

DEPARTMENT OF HEALTH CARE ACCESS AND INFORMATION

RULEMAKING FILE
(Hospital Fair Billing Program)

Item 1:
NOTICE OF PROPOSED RULEMAKING



2020 West El Camino Avenue, Suite 800
 Sacramento, CA 95833
 hcai.ca.gov



NOTICE OF PROPOSED RULEMAKING

CALIFORNIA CODE OF REGULATIONS

TITLE 22, DIVISION 7, CHAPTER 9
Sections 96040 - 96050

TITLE 22, DIVISION 7, CHAPTER 9.2

Sections: 96051-96051.37

The Department of Health Care Access and Information (Department) proposes adding new Chapter 9.2, Hospital Fair Billing Program, sections 96051, 96051.1, 96051.2, 96051.3, 96051.4, 96051.5, 96051.6, 96051.7, 96051.8, 96051.9, 96051.10, 96051.11, 96051.12, 96051.13, 96051.14, 96051.15, 96051.16, 96051.17, 96051.18, 96051.19, 96051.20, 96051.21, 96051.22, 96051.23, 96051.24, 96051.25, 96051.26, 96051.27, 96051.28, 96051.29, 96051.30, 96051.31, 96051.32, 96051.33, 96051.34, 96051.35, 96051.36, and 96051.37 in title 22 of the California Code of Regulations (CCR), Division 7, and repealing sections 90640, 96041, 96042, 96043, 96044, 96045, 96046, and 96050 of title 22, division 7, chapter 9 of the CCR. Chapter 9.2 will implement Chapter 2.5 of the Health and Safety Code (HSC) section 127400, *et seq.*, Fair Pricing Policies: Hospital Fair Pricing Policies, amended by Assembly Bill (AB) 1020 (Chapter 473, Statutes of 2021). The Department proposes to adopt and repeal the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

I. PUBLIC HEARING

The Department has not scheduled a public hearing on this proposed action. However, the Department will hold a hearing if it receives a written request for a public hearing from any interested person, or their authorized representative, no later than 15 days before the close of the written comment period.

II. WRITTEN PUBLIC COMMENT PERIOD AND CONTACT PERSON

Any interested person, or their authorized representative, may submit written comments relevant to the proposed regulatory action. The Department must receive all comments by 5:00 pm on August 1, 2023.

Inquiries and written comments regarding the proposed action should be addressed to the primary contact person named below. Comments delivered by email are suggested. Comments may also be hand delivered or mailed.

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Department of Health Care Access and Information
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Inquiries and comments may also be directed to the backup contact person at the same mailing address:

Renee Borunda, Staff Services Manager II
Hospital Fair Billing Program
Department of Health Care Access and Information
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III. AUTHORITY AND REFERENCE

Pursuant to the authority vested by sections 127010, 127435, and 127436 of the HSC, and to implement, interpret, or make specific sections 127400, 127401, 127405, 127410, 127420, 127425, 127426, 127430, 127435, 127436, and 127440 of the HSC, the Department is proposing to adopt the following changes by deleting Chapter 9 and creating Chapter 9.2 in Division 7 of title 22 of the CCR, as follows:

IV. INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Department is proposing this regulatory action to implement, interpret, and make specific Article 1 (Hospital Fair Pricing Policies, §§ 127400-127446) of Chapter 2.5, Part 2, Division 107 of the Health and Safety Code.

Summary of Existing Laws and Regulations

General Background

In 2006, California passed AB 774 (Chapter 755, Statutes of 2006), which required hospitals to offer charity care and discount payment (together financial assistance) to uninsured and underinsured patients below 350 percent of the Federal Poverty Level (FPL). It also required transparency in how patients could qualify for and apply for financial assistance, requiring hospitals to submit their policies to the Department to be made available to the public. Enforcement was placed with the California Department of Public Health (CDPH).

Since 2008, the Department has collected hospital's charity care and discount payment policies and application forms and posted them on its website. Chapter 9 of Division 7 of title 22 of the CCR provided the process hospitals follow to comply with the requirements.

