

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.

1 State of Arkansas
2 87th General Assembly
3 Regular Session, 2009

A Bill

HOUSE BILL 2189

4
5 By: Representative Blount
6
7

For An Act To Be Entitled

8
9 AN ACT TO CREATE THE ARKANSAS PATIENT FINANCIAL
10 ASSISTANCE ACT; AND FOR OTHER PURPOSES.
11

Subtitle

12
13 THE ARKANSAS PATIENT FINANCIAL
14 ASSISTANCE ACT.
15
16

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
18

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

21 20-9-1301. Findings.

22 The General Assembly finds that:

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

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

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

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

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

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



1 (7) These obligations should be clearly delineated;

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

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

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

8
9 20-9-1302. Definitions.

10 As used in this subchapter:

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

13 (A) Regarded as uncollectible following reasonable
14 collection efforts;

15 (B) Charged as a credit loss;

16 (C) Not the obligation of any federal or state
17 governmental unit; and

18 (D) Not charity care.

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

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

28 (A) Preadmission or pretreatment deposits;

29 (B) Billing statements;

30 (C) Letters;

31 (D) Electronic mail;

32 (E) Telephone and personal contacts;

33 (F) Court summonses and complaints; and

34 (G) Other activities related to the collection of a
35 hospital bill.

36 (4) "Cost-to-cost ratio" means the ratio of a hospital's total

1 cost of providing patient care to its total charges for patient care, as
2 reported in its most recently settled Medicare Cost Report;

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

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

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

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

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

20 (B) The provision of prescription drugs; and

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

26
27 20-9-1303. Eligibility process.

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

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

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

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

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

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

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

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

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

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

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

28 (C) The department shall translate the application into
 29 Spanish and other languages most frequently used by the state’s population.

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

32 (A) Residency;

33 (B) Family income ; and

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

36 (ii) In developing specifications, the department

1 shall ensure that lack of official forms of documentation is not a barrier to
2 charity care.

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

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

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

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

15

16 20-9-1304. Patient rights and responsibilities.

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

19 (1) Apply for charity care within one (1) year of the patient’s
20 initial visit to the hospital;

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

23 (3) Receive a written determination regarding the patient’s
24 charity care application within fourteen (14) days of submitting a completed
25 application; and

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

27 (b) A patient shall:

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

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

31 (3) Inform the hospital of changes in family income and
32 insurance status; and

33 (4) Provide documentation of expenses for medically necessary
34 services incurred from providers other than the hospital for purposes of
35 determining eligibility for partial charity care or medical hardship
36 assistance.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36

20-9-1305. Grievance – Appeal.

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

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

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

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

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

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

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

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

20-9-1306. Notification.

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

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

20-9-1307. Public notification.

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

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

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

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

11 (B) The notice shall:

12 (i) Include a brief description of the charity care
13 application process; and

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

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

19 (B) The notice shall:

20 (i) Include a brief description of the charity care
21 application process; and

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

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

27 (B) The notice shall:

28 (i) Include a brief description of the charity care
29 application process; and

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

32
33 20-9-1308. Hospital staff education.

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

36

20-9-1309. Reporting.

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

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

(1) The number of charity care applications submitted;

(2) The number of charity care applications approved;

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

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

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

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

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

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

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

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

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

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

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

(3) The sum of the hospital's net patient service revenue plus its investment income;

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

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

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

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

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

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

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

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

19
 20 20-9-1310. Regulatory oversight.

21 (a) The Department of Health shall administer and enforce this
 22 subchapter.

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

27
 28 20-9-1311. Department of Health – Reporting.

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

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

33 (2) The number of charity care applications approved by each
 34 hospital during the applicable year;

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

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

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

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

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

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

14
 15 20-9-1312. Penalties.

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

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

22
 23 20-9-1313. Private right of action.

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

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

31
 32 20-9-1314. Rules.

33 The Department of Health shall adopt rules to implement this
 34 subchapter.