

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 404

(Senators Hershey and Hayes)

Finance

Health and Government Operations

Hospitals - Financial Assistance - Medical Bill Reimbursement Process

This bill modifies requirements relating to a specified refund process for patients who paid for hospital services in calendar 2017 through 2021 and were eligible for free care. The bill (1) alters the agencies with which the Health Services Cost Review Commission (HSCRC) must coordinate in the development of the refund process and the responsibilities of those agencies; (2) alters the refund process; (3) requires the Health Education and Advocacy Unit (HEAU) to assist patients in obtaining reimbursement; (4) requires hospitals to reimburse State agencies for costs incurred to implement the refund process; (5) authorizes tax information to be disclosed to a hospital, HSCRC, and other State agencies involved with implementation of the refund process, as specified; (6) delays the due date for the 2024 HSCRC reporting requirement; (7) requires implementation of Option 3 from HSCRC's December 2022 *Free Hospital Care Refund Process* report; and (8) makes failure to comply by a hospital an unfair, abusive, or deceptive trade practice under the Maryland Consumer Protection Act (MCPA). **The bill takes effect July 1, 2023, and terminates on termination of Chapter 683 of 2022 (June 30, 2025).**

Fiscal Summary

State Effect: General fund expenditures increase in FY 2024 and 2025 for affected State agencies to implement the refund process, as discussed below. As hospitals must reimburse State entities for costs incurred, State revenues increase correspondingly, as discussed below. The bill's new penalty provisions and imposition of existing penalty provisions are not anticipated to have a material impact on State finances or operations. Generally, there is no net effect on State finances.

Local Effect: Potential operational and/or fiscal impact on local education agencies (LEAs), as discussed below. The bill's imposition of existing penalty provisions does not have a material impact on local government finances or operations.

Small Business Effect: None.

Analysis

Bill Summary/Current Law:

Current Requirements under Chapter 683 of 2022

Chapter 683 of 2022 requires HSCRC, in coordination with the Department of Human Services (DHS), the State-designated health information exchange (HIE), the Comptroller's Office, and the Maryland Hospital Association, to develop a process (known as the refund process) that:

- identifies patients who paid for hospital services who may have qualified for free care at the time that care was given during calendar 2017 through 2021;
- provides reimbursement to the identified patients, which may be applied incrementally;
- ensures that a patient's alternate address is used if the patient required an alternate address for safety reasons; and
- determines how HSCRC, DHS, and the Comptroller's Office should share with or disclose relevant information, including tax information, to the minimum extent necessary, to the hospital and in accordance with federal and State confidentiality laws for the purpose of carrying out the required process.

HSCRC must report twice (by January 1, 2023, and January 1, 2024) to specified committees of the General Assembly on the development and implementation by hospitals of the refund process. If the refund process requires legislation for implementation, HSCRC must include legislative recommendations in the 2023 report; if not, hospitals must implement the refund process by January 1, 2023. Chapter 683 terminates June 30, 2025.

Initial Report on the Refund Process Informs the Requirements of the Bill

Per HSCRC's December 2022 *Free Hospital Care Refund Process* [report](#), stakeholders discussed the potential refund process during the 2022 interim but were unable to reach consensus on a process. The report noted that statutory changes are required to ensure that all entities involved in the final process are compliant with federal and State data security laws and to clarify roles and responsibilities for hospitals, the HIE, and State agencies in order to remove barriers that currently prevent implementation.

Stakeholders considered four refund process options. Under Option 3, hospitals must identify all patients who paid out-of-pocket expenses in calendar 2017 through 2021. The Comptroller's Office must take the hospital data and match it with tax data to determine which patients had incomes at or below 200% of the federal poverty level (FPL) during the

year of the service date(s). Data for patients identified to have incomes at or below 200% FPL must be returned to hospitals. Data unable to be matched with tax data must be shared with DHS (and the Maryland Department of Health (MDH) and the Maryland State Department of Education (MSDE), if applicable) to match with enrollment data for certain public assistance programs. Data on patients identified as being enrolled in such programs must be returned to hospitals. Hospitals would then contact patients to inform them that they may be due a refund. At the patient's request, the hospital would determine if the patient was eligible for free care and, if so, provide a refund.

Provisions in the Bill

Responsibilities for State Agencies: The bill alters the agencies with which HSCRC is required to coordinate on the development of the refund process by removing the HIE and adding MDH, MSDE, and HEAU.

The bill also requires HEAU in the Office of the Attorney General (OAG) to assist patients identified as being eligible to obtain reimbursement under the refund process. MDH, DHS, the Comptroller's Office, MSDE, and each hospital must report to HSCRC information on the refund process developed, in the time and manner determined by HSCRC.

HSCRC, MDH, DHS, the Comptroller's Office, MSDE, and each hospital must disclose (1) to each other, to the minimum extent necessary, relevant information, including tax information, necessary for implementation of the refund process and (2) to HEAU, relevant information necessary for HEAU to assist patients in obtaining reimbursement, as specified. If HEAU requests information from HSCRC, MDH, DHS, the Comptroller's Office, MSDE, or a hospital, the information must be provided within 10 business days after the date of the receipt of the request.

The bill may not be construed to make a hospital responsible for the confidentiality of the information in possession of each of these State entities.

Alterations Related to the Refund Process: In identifying patients who may be eligible for reimbursement, the refund process must, under the bill, only identify patients who paid *more than \$25* for hospital services who may have qualified for free care *on the date the hospital service was provided* during calendar 2017 through 2021.

