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Task Force to Evaluate the Impact of Facility Fees on Patients

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Office of Policy and Legal Analysis



**STATE OF MAINE
131st LEGISLATURE
FIRST REGULAR AND FIRST SPECIAL SESSIONS**

**Task Force to Evaluate the
Impact of Facility Fees on Patients**

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Executive Summary

The Task Force to Evaluate the Impact of Facility Fees on Patients, referred to in this report as the “task force” was established by Public Law 2023, chapter 410 to evaluate the impact on patients of paying facility fees charged by health care providers. Traditionally, facility fees have been charged by hospitals to account for the “overhead” to maintain hospital inpatient and emergency services and cover the operating and administrative expenses to keep hospitals open and accessible to patients at all times. More recently, facility fees have become more commonly charged to patients receiving health care services in non-hospital settings, such as a physician office acquired by a hospital or a health system. With more health care services being delivered in outpatient settings and more patients being responsible for paying a greater portion of costs, more patients are being directly impacted by facility fees.

During the First Regular Session of the 131st Legislature, Senator Troy Jackson, President of the Senate, proposed legislation to address facility fees charged by health care providers. The bill, LD 1795, An Act to Protect Patients by Prohibiting Certain Medical Facility Fees, was introduced following a [Portland Press Herald investigative report](#) that chronicled the problems faced by Mainers with medical billing, including the charging of high facility fees that may not be covered by insurance. In the article, Maine patients recounted their experiences with being charged for facility fees that were not explained prior to receiving services or being charged amounts for facility fees that the patients believed were too high. Given the limited time left in the legislative session and the lack of data on the extent to which Maine patients and Maine’s health care system were being adversely impacted by facility fees, the Joint Standing Committee on Health Coverage, Insurance and Financial Services recommended that LD 1795 be amended to replace the bill and do two things: 1) to require the Maine Health Data Organization to annually report on payments made by payors in this State for facility fees charged by health care providers; and 2) to establish the Task Force to Evaluate the Impact of Facility Fees on Patients to further study the issue and report back to the Legislature. The Legislature followed the Committee’s recommendation and enacted Public Law 2023, chapter 410 to establish the task force.

The task force was chaired by Senator Donna Bailey and Representative Poppy Arford. Other voting members of the task force were appointed to represent stakeholder interests, including a member with expertise, knowledge and background in health care policy and members representing the interests of health care consumers, health insurance carriers, hospitals and retired persons. The Director of the Office of MaineCare Services within the Department of Health and Human Services and the Director of the Office of Affordable Health Care participated as ex officio non-voting members. A copy of the complete membership list is included as Appendix B.

The task force held three public meetings at the State House on December 1, December 7 and December 13. Over the course of the three meetings, the task force used its limited time to fulfill the duties set forth in the authorizing legislation. The task force solicited input from the following stakeholders about industry practices related to facility fees and the impact of facility fees on patients: the Maine Association of Health Plans, Maine Hospital Association, Maine Medical Association, Health Care Purchaser Alliance of Maine and Consumers for Affordable

Health Care. The task force reviewed and considered current federal and State laws related to transparency of cost information for hospitals and health insurance carriers and to standardized billing requirements. The task force also reviewed model legislation on facility fees developed by the National Academy for State Health Policy and the laws enacted in other states that address facility fees.

Given the limited time available, the task force focused on the following policy areas during their discussions: 1) the definition of facility fee; 2) data collection and reporting associated with facility fees; 3) notice or transparency requirements related to facility fees; 4) limitations on facility fees associated with telehealth services; 5) limitations on facility fees based on type of service or location; 6) assistance to patients experiencing general bills issues, including billing of facility fees; and 7) the financial impact on patients for services depending on the setting or site of service. In this report, the task force proposes broad recommendations related to these policy areas that are based on the information available to members at the time of the meetings. The task force acknowledges that, in the time available, it was not possible to consider and understand all of implications and consequences of the proposed recommendations. The task force encourages the Legislature to engage task force members and other stakeholders in additional discussion before moving forward on any of the recommendations.

