRESS]

[COLLECTION AGENCY NAME]
[COLLECTION AGENCY ADDRESS]

Re: Request for Suspension of Collection Pending Determination of Eligibility for Hospital
Financial Assistance

Dear [COLLECTION AGENCY NAME]

My hospital bill from [HOSPITAL NAME] has been sent to you for collection. I believe that I should have been offered and granted financial assistance for the medical services that I received at [HOSPITAL NAME] on [INSERT DATE(S) OF SERVICES].

California has a new Hospital Fair Pricing Policies law that requires hospitals to have written financial policies and notify their patients of these policies. CA Health & Safety Code § 127400 *et seq.* According to the law “Uninsured patients or patients with high medical costs who are at or below 350 percent of the federal poverty level . . . shall be eligible to apply for participation under each hospital’s charity care policy or discount payment policy.” CA Health & Safety Code § 127405(a).

[Select the circumstances that apply]

- I am uninsured and the hospital did not inform me that I could apply for financial assistance or seek coverage from government program as required by CA Health & Safety Code § 127410(a) and § 127420(b). I am now trying to do so.
- I have applied for financial assistance and am waiting for a decision from the hospital. CA Health & Safety Code § 127425(e) requires that you wait to collect on this bill.
- The hospital wrongfully denied me financial assistance according to the requirements of CA Health & Safety Code § 127400 *et seq* and I am appealing this decision [or] filing a complaint with the Department of Health Services.
- According to CA Health & Safety Code § 127425(d), you may not report me to a credit reporting agency or commence a civil action against me for 150 days after I was initially billed.

If you continue to try to collect on this bill before a determination of financial assistance is made on my account, you may be in violation of the Rosenthal Fair Debt Collection Practices Act and the federal Fair Debt Collection Practices Act. CA Civil Code § 1788 *et seq.* and 15 U.S.C. § 1692 *et seq.*

I am asking that you cease collection on this bill until [HOSPITAL NAME] makes a decision regarding my financial assistance application.

Sincerely,

[YOUR NAME]
CC: [HOSPITAL NAME] (Send a copy to the hospital)

SAMPLE LETTER TO LICENSING AND CERTIFICATION

[DATE]

[YOUR NAME]
[YOUR ADDRESS]

[LICENSING & CERTIFICATION DISTRICT OFFICE ADMINISTRATOR]¹
[LICENSING & CERTIFICATION DISTRICT OFFICE]
[DISTRICT OFFICE ADDRESS]

RE: [NAME OF HOSPITAL]'s failure to comply with the financial assistance guidelines of AB 774

Dear District Administrator [NAME OF ADMINISTRATOR]:

I received care at [NAME OF HOSPITAL] on [DATES OF SERVICE]. The hospital is demanding payment on this bill, [and/or] my bill has been sent to collections, [and/or] I am being sued for collection of this bill, [and/or] I was forced to pay more than I owe. My income does not exceed 350% of the federal poverty level and I am uninsured [or] my annual out-of-pocket medical costs exceed 10% of my income. According to the California Health & Safety Code § 127405, I should be eligible for charity care or a discount on my charges with an extended payment plan.

[Select all the circumstances which apply]

- I was not given written notice regarding the hospital's charity care or discount payment policy while in the hospital, or when I was billed, [and/or] in the language I speak.
- The hospital refused to give me an application for charity care or a discount payment program.
- I was not permitted to set up a reasonable payment plan.
- I applied for financial assistance, but the hospital refused to accept my application.
- I applied for financial assistance, but the hospital did not process my application and make a final determination.
- My application for financial assistance was improperly denied. [Explain circumstances]

Please review [NAME OF HOSPITAL]'s failure to comply with the requirements of AB 774. I ask that you do everything in your power to force the hospital to comply as hospitals are required to follow this statute in order to stay licensed.

I authorize Licensing and Certification to disclose my name to the hospital solely for the purposes of this investigation. Please require that the hospital reduce or forgive my bill according to their policy [and/or] reimburse me with interest the amounts I already paid in excess.

Please let me know when you will respond to this complaint and how it is ultimately resolved. Thank you for your time.

Sincerely,

[YOUR NAME]

¹ Contact information for Licensing and Certification district offices may be found at:
<http://www.dhs.ca.gov/lnc/org/default.htm>