Signed into law in 2021, Assembly Bill 1020 (Chapter 473, Statutes of 2021) (AB 1020), seeks to expand the number of patients eligible for financial assistance, increase protections for eligible patients, and strengthen state enforcement and oversight of the Hospital Fair Pricing Act. To that end, AB 1020 placed enforcement authority with the Department starting January 1, 2024. The Department is specifically required to promulgate regulations for the enforcement of Article 1 of Chapter 2.5, Part 2, Division 107 of the HSC, and commence enforcement by January 1, 2024.

Existing Law

Existing law codifies the Department's current process for hospital submission of policies in title 22, CCR sections 90640 through 96050. The penalties for enforcement of the Fair Pricing Policies Act, under the authority of CDPH until January 1, 2024, are codified in Title 22, CCR section 70959.

AB 1020 requires hospitals to submit to the Department their debt collection policy, in addition to their existing charity care and discount payment policies. The Department is required to review the policies starting January 1, 2023. The debt collection policy, along with discount and charity care policies, will be made available on both the Department and hospital websites. Hospitals are required to update the submissions biennially or whenever there are any significant changes made.

The law creates new requirements that prohibit hospitals from selling patient debt unless specified conditions are met, including that the hospital found the patient ineligible for financial assistance, or the patient has not responded to billing attempts or to offers of financial assistance for 180 days. It also extends adverse credit reporting and commencement of civil action from 150 to 180 days after initial billing. The law raises the income level for financial assistance from 350 percent to 400 percent of FPL.

The law also requires hospitals to prominently display notice about the availability of the discount payment and charity care programs in publicly accessible locations and on their websites.

Additionally, the law requires the Department to assume enforcement of the Hospital Fair Pricing Act from CDPH beginning January 1, 2024. The Department is tasked with developing and implementing a consumer-facing program to receive complaints of improper billing and establish a procedure for investigating patient complaints. The Department will impose administrative penalties on hospitals for violations of the Hospital Fair Pricing Act. Finally, this bill requires the Department to promulgate regulations to establish criteria to be considered in determining the amount of the penalty and to establish an appeal process.

Effects of the Proposed Regulatory Action

This rulemaking package first proposes a full repeal of title 22, CCR sections 90640 through 96050, in order to make the regulations consistent with the newly developed and proposed oversight processes. These sections correspond with the Department's existing structure for collecting and reviewing hospital policies, which will be out of date with the Department's processes starting January 1, 2024. Repealing these sections will allow the Department's regulations to be updated to reflect the new processes and requirements outlined in AB 1020 and will eliminate confusion by removing out of date information from the regulations.

CCR section 70959, the penalty structure for violations identified by CDPH, will remain in place for violations that occur prior to January 1, 2024.

The newly proposed rules will be located in Articles 1 through 6 of Division 7, Chapter 9.2 of title 22 (proposed regulations).

The proposed regulations codify the Department's new processes for: collection and review of hospital policies and applications, collection and review of patient complaints, assessment of penalties, and hospital appeal process. The proposed regulations further implement the goals of AB 1020 by clarifying requirements related to accessibility, patient eligibility, patient notice, and hospital oversight. Specifically, the new regulations will do the following:

Article 1 of the proposed regulations addresses definitions, document accessibility, required notices, and hospital delegation. Section 96051 defines terms used in the Act and proposed regulations that were previously undefined or unclear. Section 96051.1 establishes accessibility standards for all documents hospitals provide to patients under the Act. Section 96051.2 specifies the requirements for hospital discount payment and charity care program eligibility determination letters. Section 96051.3 explains all notices provided to a patient under the Act, as well as billing statements, shall include a specific statement about the Hospital Bill Complaint Program. Section 96051.4 confirms that the hospital obligations outlined in the Act and proposed regulations are not waived when a hospital delegates functions.

