

REFERENCE TITLE: hospital; price transparency

State of Arizona
Senate
Fifty-sixth Legislature
First Regular Session
2023

SB 1603

Introduced by
Senators Shamp: Borrelli, Kaiser, Rogers; Representative Smith

AN ACT

AMENDING TITLE 36, CHAPTER 4, ARTICLE 2, ARIZONA REVISED STATUTES, BY
ADDING SECTION 36-425.09; AMENDING SECTION 36-437, ARIZONA REVISED
STATUTES; RELATING TO HEALTH CARE INSTITUTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 36, chapter 4, article 2, Arizona Revised
3 Statutes, is amended by adding section 36-425.09, to read:

4 36-425.09. Hospital price transparency; licensure

5 AS A CONDITION OF LICENSURE IN THIS STATE, EACH HOSPITAL MUST COMPLY
6 WITH THE REQUIREMENTS OF 45 CODE OF FEDERAL REGULATIONS PART 180. THE
7 DEPARTMENT SHALL ANNUALLY CONFIRM EACH HOSPITAL'S COMPLIANCE WITH THIS
8 SECTION.

9 Sec. 2. Section 36-437, Arizona Revised Statutes, is amended to
10 read:

11 36-437. Health care facilities; charges; public availability;
12 direct payment; notice; definitions

13 A. A health care facility with more than fifty inpatient beds must
14 make available on request or online the direct pay price for at least the
15 fifty most used diagnosis-related group codes, if applicable, for the
16 HEALTH CARE facility and at least the fifty most used outpatient service
17 codes, if applicable, for the HEALTH CARE facility. The services may be
18 identified by a common procedural terminology code or by a plain-English
19 description. The health care facility must update the direct pay prices
20 at least annually based on the services from a twelve-month period that
21 occurred within the eighteen-month period preceding the annual
22 update. The direct pay price must be for the standard treatment provided
23 for the service and may include the cost of treatment for complications or
24 exceptional treatment.

25 B. A health care facility with fifty or fewer inpatient beds must
26 make available on request or online the direct pay price for at least the
27 thirty-five most used diagnosis-related group codes, if applicable, for
28 the HEALTH CARE facility and at least the thirty-five most used outpatient
29 service codes if applicable, for the HEALTH CARE facility. The services
30 may be identified by a common procedural terminology code or by a
31 plain-English description. The health care facility must update the
32 direct pay prices at least annually based on the services from a
33 twelve-month period that occurred within the eighteen-month period
34 preceding the annual update. The direct pay price must be for the
35 standard treatment provided for the service and may include the cost of
36 treatment for complications or exceptional treatment.

37 C. Subsections A and B of this section do not apply if a discussion
38 of the direct pay price would be a violation of the federal emergency
39 medical treatment and labor act.

40 D. Veterans administration facilities, health facilities on
41 military bases, ~~Indian health services hospitals and other~~ Indian health
42 services facilities, ~~AND~~ tribal owned clinics ~~and the Arizona state~~
43 ~~hospital~~ are exempt from the requirements of this section. If the
44 director of the Arizona department of health services determines that a
45 health care facility does not serve the general public, the health care

1 facility is exempt from the requirements of this section if the HEALTH
2 CARE facility does not serve the general public.

3 E. Subsections A and B of this section do not prevent a health care
4 facility from offering either additional discounts or additional lawful
5 health care services for an additional cost to a person or an employer
6 paying directly.

7 F. A health care facility is not required to report the direct pay
8 prices to a government agency or department or to a government-authorized
9 or government-created entity for review. A government agency or
10 department or government-authorized or government-created entity may not
11 approve, disapprove or limit a health care facility's direct pay price for
12 services. A government agency or department or government-authorized or
13 government-created entity may not approve, disapprove or limit a health
14 care facility's ability to change the published or posted direct pay price
15 for services.

16 G. A health care system may not punish a person or employer for
17 paying directly for lawful health care services or a health care facility
18 for accepting direct payment from a person or employer for lawful health
19 care services.

20 H. Except as provided in subsection O of this section, a health
21 care facility that receives direct payment from a person or employer for a
22 lawful health care service is deemed paid in full if the entire fee for
23 the service is paid and shall not submit a claim for payment or
24 reimbursement for the service to any health care system. This subsection
25 does not prevent a health care facility from pursuing a health care lien
26 for customary charges pursuant to title 33. This subsection does not
27 affect the ability of a health care facility to submit claims for the same
28 service provided on other occasions to the same or a different person if
29 no direct payment occurs. This subsection does not require a health care
30 facility to refund or adjust any capitated payment, bundled payment or
31 other form of prepayment or global payment made by a health care system to
32 the health care facility for lawful health care services to be provided by
33 the health care facility for the person who makes, or on whose behalf an
34 employer makes, direct payment to the health care facility.

35 I. Before a health care facility that is contracted as a network
36 provider for a health care system accepts direct payment from a person or
37 an employer, and the person is an enrollee of the same health care system,
38 the health care facility shall obtain the person's or employer's signature
39 on a notice in a form that is substantially similar to the following:

40 Important Notice About Direct Payment
41 For Your Health Care Services

42 The Arizona Constitution allows you to pay a health care
43 facility directly for health care services. Before you make
44 any agreement to do so, please read the following important
45 information:

1 If you are an enrollee of a health care system (more
2 commonly referred to as a "health insurance plan") and your
3 health care facility is contracted with the health insurance
4 plan, the following apply:

5 1. You may not be required to pay the health care
6 facility directly for the services covered by your plan,
7 except for cost share amounts that you are obligated to pay
8 under your plan, such as copayments, coinsurance and
9 deductible amounts.

10 2. Your provider's agreement with the health insurance
11 plan may prevent the health care facility from billing you for
12 the difference between the facility's billed charges and the
13 amount allowed by your health insurance plan for covered
14 services.