The task force believes that any policy recommendations related to facility fees should be made in a manner that aligns with federal law, regulations and guidelines as they currently exist and continue to evolve with the goal of requiring providers and facilities to be transparent with respect to facility fees, and of minimizing the burden to patients that result from imposing facility fees. With these considerations in mind, the task force provides the following comments and recommendations. Unless otherwise noted, the task force's recommendations are unanimously supported by all members.

1. Definition of facility fee

- ❖ **Recommend that the Legislature review current definitions of “facility fee” and consider how best to define “facility fee”, including whether charges billed by ambulatory care facilities or other independent non-hospital based facilities should be included in the scope of any legislation limiting the charging of a facility fee**

2. Data collection and reporting associated with facility fees

- ❖ **Recommend that the Maine Health Data Organization and the Office of Affordable Health Care be directed to review the available data reported by MHDO related to facility fees pursuant to the annual reporting requirement established by Public Law 2023, chapter 410; identify any gaps in the data being reported and collected related to facility fees; and make recommendations for any additional data reporting requirements related to facility fees to the Legislature no later than December 31, 2024**

3. Notice or transparency requirements related to facility fees

- ❖ Recommend that the Legislature consider the introduction of legislation to require health care providers that charge a facility fee post notice on their website and on signs in common areas of the facility, including information on how to access the Maine Health Data Organization website for more information about facility fees and under what circumstances facility fees may be charged depending on the payor for a service and the setting in which a service is provided to patient
- ❖ Recommend that the Maine Health Data Organization be directed to develop information on its publicly accessible website designed to educate patients about facility fees and whether and in what circumstances depending on payor and type of service a facility fee may be charged
- ❖ Recommend that the Legislature consider the introduction of legislation to require health care providers to notify patients prior to a scheduled service if they will be charged a facility fee associated with their scheduled service (*Task Force Vote: 6-2*)
- ❖ Recommend that the Legislature consider the introduction of legislation to require that, if a health care provider charges a patient a facility fee, a health care provider and any health care payor must identify any facility fee separately in an itemized manner on any bill or explanation of benefits sent to a patient, to the extent possible (*Task Force Vote: 6-2*)

4. Limitations on facility fees associated with telehealth services

- ❖ Recommend that the Legislature consider the introduction of legislation to prohibit a health care provider from charging a facility fee for telehealth services when a patient is not in a facility (*Task Force Vote: 6-2*)

5. Limitations on facility fees based on location or type of service

- ❖ Recommend that the Maine Health Data Organization be directed to review its available data to determine if any health care providers have charged more than one facility fee per medical encounter on the same date of service and report back to the Legislature on its findings
- ❖ Recommend that the Office of Affordable Health Care be directed to review other state laws that impose limitations or prohibitions on facility fees to determine if similar limitations or prohibitions would reduce the cost of care for consumers in Maine and report back to the Legislature on its findings
- ❖ Recommend that the Legislature consider the introduction of legislation to require hospitals to bill uninsured patients using a single invoice that itemizes any facility fees and professional fees on the invoice in order to eliminate any confusion for patients who

may have previously received separate bills for facility fees and professional fees associated with the same service

- ❖ **Recommend that the Legislature consider the introduction of legislation to regulate facility fees charged, billed or collected by a health care provider, except for the charging, billing or collection of facility fees from MaineCare, by imposing the limitations on facility fees included in the NASHP model legislation as follows:**
 - **Prohibit facility fees charged by hospital-affiliated providers except for services provided on a hospital's campus (all buildings within 250 yards of main building); at a facility that includes a licensed hospital emergency department; or emergency services provided at a licensed freestanding emergency facility; and**
 - **Prohibit facility fees for outpatient evaluation and management services regardless of where the services are provided. (Task Force Vote: 5-3 vote)**

6. Assistance to patients experiencing general billing issues, including billing of facility fees

- ❖ **Recommend that the Legislature consider the introduction of legislation to establish a complaint mechanism for patients experiencing billing issues with health care providers, including facility fees**

7. Financial impact on patients for services depending on the setting or site of service

- ❖ **Does not recommend any action related to this issue as cost sharing obligations are applied by health insurance carriers in a consistent manner according to the terms and benefits of a patient's health plans**

The task force believes it is important that policymakers understand how facility fees charged by health care facilities and health care providers impact Maine patients and Maine's health care system: determine how facility fees should be communicated to patients in a transparent manner; and take steps to minimize the burden to patients that result from imposing facility fees. With these considerations in mind, the task force has made the recommendations included in this report. In the limited time available, however, it was not possible for the task force to consider and understand all of the implications and consequences of its recommendations. The task force encourages the Legislature to carefully consider its recommendations and engage task force members and other stakeholders in further discussions before moving forward with these recommendations.

