

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

INTERIM STUDY PROPOSAL 2009-017

State of Arkansas
87th General Assembly
Regular Session, 2009

A Bill

HOUSE BILL 2189

By: Representative Blount

Filed with: House Interim Committee on Public Health, Welfare and Labor
pursuant to A.C.A. §10-3-217.

For An Act To Be Entitled

AN ACT TO CREATE THE ARKANSAS PATIENT FINANCIAL
ASSISTANCE ACT; AND FOR OTHER PURPOSES.

Subtitle

THE ARKANSAS PATIENT FINANCIAL
ASSISTANCE ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 20, Chapter 9 is amended to add an
additional subchapter to read as follows:

20-9-1301. Findings.

The General Assembly finds that:

(1) The ability to pay for essential health care services is of
vital concern to the people of this state;

(2) Hospitals play an important role in providing essential
health care services in the communities they serve;

(3) As providers of essential health services, the hospitals of
this state have a special obligation to the communities they serve;

(4) Notwithstanding public and private efforts to increase
access to health care, the people of this state continue to have tremendous
unmet health needs;

(5) Certain residents of this state do not have the economic
means to obtain access to quality health care;



1 (6) Licensing privileges conveyed by this state that give
2 hospitals the right to conduct business within the state should be
3 accompanied by concomitant obligations to address unmet health care needs;

4 (7) These obligations should be clearly delineated;

5 (8) The state has a substantial interest in assuring that the
6 unmet health needs of its residents are addressed;

7 (9) Hospitals can help address these needs by providing charity
8 care to certain uninsured and underinsured members of their communities; and

9 (10) The provision of charity care should become a recognized
10 and accepted obligation of all hospitals in this state.

11
12 20-9-1302. Definitions.

13 As used in this subchapter:

14 (1) "Bad debt" means an account receivable based on services
15 furnished to any patient that is:

16 (A) Regarded as uncollectible following reasonable
17 collection efforts;

18 (B) Charged as a credit loss;

19 (C) Not the obligation of any federal or state
20 governmental unit; and

21 (D) Not charity care.

22 (2) "Charity care" means medically necessary health care
23 services rendered for free or at a reduced cost to uninsured and underinsured
24 persons who meet the organization's criteria for financial assistance and are
25 deemed unable to pay for all or a portion of services and not recorded by the
26 hospital as revenue or in its receivables;

27 (3) "Collection action" means an activity by which a hospital, a
28 designated agent or assignee of the hospital, or a purchaser of the patient
29 account requests payment for services from a patient or a patient's
30 guarantor, including without limitation:

31 (A) Preadmission or pretreatment deposits;

32 (B) Billing statements;

33 (C) Letters;

34 (D) Electronic mail;

35 (E) Telephone and personal contacts;

36 (F) Court summonses and complaints; and

1 (G) Other activities related to the collection of a
2 hospital bill.

3 (4) "Cost-to-cost ratio" means the ratio of a hospital's total
4 cost of providing patient care to its total charges for patient care, as
5 reported in its most recently settled Medicare Cost Report;

6 (5) "Effective date of eligibility" means the date on which
7 medically necessary services are initiated;

8 (6)(A) "Hospital" means a facility used for the purpose of
9 providing inpatient diagnostic care or treatment, including general medical
10 care, surgical care, obstetrical care, psychiatric care, and specialized
11 services or specialized treatment that is subject to the rules for hospitals
12 in Arkansas.

13 (B) "Hospital" does not mean a facility that primarily
14 provides long-term care;

15 (7) "Medically necessary services" means services that are
16 reasonably expected to prevent, diagnose, prevent the worsening of,
17 alleviate, correct, or cure conditions that endanger life, cause suffering or
18 pain, cause physical deformity or malfunction, threaten to cause or to
19 aggravate a handicap, or result in illness or infirmity, including without
20 limitation:

21 (A) Inpatient and outpatient services as mandated under
22 Title XIX of the Social Security Act, 42 U.S.C. §§ 1396 – 1396v; and

23 (B) The provision of prescription drugs; and

24 (8) "Underinsured patient" means a patient who has a policy of
25 health insurance or is a member of a public or private health insurance,
26 health benefit, or other health coverage program but who still has financial
27 liability after that policy or program has paid the amount for which it is
28 responsible.