Article 2 of the proposed regulations addresses the submission of discount payment, charity care, and debt collection policies and procedures. Section 96051.5 specifies that hospitals must have a primary and secondary contact register in the Department's online policy submission portal to receive compliance and informational communications regarding hospital policies required by HSC section 127435. This provision outlines the information required for registration and the requirement to update changes to the contacts within 10-working days. Section 96051.6 outlines information that is required to be in hospital policies pursuant to HSC section 127435, the timeframes and triggers for hospitals to submit their policies to the Department for review and posting, and the information that hospitals must submit to the Department along with their policies.

Additionally, this section outlines requirements for the file type and format of documents when hospitals submit their policies to the Department. This section also provides the procedure for hospitals to respond to Department questions and correspondence through the policy review process, including how the hospital may request extensions of time and the standard by which the Department will review those requests. Section 96051.7 outlines various notice and eligibility requirements hospitals must follow related to the discount payment program required by the Act. Section 96051.8 outlines requirements for hospitals' patient facing applications for charity care and discount payment eligibility.

Article 3 of the proposed regulations addresses the notice and posting requirements of the Act. Section 96051.9 outlines requirements for hospital discharge notices. Section 96051.10 clarifies requirements for hospital postings related to discount payment and charity care. Section 96051.11 clarifies hospital website requirements related to discount payment and charity care.

Article 4 of the proposed regulations implements the patient complaint process for the Hospital Bill Complaint Program. Section 96051.12 specifies requirements for hospitals to designate a contact to register in the Department's online patient complaint portal to review and respond to complaints from the Department related to the patient complaint process. This provision outlines the information required for registration, the option for the designated contact to add approved users to respond to complaints, the requirement to update changes to the designated contact within 10-working days, and the requirement that the designated contact and approved users must sign a statement of certification under penalty of perjury attesting to the accuracy of any responses submitted by the hospital through the online patient complaint portal. Section 96051.13 specifies the options for patients to file patient complaints online or by mail. Section 96051.14 provides the ability and the steps necessary for a patient to designate an authorized representative. This section also outlines the requirements to modify or cancel an authorized representative designation. Section 96051.15 specifies the requirement for a patient or authorized representative to sign a release of information authorizing the Department to request all information necessary to investigate the patient's complaint. Section 96051.16 outlines the requirements to file a patient complaint with the Department, including providing identifying information, contact information, demographic information, and specific information about the complaint being filed. Section 96051.17 outlines the Department's complaint review process. This provision includes a requirement that a patient must have filed an application with the hospital for discount payment or charity care prior to filing a complaint with the Department. This provision outlines the steps the Department will take upon receipt of a complaint, the deadlines and requirements for hospital responses, the steps the Department will take upon concluding the investigation, and the obligations of the hospital after a compliance determination is made. Section 96051.18 outlines the process and standard of review for a request for extension filed by the hospital during the patient complaint process. Section 96051.19 specifies that hospitals shall not submit a patient to collections and shall cease all collections activity while that patient's

complaint with the Department is pending. The section further implements a penalty in the event a hospital fails to comply with this provision.

Article 5 of the proposed regulations implements the penalty process for violations of the Act and the proposed regulations. Section 96051.20 makes specific the application of the proposed penalty regulations and the Department's authority to enforce the Act beginning January 1, 2024. Section 96051.21 implements the Department's enforcement authority by adding penalties of \$1,000 per day for late submissions of required policies and applications for discount payment and charity care programs, and debt collection policies, as well as responses to requests from the Department for additional information regarding policy submissions and information regarding the patient complaint process. Section 96051.22 sets forth how the penalties arising from 96051.21 will be calculated and communicated to hospitals. Section 96051.23 implements a penalty process and structure for policies and applications submitted to the Department, hospital postings, and website postings that are not in compliance with the Act and the proposed regulations. Sections 96051.24 through 96051.27 implement penalties and the process for calculation of penalty assessments resulting from violations identified through the patient complaint system. Section 96051.24 interprets the definition of investigation as used in HSC section 127436. Section 96051.25 outlines the process of determining a base penalty for violation(s) and Section 96051.26 implements the additional factors, and the weight of the factors, the Department will consider in adjusting the base penalty. Section 96051.27 makes specific the limit of \$40,000 as applied to patient complaints. Section 96051.28 implements the requirement that if a hospital owes a reimbursement to a patient, it must reimburse the patient in a timely manner or a penalty will be assessed at \$1,000 per day with a cap of three times the amount owed to the patient, including interest. Section 96051.29 implements and makes specific how a small or rural hospital can apply for assistance in paying an assessed penalty if payment will affect access to quality care. Section 96051.30 makes specific how the Department will adjust the maximum penalty every five years as required by HSC section 127436. Section 96051.31 gives the Department authority to impose corrective action to ensure policies and procedures comply with the Act and the proposed regulations.