15 3. If you pay directly for a health care service, your
16 health care facility will not be responsible for submitting
17 claim documentation to your health insurance plan for that
18 claim. Before paying your claim, your health insurance plan
19 may require you to provide information and submit
20 documentation necessary to determine whether the services are
21 covered under your plan.

22 4. If you do not pay directly for a health care
23 service, your health care facility may be responsible for
24 submitting claim documentation to your health insurance plan
25 for the health care service.

26 Your signature below acknowledges that you received this
27 notice before paying directly for a health care service.

28 J. A health care facility that receives direct payment for a lawful
29 health care service and that complies with subsection I of this section is
30 not responsible for submitting documentation of any kind for purposes of
31 reimbursement to any health care system for that claim if the failure to
32 submit such documentation does not conflict with the terms of any federal
33 or state contracts to which the health care system is a party and the
34 health care facility has agreed to serve patients under or with applicable
35 state or federal programs in which a health care facility and health care
36 system participate.

37 K. A health care facility that receives direct payment pursuant to
38 this section shall provide the person making the direct payment with a
39 receipt that includes the following information:

40 1. The amount of the direct payment.

41 2. The applicable procedure and diagnosis codes for the services
42 rendered.

43 3. A clear notation that the services were subject to direct
44 payment under this section.

1 L. If an enrollee pays to a health care facility that is an
2 out-of-network provider the direct pay price for a lawful health care
3 service that is covered under the enrollee's health care plan, pursuant to
4 the requirements of this section, the amount paid by the enrollee shall be
5 applied first to the enrollee's in-network deductible with any remaining
6 monies being applied to the enrollee's out-of-network deductible, if
7 applicable. The amount applied to the in-network deductible shall be the
8 amount paid directly or the HEALTH insurer's prevailing contracted
9 commercial rate for the enrollee's health care plan in this state for the
10 service or services. If the service or services do not match standard
11 codes or bundled payment programs in use in this state by the HEALTH
12 insurer, the amount applied to the in-network deductible shall be the
13 amount paid directly. For the purposes of this subsection, "prevailing
14 contracted commercial rate" means the most usual and customary rate that
15 ~~an~~ A HEALTH insurer offers as payment for a specific service under a
16 specific health care plan, not including a plan offered under medicare or
17 medicaid or on a health insurance exchange.

18 M. If an enrollee is enrolled in a high deductible plan that
19 qualifies the enrollee for a health savings account as defined in
20 26 United States Code section 223, the health care system is not liable if
21 the enrollee submits a claim for deductible application of a direct pay
22 amount pursuant to subsection L of this section that jeopardizes the
23 enrollee's status as an individual eligible for favorable tax treatment of
24 the health savings account.

25 N. This section does not create any private right or cause of
26 action for or on behalf of any person against the health insurer. This
27 section provides solely an administrative remedy for any violation of this
28 section or any related rule.

29 O. This section does not impair the provisions of a health care
30 system's private health care network provider contract, except that a
31 health care facility may accept direct payment from a person or employer
32 or may decline to bill the health care system directly for services paid
33 directly by a person or employer if the health care facility has complied
34 with subsection I of this section and the health care facility's receipt
35 of direct payment and the declination to bill the health care system do
36 not conflict with the terms of any federal or state contract to which the
37 health care system is a party and the health care facility has agreed to
38 serve patients under or with applicable state or federal programs in which
39 a health care facility and health care system participate.

40 P. This section may not prevent the department of health services
41 from performing an investigation of a health care facility under the
42 department's powers and duties as prescribed in this title. If a health
43 care facility fails to comply with this section, the penalty shall not
44 include the revocation of the HEALTH CARE FACILITY'S license to deliver
45 health care services.

1 Q. For the purposes of this section:

2 1. "Direct pay price" means the entire price that will be charged
3 by a health care facility for a lawful health care service, regardless of
4 the health insurance status of the person, if the entire fee for the
5 service is paid in full directly to a health care facility by the person,
6 including the person's health savings account, or by the person's employer
7 and that does not prohibit a HEALTH CARE facility from establishing a
8 payment plan with the person paying directly for services.

9 2. "Enrollee" means a person who is enrolled in a health care plan
10 provided by a health insurer.

11 3. "Health care facility" means ~~a hospital~~, AN outpatient surgical
12 center, health care laboratory, diagnostic imaging center or urgent care
13 center.

14 4. "Health care plan" means a policy, contract or evidence of
15 coverage issued to an enrollee. Health care plan does not include limited
16 benefit coverage as defined in section 20-1137.

17 5. "Health care provider" means a person who is licensed pursuant
18 to title 32, chapter 7, 8, 13, 14, 16, 17, 19 or 34.

19 6. "Health care system" means a public or private entity whose
20 function or purpose is the management, processing or enrollment of
21 individuals or the payment, in full or in part, of health care services.

22 7. "Health insurer":

23 (a) Means a disability insurer, group disability insurer, blanket
24 disability insurer, health care services organization, hospital service
25 corporation, medical service corporation or hospital and medical service
26 corporation as defined in title 20.

27 (b) Does not include a governmental plan as defined in the employee
28 retirement income security act of 1974 (P.L. 93-406; 88 Stat. 829;
29 29 United States Code section 1002).

30 8. "Lawful health care services" means any health-related service
31 or treatment, to the extent that the service or treatment is ~~permitted~~
32 ALLOWED or not prohibited by law or regulation, that may be provided by
33 persons or businesses THAT ARE otherwise ~~permitted~~ ALLOWED to offer the
34 services or treatments.

35 9. "Punish" means to impose any penalty, surcharge or named fee
36 with a similar effect that is used to discourage the exercise of rights
37 under this section.