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State-Mandated Facility Fee Disclosure and Posting
Guidance for MHA members
June 10, 2019

Under a new state law, beginning Aug. 1, 2019, any provider-based clinic that charges a separate facility fee for routine clinic visits must give notice to its patients, publicly post this information in the form of a poster, and include the information on its website, if the clinic has one. There are a few narrow exceptions to the requirement for certain clinics. The new statutory language is attached as Appendix A.

More specifically the new law requires most clinics that charge a facility fee to notify each patient before services are delivered, and to "post prominently in locations easily accessible to and visible by patients, including its website, a statement that the provider-based clinic is part of a hospital and the patient may receive a separate charge or billing for the facility, which may result in a higher out-of-pocket expense."

Key aspects of the new law

- The law **goes into effect Aug. 1.**
- With limited exceptions, the law **applies to any provider-based clinic**, including hospital-owned or health system-owned clinics, as well as to provider-based specialty care clinics.
- **The law does not apply to** the following facilities or services**:**
    - **Facilities designated as rural health clinics**,
    - Clinics that are "exclusively providing laboratory, x-ray, testing, therapy, pharmacy, or educational services,"
    - Clinics located on the hospital's campus, or
    - Emergency services.

- Although the law does not prescribe the exact wording for the posting, the language used must contain or convey the following statutory elements:

    - The clinic is part of a hospital,

    - The patient may receive a separate charge or billing for the facility component, and

    - The charge or billing for the facility component may result in a higher out-of-pocket expense.

- Clinics are not required to post the amount of a facility fee.

MHA recommendations:

- While the law does not prescribe the specific wording clinics must use, MHA suggests the following language for your consideration:

    "Depending on your health insurance, this hospital-based clinic may charge a separate facility fee, which might result in higher out-of-pocket expense. For more information, please contact [name and title/office name, contact information]."

- Because clinics are already providing similar notices to Medicare patients, MHA recommends reviewing and revising the language used in those notices to ensure that it also complies with this new state law. For example, unlike the state law, Medicare rules do not require that the notice address the potential for higher out-of-pocket costs.

- Clinics should consider making the information available in languages other than English based on the populations they serve.

- Information and notices posted on a clinic's website should be ADA compliant.

- With respect to another state law going into effect on July 1, 2019, MHA provided previous guidance suggesting that clinics subject to that law's requirements to post their top 25 procedures along with average pricing for Medicare, Medicaid, commercially insured and uninsured patients could include this facility fee notice language as part of the same poster. For clinics that are not subject to that law, the required facility fee disclosure would be posted on its own. For more information about the posting requirements for a clinic's top 25 services and to which clinics they apply, see MHA's guidance and webinar.

Suggested key messages to help explain the clinic facility fee posting

Patients are likely to ask for more information to understand the posted information and its relationship to their individual financial obligations. The following key messages may be helpful to provide context for the notices and postings. MHA advises that our members provide scripting to clinic and patient financial relations staff.

- The Minnesota Legislature passed a law in 2019 that requires certain hospital-based clinics to disclose the presence of a facility fee, if they have one.
- For more information about this hospital-based facility fee, please contact [name and title/office name, contact information].
- For specific information about the amount you will owe for the services you receive, please contact your insurer.
- Most patients, including those with government-sponsored health coverage, such as Medicare, Medical Assistance or Medicaid, or MinnesotaCare, have clinic payment rates based on fee schedules or negotiated by a managed care organization. For information about the clinic's facility fee or other questions regarding the fee schedule or negotiated rates applicable to your specific coverage, please contact your insurance program by calling the customer service number on your insurance card.
- Patients who want to shop for medical services should contact their insurance company to get important information necessary to make the best decisions. This information might include the following:
    - Which providers, clinics and hospitals are in- or out-of-network under the terms of the specific policy?
    - Which services are covered under the policy?
    - Even if the services are covered, does the policy require any prior authorization or other approvals by the insurance company before receiving the service?
    - What portion of the costs for the service(s), if any, will be covered by the insurance company and which will be the patient's responsibility?

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(SENATE AUTHORS: DRAHEIM, Jensen, Mathews, Klein and Koran)

Section 1. **[62J.824] FACILITY FEE DISCLOSURE.**

(a) Prior to the delivery of nonemergency services, a provider-based clinic that charges a facility fee shall provide notice to any patient stating that the clinic is part of a hospital and the patient may receive a separate charge or billing for the facility component, which may result in a higher out-of-pocket expense.

(b) Each health care facility must post prominently in locations easily accessible to and visible by patients, including its website, a statement that the provider-based clinic is part of a hospital and the patient may receive a separate charge or billing for the facility, which may result in a higher out-of-pocket expense.

(c) This section does not apply to laboratory services, imaging services, or other ancillary health services that are provided by staff who are not employed by the health care facility or clinic.

(d) For purposes of this section:

(1) "facility fee" means any separate charge or billing by a provider-based clinic in addition to a professional fee for physicians' services that is intended to cover building, electronic medical records systems, billing, and other administrative and operational expenses; and

(2) "provider-based clinic" means the site of an off-campus clinic or provider office located at least 250 yards from the main hospital buildings or as determined by the Centers for Medicare and Medicaid Services, that is owned by a hospital licensed under chapter 144 or a health system that operates one or more hospitals licensed under chapter 144, and is primarily engaged in providing diagnostic and therapeutic care, including medical history, physical examinations, assessment of health status, and treatment monitoring. This definition does not include clinics that are exclusively providing laboratory, x-ray, testing, therapy, pharmacy, or educational services and does not include facilities designated as rural health clinics.