Article 6 of the proposed regulations implements the appeal process. Section 96051.32 provides a detailed explanation of how a hospital may file an appeal, the time limits on filing an appeal, the information required in a notice of appeal, and where to serve the notice. Section 96051.33 implements the requirements regarding communications after an appeal is filed. Section 96051.34 implements additional prehearing rules including how the parties will be notified of the appeal hearing date, the process to submit exhibits and witness lists, and how to request a change to the hearing date or to the manner of how the hearing will be held (in-person or by telephone). This section also clarifies how to request consolidation, how to request an interpreter, and how to arrange for a court reporter. Section 96051.35 implements the hearing procedure, including whether it will be held by a Department hearing officer or referred to the California Office of Administrative Hearings. It also sets forth the rules for taking of evidence. Section 96051.36 implements the ability of the parties to reach a settlement and how the

settlement will be communicated to the hearing officer. Section 96051.37 makes specific the Director's final review process and the steps the Director will take to finalize the decision.

The proposed regulations are necessary to implement and administer the newly amended Hospital Fair Pricing Act.

The Department has performed an evaluation as to whether the proposed regulations are inconsistent or incompatible with existing state regulations and determined the proposed regulations are not inconsistent or incompatible with existing state regulations. The Department also determined these regulations do not substantially differ from existing federal statute or regulations.

OBJECTIVES AND ANTICIPATED BENEFITS OF THE PROPOSED REGULATIONS

One of the benefits of this regulation package is increasing awareness about hospital discount payment, charity care, and the Hospital Bill Complaint Program. These regulations clarify what hospitals must do to comply with hospital written notice, posting, and website requirements. Currently, hospitals do not have robust notice requirements and patients are less likely to be aware that they may qualify for financial assistance. The requirements of these regulations will help ensure patients are aware of the hospital's discount payment and charity care programs, as well as the Hospital Bill Complaint Program.

The proposed regulations also describe the process for the Hospital Fair Billing Program to collect and review hospital discount payment, charity care, and debt collection policies. By clarifying the policy submission requirements, document requirements, policy review process, and substantive policy requirements, it is more likely that hospital policies will comply with the Act.

Another benefit of the regulations is the creation of the Hospital Bill Complaint Program, a consumer complaint process. If a patient believes they were improperly denied discount payment or charity care, the patient may file a complaint with the Department. The regulations clarify how a patient, or their authorized representative, may file a complaint through the patient complaint portal. The requirements of the regulations offer patients possible recourse if a hospital improperly denies their discount payment or charity care application.

Lastly, the regulations specify penalties for hospital violations by establishing criteria for determining penalty amounts, as well as an appeal process. By clarifying the penalty amounts as well as the process to calculate administrative penalties, hospitals will have increased transparency regarding penalty assessments. Penalties will also benefit patients because they will deter hospitals from future out of compliance behavior.