The refund process must require each hospital to consider (1) tax data from the Comptroller's Office as *de facto* evidence of a patient's income and (2) data from MDH, DHS, and MSDE as *de facto* evidence of a patient's presumptive eligibility for free care. The refund process must (1) require each hospital to provide refunds to qualifying patients and (2) may not require a hospital to provide a patient with a refund if the patient previously was denied free care because of a failed asset test for the identified date of service.

Additionally, under the bill, if reimbursements are provided incrementally and less than 5% of the estimated reimbursements are made each year during the first increment, HSCRC is not required to implement additional increments of the process.

The bill delays the due date of HSCRC's second report on the development and implementation by hospitals of the refund process from January 1, 2024, to October 1, 2024.

The bill requires that each hospital, HSCRC, the Comptroller's Office, MDH, DHS, and MSDE implement Option 3 from the *Free Hospital Care Refund Process* report submitted by HSCRC in December 2022. Accordingly, a patient who paid out-of-pocket expenses for services must qualify for refunds if, based on the following: (1) the Comptroller's Office determines that the patient's family income was at or below 200% FPL during the year of service date(s); or (2) DHS, MDH, or MSDE determines that, during the year of service date(s), the patient lived in a household with children enrolled in the free and reduced-cost meal program or received benefits through the federal Supplemental Nutrition Assistance Program (SNAP), the State's energy assistance program, or the federal Special Supplemental Food Program for Women, Infants, and Children (WIC). However, the bill specifies that the Comptroller's Office, DHS, MDH, MSDE, HSCRC, and each hospital may not implement the alternative approach included with Option 3 in the HSCRC report.

Hospital Responsibilities and Penalties: Each hospital must reimburse HSCRC, the Comptroller's Office, MDH, DHS, MSDE, and HEAU for the costs incurred by each State entity to implement the refund process. Calculations for each hospital's share must be based on the hospital's proportion of the total number of patients who were identified by the State entity as potentially eligible for reimbursement in a designated year, as determined by HSCRC. HSCRC must provide each hospital with the reimbursement amount due to the appropriate State entity, as specified.

Each hospital must also create a webpage that includes specified information about the refund process. If a patient is entitled to a single refund per year in an amount of \$25 or less, the hospital may, but is not required to, provide the reimbursement.

If a hospital fails to provide refunds to patients who qualify as required under the bill, HSCRC may impose a fine of up to \$50,000 per violation. In determining the amount of the fine to be imposed, HSCRC must consider the appropriateness of the fine in relation to the severity of the violation. A violation of the refund process by a hospital is an unfair, abusive, or deceptive trade under and subject to enforcement and penalty provisions of MCPA.

Maryland Consumer Protection Act

An unfair, abusive, or deceptive trade practice under MCPA includes, among other acts, any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair, abusive, or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

The Consumer Protection Division in OAG is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, issue a cease and desist order, or file a civil action in court. A merchant who violates MCPA is subject to a fine of up to \$10,000 for each violation and up to \$25,000 for each repetition of the same violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 and/or imprisonment for up to one year.

State Fiscal Effect: HSCRC advises it can implement any changes to the refund process using existing personnel.

Under the bill, the Comptroller's Office must match hospital data with tax data. General fund expenditures for the Comptroller increase by approximately \$28,000 in fiscal 2024 and 2025 only for contractual staffing costs to match data sets.

MDH, DHS, and MSDE must take patient data unable to be matched with tax data and match it with other public benefits program enrollment data. MDH advises that it can match data with WIC enrollment using existing budgeted resources. This analysis assumes that DHS incurs additional general fund expenditures for data matching with SNAP and State energy assistance program data; however, the department did not provide a specific estimate of these costs. MSDE also likely incurs additional general fund expenditures to determine if any patients lived in households with children in the free and reduced-cost meal program. MSDE advises that it must obtain this data from LEAs.

OAG's HEAU must assist patients identified as eligible in obtaining reimbursement under the refund process. OAG may require additional staff to provide assistance to patients; however, OAG did not respond to a request for information for this fiscal and policy note.

Each State entity that incurs costs under the bill is eligible for reimbursement from hospitals; presumably the reimbursement requirement applies to costs absorbed within existing budgets. Accordingly, revenues increase for the Comptroller's Office, DHS, and potentially MSDE, OAG, and HSCRC in fiscal 2024 and/or 2025 to reflect reimbursement from hospitals for costs incurred to comply with the bill and implement the refund process. It is unclear whether these monies would be treated as reimbursable revenues or special fund revenues (even though there may not be a dedicated special fund to receive them); reimbursable or special fund expenditures increase subsequently, presumably replacing other (in many cases, general fund) appropriations.

Local Fiscal Effect: MSDE advises that it does not determine eligibility for the free and reduced-cost meal program; instead, LEAs identify eligible students using data from DHS or by using the Household Application for Free and Reduced-Price Meals. Thus, LEAs must provide MSDE with data on households with children in the free and reduced-cost meal program so that MSDE may match the data with patient data provided by hospitals. This may have an operational and/or fiscal impact on LEAs.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 333 (Delegate Charkoudian, *et al.*) - Health and Government Operations.

Information Source(s): Maryland Department of Health; Department of Human Services; Maryland State Department of Education; Maryland Energy Administration; Comptroller's Office; Department of Legislative Services

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