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New York: High Prices and Large Debts, But Significant Reforms Are Coming

New York state requires its hospitals to offer financial assistance to patients who meet certain eligibility standards. Those standards, as written, are relatively specific and expansive compared to other states' rules, according to Community Catalyst's analysis for its 50-state compendium of state policies. The state has also recently enacted a law restricting the use of facility fees – add-ons to hospital bills that are not related to the professional services a patient receives – for preventative care. In recent years, hospitals have stepped up the use of these fees, effectively increasing their prices.

These measures have the potential to lower hospital bills for some patients, thereby reducing the likelihood of acquiring medical debt. The financial assistance law, however, has flaws that prevent many who should benefit from receiving discounts. Newly enacted improvements to the law, which will go into effect later this year, include several positive updates. Problems with the facility fees law may emerge, but it is too new to have a full sense of any problems.

This spotlight looks at New York's hospital financial assistance and facility fee laws and assesses their past effectiveness in moderating hospital prices and reducing medical debt. It looks at the specifics of the laws, how they are followed, and how they can be improved. The information in the spotlight is largely qualitative, based on a few interviews with knowledgeable health advocates and state regulators, and a review of state statutes, proposed legislation, and other public sources. Additional research and analysis would be required to reach definitive conclusions.

Overview of hospitals' prices and medical debt in New York

Hospital prices in New York are very high. The Health Care Cost Institute reported that the average price for an inpatient hospital service was \$34,219 in 2021. This was 27% higher than the national average of about \$27,000.ⁱ For context, the income of the median New York household in 2021 was \$74,314, barely twice the average hospital price. Without assistance – either health insurance or hospital discounts – an average hospital bill for an average New Yorker would cause extreme financial hardship.

The average out-of-pocket cost for inpatient care – the deductibles, coinsurance, and copayments that insured patients pay when they receive services – was \$823.ⁱⁱ While this figure is lower than the national average, it is still significant, considering the median amount of medical debt in collectionsⁱⁱⁱ in New York was \$456 (2022 data).^{iv}

While New Yorkers are less likely to have medical debt than residents of other states, there are still hundreds of thousands of people in New York who are in debt because of medical bills. In 2022, 6% of the state population had medical debt in collections, including 6% of people living in white communities and 5% living in communities of color.^v Because of its large population, this percentage means that over one million New Yorkers have medical debt. Advocates report that hospitals providing the most financial assistance are in racially and ethnically diverse neighborhoods, while those providing the least tend to be in more rural, less diverse areas.^{vi}

Key details of the policies

New York's "General Hospital Indigent Care Pool" law has been in place since 2009.^{vii} Hospitals that receive payment for uncompensated care from the pool cannot charge eligible patients whose income is at or below 300% of the federal poverty level (FPL)^{viii} more than what the hospitals would have been paid by Medicaid, Medicare, or the commercial payer with the largest numbers of claims in the previous year, whichever is greater. The law specifies a schedule of discounts using one of these three prices as the base:

- Under 100% FPL: no more than a "nominal charge"
- 100% to up to 150% FPL: sliding scale up to 20% of the base price
- 150% to up to 250% FPL: 20% to 100% of the base price
- 250% to 300% FPL: 100% of the base price

To be eligible, a patient must be uninsured or have exhausted their health insurance benefits and be unable to pay full charges. Hospitals must offer a payment plan to patients who qualify for a discount, with a monthly payment that does not exceed 10% of the patient's gross monthly income. The hospital may charge interest on the payment plan no higher than the yield of the 90-day Treasury bill plus 0.5%.

The New York State Public Health Law was amended in 2022 to address facility fees. It prohibits hospitals from charging facility fees that are not covered by a patient's health insurance unless it provides seven days advance notice or, if an appointment is made less than seven days in advance, on the day when the services are delivered. Facility fees are prohibited entirely for preventive care services. The law, which is one of the most aggressive in the nation in curbing hospitals' latitude to charge additional fees, went into effect on June 21, 2023.^{ix}

Effectiveness of the policies

Curbing hospital prices

Some advocates feel that the current financial assistance law is not an effective method to control hospital prices. While it provides discounts to patients whose income is below the eligibility threshold, the law does not address the prices on which the discounts are based. And the discounts themselves may not be sufficient: in New York, which has among the highest hospital prices in the nation, even a 20% discount off the commercial rate may still be a very high price. The law permits patients only 90 days to apply for financial assistance, which is often before insurance claims have been processed.