V. DISCLOSURES REGARDING THE PROPOSED ACTION

HCAI has made the following initial determinations:

1. Mandate on local agencies and school districts: None.
2. Cost or savings to any state agency: No fiscal impact is anticipated on the Agency. To implement the provisions of AB 1020, the Department previously completed a Budget Change Proposal (BCP) based upon the passage of the Act (4140-029-BCP-2022-GB), which was approved by the legislature. The BCP allocated \$3.9 million (\$1.9 million General Fund) in expenditure authority in Fiscal Year (FY) 2022-23, \$3.6 million (\$1.8 million General Fund) in 2023-24, and \$3.6 million (\$1.8 million General Fund) annually thereafter to support program services associated with the implementation of AB 1020. The Department does not anticipate needing additional funds beyond what was already requested and approved.
3. Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500-17630: None.
4. Other nondiscretionary cost or savings imposed on local agencies: None.
5. Cost or savings in federal funding to the state: None.
6. Cost impact on a representative person or business: The Department estimates the regulations required to implement Chapter 2.5 Fair Pricing Policies: Hospital Fair Pricing Policies (HSC section 127400 *et seq.*) will be an average of \$2,887.76 per licensed hospital.
7. Statewide adverse economic impact directly affecting businesses and individuals: The Department has made an initial determination that the regulations will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.
8. Significant effect on housing costs: None.
9. Cost impact on small businesses: This proposed action does not affect small business because no entities regulated (hospitals licensed under HSC section 1250 (a), (b) or (f)) under the proposed action are small businesses.

VI. STATEMENT OF THE RESULTS OF THE ECONOMIC IMPACT ANALYSIS (EIA)

New regulations are required to implement Chapter 2.5 Fair Pricing Policies: Hospital Fair Pricing Policies (HSC section 127400, *et seq.*). The Department has narrowly tailored the proposed regulations to implement the statutory requirements for the new program. The proposed regulations impose only minor additional requirements on any businesses, organizations, or individuals.

Therefore, the Department concludes that:

1. This regulatory action will not create jobs within the state.
2. This regulatory action will not eliminate jobs within the state.

3. This regulatory action will not create new businesses.
4. This regulatory action will not eliminate existing businesses.
5. This regulatory action will not expand businesses currently doing business within the state.
6. The benefits of the regulations are to achieve the goals of AB 1020, HSC section 127400, *et seq.*, by implementing the newly mandated program. The amendments to HSC sections 127400, *et seq.*, were designed to inform patients of the availability of financial assistance, increase eligibility of uninsured and underinsured patients for financial assistance, impose additional requirements for collection of medical debt, and authorize the Department to enforce hospital compliance with the requirements of HSC sections 127400, *et seq.* The proposed regulations will make discount payment and charity care more accessible, ensuring those who qualify for assistance receive the financial assistance intended.
7. This regulatory action will not impact workers' safety.
8. This regulatory action will not impact the state's environment.

VII. REASONABLE ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

VIII. AVAILABILITY OF EXPRESS TERMS, INITIAL STATEMENT OF REASONS, AND INFORMATION UPON WHICH PROPOSED RULEMAKING IS BASED

The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at 2020 West El Camino Avenue, Suite 800, Sacramento, CA 95833-1880. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the text of the proposed regulations, information upon which proposed rulemaking is based, the initial statement of reasons, and an economic impact analysis (contained in the initial statement of reasons).

The text is available on the Department's website at hcai.ca.gov/about/laws-regulations/.

IX. AVAILABILITY OF SUBSTANTIAL CHANGES TO ORIGINAL PROPOSAL

After considering all timely and relevant comments received, HCAI may adopt the proposed regulations substantially as described in this notice. If HCAI makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before HCAI adopts the regulations as revised.

Please send requests for copies of the modified text to the listed contact person. The modified text will also be available on the website at hcai.ca.gov/about/laws-regulations/. HCAI will accept written comments on the modified regulations for 15 days after the date on which they are made available.

X. AVAILABILITY OF FINAL STATEMENT OF REASONS

The Final Statement of Reasons, including all comments and responses, will be available, after its completion, through the HCAI website at hcai.ca.gov/about/laws-regulations/. The Final Statement of Reasons will also be available for review from the designated contact person.

XI. AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the proposed regulations can be accessed through the HCAI website at hcai.ca.gov/about/laws-regulations/ .