I. INTRODUCTION

The Task Force to Evaluate the Impact of Facility Fees on Patients, referred to in this report as the “task force” was established by Public Law 2023, chapter 410 to evaluate the impact on patients of paying facility fees charged by health care providers. The law directs the task force to submit a report that includes its findings and recommendations to the Maine Legislature no later than December 6, 2023. Pursuant to Joint Rule 353, an extension of that deadline was requested and granted until December 15, 2023. A copy of the law establishing the task force is included as Appendix A.

Public Law 2023, chapter 410 became effective on October 25, 2023. Pursuant to the law, members were required to be appointed within 30 days of that date. The task force has 8 voting members and 2 ex officio non-voting members. Senator Donna Bailey was named the Senate chair and Representative Poppy Arford was named as the House Chair of the task force. The remaining members of the task force were appointed to represent the interests articulated in the law as follows:

- A member representing a statewide organization supporting the interests of health care consumers;
- A member representing the interests of health insurance carriers;
- A member with expertise, knowledge and background in health care policy;
- A member representing a statewide organization of retired persons¹;
- A member representing a statewide organization of hospitals; and
- A member representing a hospital in the State.

The Director of the Office of MaineCare Services within the Department of Health and Human Services and the Director of the Office of Affordable Health Care participated as the ex officio non-voting members. A copy of the complete membership list is included as Appendix B.

The task force held three public meetings at the Maine State House on December 1, December 7 and December 13. Materials distributed and reviewed at each meeting, as well as additional background and other study-related materials were posted on the task force’s webpage and are available at this link: <https://legislature.maine.gov/task-force-to-evaluate-the-impact-of-facility-fees-on-patients>.

II. Background

Traditionally, facility fees have been charged by hospitals to account for the “overhead” to maintain hospital inpatient and emergency services and cover the operating and administrative expenses to keep hospitals open and accessible to patients at all times. For two decades, Medicare and Medicaid billing rules have required hospitals to bill for a facility fee for use of a facility and to bill for a professional fee for the health care services provided to a patient. More recently, facility fees have become more commonly charged to patients receiving health care

¹ With the approval of the chairs, Jess Maurer, who was appointed by the Speaker of the House as this member, designated another staff member of the Maine Council on Aging, Jena Jones, to participate in her place.

services in non-hospital settings, such as a physician office owned or acquired by a hospital or a health system. Medicare and Medicaid regulations permit the billing of facility fees for visits in hospital-based inpatient and outpatient settings and also for services rendered in certain physician-owned ambulatory surgical centers. As a result, the services rendered by the physician practices owned or acquired by hospitals can be and are billed as a part of the overall health system that regularly charges facility fees, even when that physician office may not be located in a hospital or on a hospital campus. With respect to patients that are commercially insured, State law requires that all services provided in an “office setting” be submitted to health insurers on a single standardized claim form. The law effectively prohibits carriers from paying separate facility fees for services provided in office settings. However, with more health care services being delivered in outpatient settings and more patients being responsible for a greater portion of costs, more patients are being directly impacted by facility fees.

During the First Regular Session of the 131st Legislature, Senator Troy Jackson, President of the Senate, proposed legislation to address facility fees charged by health care providers. The bill, LD 1795, An Act to Protect Patients by Prohibiting Certain Medical Facility Fees, was introduced following a [Portland Press Herald investigative report](#) that chronicled the problems faced by Mainers with medical billing, including the charging of high facility fees that may not be covered by insurance. In the article, Maine patients recounted their experiences with being charged for facility fees that were not explained prior to receiving services or being charged amounts for facility fees that the patients believed to be too high. As originally drafted, the bill proposed to prohibit certain health care providers from charging, billing or collecting a facility fee in certain situations and requires annual reporting on the amount of facility fees charged or billed. At the public hearing on LD 1795, Senator Jackson spoke about the rising costs of health care in Maine and that facility fees were one factor that was contributing to rising costs. His testimony noted that the health care billing system is complex and patients are not made fully aware about how facility fees may significantly impact the cost of the health care they receive. The Legislature also received other testimony about patients receiving facility fees for routine care or outpatient services even when the provider office is not located in a hospital or on a hospital campus. Based on calls to their HelpLine, the testimony from Consumers for Affordable Health Care provided several anecdotal examples of seemingly unwarranted facility fees, including the charging of multiple facility fees for a single visit, the charging of facility fees for visits to a freestanding urgent care clinic and the charging of a facility fees for a telehealth visit.