Further, the law allows for a high degree of discretion for individual hospitals in determining discounts and how they are applied. Hospitals may, for example, discount copayments and deductibles for insured patients who demonstrate an inability to pay. The law also allows (but does not require) hospitals to count the lowest-income patients' assets, with some exclusions, in determining ability to pay. It is silent, however, on parameters for if and when a hospital may sue a patient for an outstanding medical debt. The lack of standardization means that, while the law is well-intentioned and helps many people in individual cases, there are significant gaps that result in an inconsistent and incomplete effect on prices that patients face.^x

The new facility fee law should reduce hospital bills by removing, in many cases, add-on fees that effectively increase prices, sometimes by thousands of dollars. New York was an early participant in a growing trend among states to rein in this inflationary practice by hospitals. It was the first state to ban the use of facility fees for preventive care, which had become more prevalent as hospitals acquired more physician practices, turning them into outpatient departments of the hospital system.^{xi} The new facility fee rules have been in effect in New York for less than one year, however, so the extent of their impact is not yet clear.

Improving affordability

Hospital financial assistance improves the affordability of care for those who qualify for it and can access it. Without it, uninsured patients (there are about one million uninsured people in New York)^{xii} could be billed the hospital's full charge, which can be multiple times higher than the Medicaid, Medicare, or commercial payer price. In addition, since 2020, the state has enacted provisions that make it more difficult (and less lucrative) for hospitals and their collection agents to sue patients.^{xiii} Additionally, in 2023, the state

banned the reporting of medical debt to credit bureaus and required hospitals to use a uniform hospital financial assistance form.

There are gaps in hospitals' policies and how they are applied, however, so not all who should have more affordable coverage do. A fundamental shortcoming is that hospitals design their own policies and application processes, which do not always comply with the law – they might require documentation beyond what the law allows, for example, or deny eligibility for someone who is looking for a job.^{xiv} Underinsured patients often do not receive assistance, though the law covers patients who have exhausted their insurance benefits and demonstrate an inability to pay. Practitioners within the hospital who are not part of the hospital's staff – for example, anesthesiologists who bill separately from the hospital – may not be covered by the hospital's policy.

Further, the rules for payment plans do not promote affordability. The allowable interest rate is high, and a maximum payment of 10% of gross income is not manageable for many people with low and moderate incomes in a state where other essential needs can be quite costly.

Enforcement

The Department of Health is responsible for enforcing the provisions of the financial assistance law. Enforcement depends on complaints from patients or their representatives initiating the process. Some advocates feel that the state does not devote sufficient resources and attention to enforcement. For example, there is no official or phone number at the Department of Health that patients can call to report a problem with securing assistance at a specific hospital.^{xv} Monitoring hospitals' policies, applications, and practices is a formidable task, since every hospital may design its own. The Department may impose fines, but that authority is rarely used.

The Attorney General's office, which is responsible for enforcing state laws overall, does not play an active role in enforcing hospitals' compliance with the Hospital Financial Assistance Law. Ironically, the AG's office brought 6,833 medical debt lawsuits in New York state in 2023, 83% of the total, on behalf of just five state-run hospitals (the other 210 private non-profit hospitals were the source of the other 1,379 suits).^{xvi}

To improve compliance with the Hospital Financial Assistance Law and motivate better practices, the Department of Health began to audit hospitals' policies in 2012. Hospitals responded to 52 audit questions in writing, and auditors would conduct a field audit of a selection of hospitals every year. The audits saw marked improvements in the first few years, with 96% of hospitals failing at least one audit question falling to 62% in 2016.

However, results did not improve significantly after that, showing the audit program's limited effectiveness in improving compliance. As of 2021, 59% of hospitals were still failing at least one question of the desk audit.^{xvii}

There is no enforcement provision in the facility fee statute. The Department of Health sent a letter to hospital CEOs in August of 2023 informing them of their obligations under the new law. The letter simply restates the statute; there is no mention of possible consequences for noncompliance.^{xviii}

What more could/should be done to address high hospital prices and medical debt?

Since its original passage, New York's Hospital Financial Assistance Law has had limited impact on hospital prices because hospitals have discretion to design their own financial assistance policies, and because the law allows for discounts to be based on commercial insurance payment levels. Under current law, there is no mechanism to cap those prices, and the "discount" for patients at 300% of FPL can be as much as 100% of those rates.