29
30 20-9-1303. Eligibility process.

31 (a)(1) A hospital shall ask a patient or the patient's representative
32 before discharge whether the patient requires financial assistance in
33 connection with paying the hospital bill.

34 (2) The timing of the inquiry shall be consistent with the
35 requirements of 42 U.S.C § 1395(DD) et seq., as in effect on January 1, 2009,
36 and any regulations adopted under those sections.

1 (b) A patient or the patient's representative may submit an
2 application for charity care before, during, or within one (1) year of the
3 effective date of eligibility.

4 (c)(1) A hospital shall screen a patient who requests financial
5 assistance or who is identified as uninsured or underinsured to determine
6 whether he or she is eligible for or enrolled in coverage from any other
7 private or public source, including without limitation Medicaid, the ARKids
8 First Program, under § 20-77-101 et seq., the State Children's Health
9 Insurance Program, or another government program.

10 (2) If the screening determines that a patient is uninsured or
11 underinsured, the patient is eligible for charity care t only to the extent
12 that the patient has incurred expenses for medically necessary services that
13 are not otherwise covered by a public coverage program.

14 (3)(A) If a hospital determines a patient meets the eligibility
15 criteria for Medicaid, the ARKids First Program, the State Children's Health
16 Insurance Program, or another government program, the hospital shall
17 encourage the patient to apply for that coverage and shall assist the patient
18 in the application process.

19 (B) Refusal to apply for another source of coverage shall
20 not disqualify a patient from applying for and, if eligible, being approved
21 for charity care.

22 (C) A hospital shall not deny or delay patient care while
23 the patient's application for the other source of coverage is pending.

24 (d)(1) A hospital shall develop and use an application form to
25 determine eligibility for charity care.

26 (2)(A) A hospital shall submit the application form for approval
27 to the Department of Health.

28 (B) The department shall ensure that the application is
29 simple and easy to read and that it requests only the information that is
30 reasonably necessary to determine eligibility.

31 (C) The department shall translate the application into
32 Spanish and other languages most frequently used by the state's population.

33 (e)(1) The department shall specify the forms of documentation an
34 applicant shall submit in order to verify:

35 (A) Residency;

36 (B) Family income ; and

1 (C)(i) For purposes of an application for medical hardship
2 assistance only, available assets.

3 (ii) In developing specifications, the department
4 shall ensure that lack of official forms of documentation is not a barrier to
5 charity care.

6 (2) An affidavit signed by the applicant is sufficient if no
7 other documentation is reasonably available.

8 (3) An applicant for charity care shall not be required to
9 provide a social security number.

10 (f)(1) A hospital shall give a patient written notice of an
11 eligibility determination within fourteen (14) days after the hospital
12 receives a complete application.

13 (2) The patient shall remain eligible for charity care for one
14 (1) year after the effective date of eligibility determination, unless over
15 the course of that year the patient's family income or insurance status
16 changes to such an extent that the patient becomes ineligible for charity
17 care.

18
19 20-9-1304. Patient rights and responsibilities.

20 (a) A hospital shall advise patients of the following rights to,
21 including without limitation:

22 (1) Apply for charity care within one (1) year of the patient's
23 initial visit to the hospital;

24 (2) Enter into a payment plan if the patient is determined to be
25 ineligible for charity care;

26 (3) Receive a written determination regarding the patient's
27 charity care application within fourteen (14) days of submitting a completed
28 application; and

29 (4) File a grievance with the Department of Health.

30 (b) A patient shall:

31 (1) Provide all information required under § 20-9-1303(e)(1);

32 (2) Provide all necessary documentation relating to Medicaid
33 enrollment or the denial of Medicaid enrollment;

34 (3) Inform the hospital of changes in family income and
35 insurance status; and

36 (4) Provide documentation of expenses for medically necessary

1 services incurred from providers other than the hospital for purposes of
2 determining eligibility for partial charity care or medical hardship
3 assistance.