Given the limited time left in the legislative session and the lack of data on the extent to which Maine patients and Maine’s health care system were being adversely impacted by facility fees, the Joint Standing Committee on Health Coverage, Insurance and Financial Services recommended that LD 1795 be amended to replace the bill and do two things: 1) to require the Maine Health Data Organization to annually report on payments made by payors in this State for facility fees charged by health care providers; and 2) to establish the Task Force to Evaluate the Impact of Facility Fees on Patients to further study the issue and report back to the Legislature. The Legislature followed the Committee’s recommendation and enacted Public Law 2023, chapter 410 to establish the task force.

Public Law 2023, chapter 410 directed the task force to:

- Review the industry practices for charging facility fees, uses of the funds received as facility fees and impacts on patients of paying facility fees charged by health care providers;
- Review federal transparency requirements for hospitals and health insurance carriers regarding cost of treatment, identify any gaps or redundancies between state laws and federal laws and identify any problems with enforcement of those laws;
- Consider efforts in other states and by national organizations related to regulation of, or minimization of, facility fees and the potential effects such efforts might have on health care costs in this State; and
- Make recommendations for changes in laws or rules regarding facility fees and medical cost transparency based on the information examined under this subsection.

III. Task Force Process

Over the course of three meetings, the task force used its limited time to fulfill the duties set forth in the authorizing legislation. The task force solicited input from the following stakeholders about industry practices related to facility fees and the impact of facility fees on patients: the Maine Association of Health Plans, Maine Hospital Association, Maine Medical Association, Health Care Purchaser Alliance of Maine and Consumers for Affordable Health Care.

Task force staff presented materials on current federal and State laws related to transparency of cost information for hospitals and health insurance carriers and to standardized billing requirements. An overview of these laws is provided below. The Maine Health Data Organization also provided an update on the annual reporting on facility fee payments required by Public Law 2023, chapter 410. While work on the report is ongoing, the first annual report is expected to be provided to the Legislature in January 2024.

In addition, the task force invited Maureen Hensley-Quinn, one of the task force members, to present information on the development of National Academy of State Health Policy (NASHP) Model Legislation on facility fees. The task force also received a presentation on Connecticut's laws related to facility fees from Vicki Veltri, Senior Policy Fellow, NASHP, and former Executive Director of the Office of Health Strategy in Connecticut. Finally, task force staff provided information and materials related to the laws enacted in other states that address facility fees. An overview of the NASHP model legislation and other state laws is provided below.

At the conclusion of its meetings, the task force voted to put forth for consideration by the 13th Legislature the recommendations described in section IV.

▪ **Current Federal and State Law and Regulations Related to Transparency and Information about Health Care Costs**

The following is a brief outline of the federal law and regulations and State laws related to requirements for hospitals and other health care providers to be transparent about their prices and disclose information about health care costs to patients.

Federal law and [regulations](#) related to hospital price transparency. Hospitals are required to provide clear, accessible pricing information online about the items and services they provide in two ways: (1) as a comprehensive machine-readable file with all items and services; and (2) in a display of at least 300 shoppable services in a consumer-friendly format. Under the federal rule, the penalty for noncompliance is progressive: hospitals receive a written warning and are permitted to file a corrective action plan; only if the corrective action plan is not satisfactory are hospitals then subject to civil monetary penalties.

