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FAQs for Facility Fees

These FAQs answer questions regarding PHL § 2830, which took effect on June 21, 2023, as explained in DAL 23-08 Facility Fees. Chapter 764 of the Laws of 2022 added PHL § 2830 and also added definitions of "facility fee," "health system," and "provider" to PHL § 2801.

Q. Do these notice requirements apply to all patients or just patients whose insurance does not cover the fee?

A. Yes, this is applicable to all patients. Providers may not bill or seek payment from a patient for a facility fee that is not covered by the patient's health insurance unless the patient was notified prior to the date of the service that a facility fee would be applicable.

Q. Do these requirements apply only to outpatient settings?

A. No. These requirements apply to both inpatient stays and outpatient visits. Many patients have insurance that covers facility fees for inpatient stays, but some patients do not. In the case of an inpatient who does not have insurance that covers the facility fees, providers may not bill or seek payment from the patient for a facility fee that is not covered by the patient's health insurance unless the patient was notified prior to the date of the service that the facility fee would be applicable.

Q. How do these requirements apply to emergency and/or urgent care services where determination of facility fee coverage and notice prior to rendering of services is not feasible?

A. If advance written notice is infeasible because the visit was secured less than seven days in advance, then a written notice shall be provided on the date the service is rendered. The facility must explain the amount of the fee and if the patient is uninsured, how to apply for financial assistance.

Q. What if the hospital cannot determine ahead of time from the insurer whether or not the patient's plan will pay the fee?

A. The facility may not bill or seek payment from a patient for a facility fee that is not covered by the patient's health insurance unless the patient was notified prior to the date of service that a facility fee would be applicable. If the hospital cannot determine ahead of time whether the patient's plan will pay the fee, the hospital may provide the notification to the patient so that the facility will be able to bill or seek payment from the patient in the event that the patient's plan will not pay the fee.

Q. What are the penalties associated with non-compliance?

A. In accordance with New York State Public Health Law § 12, the penalty is $2,000 for each violation. The penalty may be increased to up to $5,000 for subsequent violations.

Q. How are providers to collect the facility fee from a patient for whom services have already been rendered and the patient refuses to pay the facility fee?

A. Facilities should discuss with their legal representation and develop policies and procedures for how to handle.

Q. Are there operational expenses that are excluded from the facility fee?

A. Under Public Health Law § 2801, as amended, a "facility fee" is defined as any fee that is (a) intended to compensate for operational expenses, and (b) is distinct from a professional fee. Under this definition, the total fee minus the professional fee for the services of licensed health care practitioners is equal to the facility fee.

Q. Are facility fees equivalent of all technical components in a split bill?

A. Under Public Health Law § 2801, a "facility fee" is defined as any fee that is (a) intended to compensate for operational expenses, and (b) is distinct from a professional fee. Where the fee charged or billed is split into a professional fee and a fee for technical components, then the fee for technical components would be the facility fee.

Q. If a patient is unable to be noticed, is the provider still able to bill the patient's insurance?

A. Yes.

Q. If a patient has a scheduled screening, are providers prohibited from billing the technical component of the screening (for example, a CT scan) without notice?

A. Providers may bill the patient's insurance, but providers may not bill or seek payment from a patient for a facility fee that is not covered by the patient's health insurance unless the patient was notified prior to the date of the service that a facility fee would be applicable. The total fee minus the professional fee for the services of licensed health care practitioners is equal to the facility fee. Where the fee charged or billed is split into a professional fee and a fee for technical components (for example, a CT scan), then the fee for technical components would be the facility fee.