4
5 20-9-1305. Grievance – Appeal.

6 (a) A person whose application for charity care is denied by a
7 hospital’s determination regarding his or her application for charity care
8 may appeal the decision to the Department of Health.

9 (b) The grievance and appeal process under this subchapter shall
10 consist of the following:

11 (1) The patient shall send a written complaint to the
12 department, including without limitation any supporting documentation;

13 (2)(A) The department shall send a copy of the complaint to the
14 hospital and ask for the hospital’s written response, including without
15 limitation any additional documentation the hospital may possess.

16 (B) The hospital shall respond the request under (b)(2)(A)
17 of this section within thirty (30) days;

18 (3)(A) Within thirty (30) days after receiving the response from
19 a hospital under subdivision (b)(2) of this section, the department shall
20 issue a written decision upholding, reversing, or modifying the hospital’s
21 determination.

22 (B) The decision under subdivision (b)(3)(A) of this
23 section shall explain the basis for the department’s action.

24 (4) The department’s determination under subdivision (b)(3) of
25 this section is a final administrative decision and may be appealed by either
26 party to a court of competent jurisdiction.

27
28 20-9-1306. Notification.

29 (a) A hospital shall provide individual notice in the appropriate
30 language of the availability of charity care to a patient who is identified
31 as uninsured or underinsured.

32 (b) The hospital, a designated agent, or assignee of the hospital or
33 purchaser of the hospital patient account shall provide notice of the
34 availability of charity care to the patient in the appropriate language in
35 any collection action.

36

1 20-9-1307. Public notification.

2 (a) A hospital shall provide notification of the availability of
3 charity care through the hospital as follows:

4 (1)(A) The hospital shall post signs in the inpatient,
5 outpatient, emergency, admissions, and registration areas of the facility,
6 and in business office areas that are customarily used by patients, that
7 conspicuously inform patients of the availability of charity care and the
8 location within the hospital at which to apply for charity care.

9 (B) The signs shall be in English, Spanish, and other
10 appropriate languages that are most frequently spoken by the hospital's
11 service area;

12 (2)(A) The hospital shall post a notice in a prominent place on
13 its website that charity care is available.

14 (B) The notice shall:

15 (i) Include a brief description of the charity care
16 application process; and

17 (ii) Be in English, Spanish, and other appropriate
18 languages that are most frequently spoken by the hospital's service area.

19 (b)(1)(A) A hospital shall provide notice that charity care is
20 available to all community health centers and external human and social
21 services organizations located in the hospital's service area.

22 (B) The notice shall:

23 (i) Include a brief description of the charity care
24 application process; and

25 (ii) Be in English, Spanish, and other appropriate
26 languages that are most frequently spoken by the hospital's service area.

27 (c)(1)(A) A hospital shall publish quarterly a notice in a newspaper
28 of general circulation in the hospital's service area that charity care is
29 available.

30 (B) The notice shall:

31 (i) Include a brief description of the charity care
32 application process; and

33 (ii) Be in English, Spanish, and other appropriate
34 languages that are most frequently spoken by the hospital's service area.

35
36 20-9-1308. Hospital staff education.

1 A hospital shall provide regular in-service training to all hospital
2 staff and personnel regarding hospital charity care policies and procedures.

3
4 20-9-1309. Reporting.

5 (a) Within three (3) months after the end of a hospital's fiscal year,
6 a hospital shall submit an annual report to the Department of Health in a
7 format specified by the department.

8 (b) The report shall include without limitation the following
9 information for the previous fiscal year:

10 (1) The number of charity care applications submitted;

11 (2) The number of charity care applications approved;

12 (3) The number of charity care applications denied and the
13 reason for denial;

14 (4) The number of appeals to the department arising from denial
15 of a charity care application and the disposition of those appeals;

16 (5) The total and unduplicated number of patients who received
17 charity care;

18 (6) A copy of the hospital's charity care policy; and

19 (7) A copy of the hospital's billing and debt collection policy.

20 (c) The department may require a hospital to submit other data
21 sufficient to the department to ensure that the hospital is not
22 discriminating against patients who request or are eligible for charity care.