Federal law and [regulations](#) related to good faith estimates. Federal law also sets forth requirements for health care providers to provide “good faith estimates” to patients prior to a scheduled health care service (or set of services). Currently, providers must provide these estimates to uninsured patients, but the implementation of the requirements for insured patients has been delayed pending federal rulemaking. Once federal rules are in place, health insurance health insurance carriers will also be required to provide “advance explanation of benefits” for scheduled services upon request; consumers can request advance information from their health insurance carrier about how services will be covered before they are provided. For scheduled services, consumers can submit requests and, generally within three business days, the carrier must provide written information including about whether the provider/facility participates in-network, and a good faith estimate of what the plan will pay and what patient will have to pay.

Federal law and [regulations](#) related to price information from health insurance carriers. Most group health plans and issuers of group or individual health insurance coverage are required to disclose personalized pricing information for 500 covered items and service to their participants, beneficiaries, and enrollees through an online consumer tool, by phone, or in paper form, upon request. Cost estimates must be provided in real-time based on cost-sharing information that is accurate at the time of the request. Detailed price information must also be made available in machine-readable files: 1) rates for all covered items and services between the plan or issuer and in-network providers; and 2) allowed amounts for, and billed charges from, out-of-network providers.

State laws. There are several provisions in current law that require disclosure of information about the costs of health care services and that relate to billing for health care services, including:

- [22 MRSA §1712](#) requiring hospitals to provide itemized bills to patients within 30 days of a request;
- [22 MRSA §1718](#) requiring hospitals and ambulatory surgical centers to provide the average charge for any inpatient service or outpatient procedure upon request;
- [22 MRSA §1718-B](#) requiring health care entities to provide information about prices of most frequently provided health care services, about the MHDO’s CompareMaine website and about the “right to shop” for certain services;

- [22 MRSA §1718-C](#) requiring health care entities to provide estimate of the total price of medical services rendered during a single encounter to uninsured patients upon request, including identification of third-party health care entities, and to notify patient of charity care policy;
- [22 MRSA §1718-D](#) prohibiting balance billing for surprise bills and out-of-network emergency services;
- [22 MRSA §1721](#) prohibiting a patient or patient’s insurer from being charged by a health care facility for health care services provided as a result of or to correct a mistake or preventable adverse event;
- [22 MRSA §8712](#) requires the Maine Health Data Organization to create a publicly accessible interactive website with information related to payments for services rendered by health care facilities and practitioners to residents of the State; see MHDO’s [CompareMaine](#) website. Beginning January 2024, MHDO must also post on its website and provide annual reports on payments for facilities fees made by payors to the extent the information is available; and
- [24-A MRSA §4303, subsection 21](#) requires health insurance carriers to make information available to consumers about estimated costs of certain comparable health care services (Physical and occupational therapy services; radiology and imaging services; laboratory services; and Infusion therapy services). Carriers may comply by providing this information on its publicly accessible website or by consumers to the publicly accessible health care costs website of the Maine Health Data Organization.

▪ **Current Federal and State Law Related to Standardized Claims Forms for Billing**

Federal standardized claim forms. Federal law regulations require that health care providers use the following standardized claim forms or formats to bill for services provided by Medicare and Medicaid. These same standardized forms have been adopted for use by all payors of health care claims, including health insurers and self-insured employer health plans. Claims from institutional providers, such as hospitals, are billed on a form referred to as the [UB 4](#) or CMS 1450. Claims from health care professionals, such as physicians, are billed on a form referred to as the [CMS 1500](#).

State laws related to standardized claim forms. The following state laws govern the use of standardized claims forms, including:

- [24 MRSA §2985](#) requiring health care practitioners who directly bills for health care services to use the current standardized claim form for professional services approved by the federal Government;
- [24-A MRSA §2753](#) requiring insurers providing individual health coverage to accept the standardized claim for professional services from a health care practitioner:
 - requires all services provided by a health care practitioner in an office setting to be submitted on the standardized federal form used by noninstitutional providers;
 - insurers may not be required to accept a claim submitted on another form
 - services in a nonoffice setting may be billed as negotiated between the insurer and health care practitioner;