New York's governor, Kathy Hochul, recently signed a package of amendments to the law as part of the state's fiscal year 2025 budget. With these changes, New York's requirements arguably go further than Colorado, whose law is a model for restraining hospital prices.^{xix} New York's amendments, which will go into effect in October 2024, make the Medicaid rate the index price for discounts, removing the highest volume commercial payer and even the Medicare rate as options for hospitals. Further, it increases eligibility for discounts to 400% of FPL and offers a clear definition of an "underinsured" patient who is also eligible for discounts. For those who qualify, the proposed maximum price would be 20% of the Medicaid rate for uninsured patients and 20% of the cost sharing obligation of underinsured patients.^{xx} More than half (54%) of New York's population has an income below 400% of FPL^{xxi}, so adoption of these provisions means that hospital prices will effectively be reduced to one-fifth of the Medicaid level or lower for patients in this half of the population who have no insurance or inadequate insurance.

The new reforms include other provisions to make it more likely that patients eligible for the discounts will receive them, including eliminating the option for hospitals to consider assets in evaluating eligibility, establishing requirements for hospital notifications about the availability of discounts, and allowing patients to apply for assistance at any time during the collection process.^{xxii}

Some provisions also address medical debt. For example, the maximum payment under a payment plan will be reduced to 5% of gross monthly income. While this may still be unmanageably high for many patients, it is half the allowable level under current law. The law also reduces the maximum interest rate on payment plans to 2%. While zero would be preferable, this is still an improvement over current law.

Conclusion

New York has a long-standing hospital financial assistance law that has benefited many patients, but it does not systematically address hospital prices. Gaps and insufficient protections in the law mean that many who are eligible do not receive assistance or, if they do, they may be exposed to damaging levels of medical debt. The state has just passed improvements to the law that represent significant steps toward curbing prices and reducing medical debt. The state's new law restricting the use of facility fees may also effectively reduce prices. These developments are potential models for other states seeking to use these approaches to manage prices and debt.

ⁱ Health Care Cost Institute, 2021 Health Care Cost and Utilization Report, April 2023. Data files: https://healthcostinstitute.org/images/pdfs/HCCUR2021_Downloadable_Data_Files.zip.

ⁱⁱ Health Care Cost Institute.

ⁱⁱⁱ Debt reported to a major credit bureau. Includes past-due credit lines that have been closed and charged-off on the creditor's books as well as unpaid bills reported to the credit bureaus that the creditor is attempting to collect.

^{iv} Debt in America: An Interactive Map. The Urban Institute. <https://apps.urban.org/features/debt-interactive-map/>, accessed December 12, 2023.

^v Debt in America, The Urban Institute.

^{vi} Amanda Dunker and Carrie Tracy, "An Ounce of Prevention: Reforming the Hospital Financial Assistance Law Could Save Pounds of Patient Debt." Community Service Society, April 2023.

^{vii} New York State Public Health Law, § 2807-K.

^{viii} 300 percent of FPL in 2024 is \$93,600 for a family of four.

^{ix} New York State Public Health Law, § 2830.

^x Community Catalyst interviews with New York informants.

^{xi} Christin H. Monahan, Karen Davenport, and Rachel Swindle, "Protecting Patients from Unexpected Outpatient.

^{xii} KFF State Health Facts. <https://www.kff.org/other/state-indicator/total-population/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7Dm>, accessed May 15, 2024.

^{xiii} The recent provisions include: (1) the reduction of the statute of limitations (time to sue patients) from six to three years; (2) the reduction of the consumer judgment interest rate from 9% to 2%; and (3) the banning of securing liens on patients' primary residences and the garnishment of their wages.

^{xiv} Community Catalyst interviews with New York informants.

^{xv} Community Catalyst interviews with New York informants.

^{xvi} <https://www.cssny.org/news/entry/mapping-how-new-yorks-hospitals-sue-vulnerable-patients-an-update>, accessed April 12, 2024.

^{xvii} Dunker and Tracy, “An Ounce of Prevention.”

^{xviii} Letter to hospital chief executives and administrators from Stephanie Shulman, Director of the Division of Hospital and Diagnostic & Treatment Centers. DHDTTC DAL#: 23-08, August 15, 2023.

^{xix} Colorado Spotlight: innovative Policies Protect Many from High Prices and Medical Debt; They Could Still be Better. <https://communitycatalyst.org/wp-content/uploads/2024/04/Colorado-State-Spotlight-April-2024.pdf>

^{xx} Community Service Society of New York (CSSNY), “New York’s Reformed Hospital Financial Assistance Law.” <https://hcfany.org/wp-content/uploads/2024/05/Stoplight-HFAL-FINAL.pdf>, accessed May 15, 2024.

^{xxi} KFF estimates based on the 2008-2022 American Community Survey, 1-Year Estimates. <https://www.kff.org/other/state-indicator/distribution-by-fpl/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>

^{xxii} CSSNY, “New York’s Reformed Hospital Financial Assistance Law.”