23 (d) A hospital shall submit with its annual report a description of
24 its charity care application process, including without limitation the
25 identity of the person or persons responsible for making determinations on
26 charity care applications.

27 (e) A hospital shall submit with its annual report its most recent and
28 complete set of audited financial statements.

29 (f) A hospital shall submit with its annual report a statement that
30 details the following:

31 (1) The amount of charity care, calculated at cost, provided in
32 the reporting year;

33 (2) The amount of bad debt incurred in the reporting year
34 calculated at cost and identifying how much of the bad debt is attributable
35 to individual patients and how much is attributable to third-party payers;

36 (3) The sum of the hospital's net patient service revenue plus

1 its investment income;

2 (4) The amount of any disproportionate share hospital funds
3 received from Medicaid or Medicare during the reporting year;

4 (5) The amount of any other public funds for the provision of
5 charity care or uncompensated care; and

6 (6) The amount of philanthropic funds available to the hospital
7 to subsidize the cost of charity care and the amount of those philanthropic
8 funds that were used during the reporting year to subsidize charity care.

9 (g)(1) A hospital may report the amount of charity care provided and
10 bad debt incurred using the hospital's uniform pricing structure.

11 (2) However, the hospital shall report the hospital's cost-to-
12 charge ratio as calculated in its most recently settled Medicare Cost Report.

13 (h) A hospital shall at the request of the department provide income
14 information related to applicants for charity care and any disease or
15 diagnostic code information related to services provided to patients who
16 receive charity care to enable the department to develop and implement
17 strategies to address health access and other public health issues.

18 (i) A hospital shall maintain auditable records of charity care
19 applications and determinations.

20 (j) A hospital shall report any other information that the department
21 deems necessary to ensure compliance with this subchapter.

22
23 20-9-1310. Regulatory oversight.

24 (a) The Department of Health shall administer and enforce this
25 subchapter.

26 (b) If a hospital has reported its charity care and bad debt data
27 using the hospital's uniform pricing structure, the department shall deflate
28 those amounts using the hospital's cost-to-charge ratio as calculated in its
29 most recently settled Medicare Cost Report.

30
31 20-9-1311. Department of Health – Reporting.

32 (a) The Department of Health shall issue a annual report to the public
33 including without limitation:

34 (1) The number of charity care applications submitted to each
35 hospital during the applicable year;

36 (2) The number of charity care applications approved by each

1 hospital during the applicable year;

2 (3) The number of charity care applications denied and the
3 reason for denial;

4 (4) The number of appeals to the department arising from denial
5 of a charity care application and the disposition of those appeals;

6 (5) The amount of charity care calculated at cost provided by
7 each hospital during the applicable year;

8 (6) The amount of bad debt, calculated at cost, incurred by each
9 hospital during the applicable year, identifying how much of the bad debt is
10 attributable to individual patients and how much is attributable to private
11 third-party payers; and

12 (7) The amount of charity care provided by each hospital during
13 the applicable year relative to the sum of the hospital's net patient service
14 revenue and investment income for the applicable year.

15 (b) At least annually, the department shall conduct a site visit to
16 each hospital to monitor compliance with this subchapter.

17
18 20-9-1312. Penalties.

19 (a) After notice and opportunity for a hearing, the Department of
20 Health may impose a civil penalty on any hospital that fails to comply with
21 any provision of this subchapter in an amount of not less than one thousand
22 dollars (\$1,000) for each failure to comply.

23 (b) Any decision by the department shall be considered a final
24 administrative decision for purposes of appeal.

25
26 20-9-1313. Private right of action.

27 (a) A individual who is otherwise eligible for charity care and who
28 suffers actual or consequential damages as a result of hospital noncompliance
29 with this subchapter may bring suit against the hospital in a court of
30 competent jurisdiction to recover the damages.

31 (b) An applicable charitable immunity provision or common-law doctrine
32 of charitable immunity does not apply in connection with any suit brought
33 under this subchapter.

34
35 20-9-1314. Rules.

36 The Department of Health shall adopt rules to implement this subchapt

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2 Filed Date: 04/02/2009 By: MGF\VJF