- *“office setting” defined as a location where the health care practitioner routinely provides health examinations, diagnosis and treatment of illness or injury on an ambulatory basis whether or not the office is physically located within a facility:*
- 24-A MRSA §2823-B requiring insurers providing group health coverage to accept the standardized claim for professional services from a health care practitioner:
 - requires all services provided by a health care practitioner in an office setting to be submitted on the standardized federal form used by noninstitutional providers;
 - insurers may not be required to accept a claim submitted on another form;
 - services in a nonoffice setting may be billed as negotiated between the insurer and health care practitioner;
 - *“office setting” defined as a location where the health care practitioner routinely provides health examinations, diagnosis and treatment of illness or injury on an ambulatory basis whether or not the office is physically located within a facility;*
- 24-A MRSA §4235 requiring health maintenance organizations providing individual or group health coverage to accept the standardized claim for professional services from a health care practitioner:
 - requires all services provided by a health care practitioner in an office setting to be submitted on the standardized federal form used by noninstitutional providers;
 - health maintenance organizations may not be required to accept a claim submitted on another form;
 - services in a nonoffice setting may be billed as negotiated between the insurer and health care practitioner;
 - *“office setting” defined as a location where the health care practitioner routinely provides health examinations, diagnosis and treatment of illness or injury on an ambulatory basis whether or not the office is physically located within a facility; and*
- 24-A MRSA §1912 requiring third-party administrators who administer claims must accept the standardized claim for professional services from a health care practitioner:
 - requires all services provided by a health care practitioner in an office setting to be submitted on the standardized federal form used by noninstitutional providers;
 - administrators may not be required to accept a claim submitted on another form
 - services in a nonoffice setting may be billed as negotiated between the insurer and health care practitioner;
 - *“office setting” defined as a location where the health care practitioner routinely provides health examinations, diagnosis and treatment of illness or injury on an ambulatory basis whether or not the office is physically located within a facility.*

▪ **National Academy of State Health Policy Model Legislation**

In response to requests from state officials and policymakers to develop policy proposals that address rising health care costs, the National Academy of State Health Policy (NASHP) identified facility fees as one factor contributing to health care costs and developed model legislation related to one facility fees in 2020. The model bill proposes to prohibit certain facility fees from being charged to consumers accessing primary care services. The NASHP model legislation does not eliminate all facility fees, but it restricts their use by location and service. With regard to location, the model prohibits any health care facility that is located more

than 250 yards from a hospital campus from charging a facility fee for services provided at that location, eliminating the ability of certain physician practices acquired by hospitals from adding facility fees simply because the doctor's office is no longer independent from a hospital or health system. With regard to the type of service, the model also prohibits providers from charging facility fees for certain classes of outpatient services, including but not limited to evaluation and management services, regardless of the location where that specific service was provided. Finally, the model also includes a requirement for health systems to report their facility fee charges to the state on an annual basis.

▪ **State Legislation to Address Facility Fees**

There are currently 12 states that have enacted legislation to address facility fees in some manner. The actions taken by states have focused on requiring reporting and disclosure related to facility fees, establishing state oversight over facility fees, limiting or restricting the instances when health care providers may charge facility fees and prohibiting the charging of facility fees for certain telehealth visits.

Connecticut, Colorado, Indiana and Maryland have laws requiring annual reporting to the state on facility fees.

Connecticut, Colorado, Florida, Indiana, Maryland, Massachusetts, Minnesota, New York, Texas and Washington have laws requiring providers to post notice in their facilities or to specifically disclose facility fees to patients prior to delivering care.

Connecticut, Colorado, Indiana, Maryland, New York and Texas have laws limiting or restricting the charging of facility fees for certain services or in certain outpatient settings not on a hospital campus.

Connecticut, Georgia, Maryland, Minnesota, Ohio and Washington have laws prohibiting facility fees for certain telehealth visits.

An overview of the laws enacted in other states is included as Appendix C. The consideration of legislative proposals by state policymakers related to facility fees is expected to continue in 2024.

IV. Recommendations

Given the limited time available, the task force focused on these policy areas during their discussions: 1) the definition of facility fee; 2) data collection and reporting associated with facility fees; 3) notice or transparency requirements related to facility fees; 4) limitations on facility fees associated with telehealth services; 5) limitations on facility fees based on type of service or location; 6) assistance to patients experiencing general billing issues, including billing of facility fees; and 7) financial impact on patients for services depending on the setting or site of service. In this report, the task force proposes broad recommendations in these policy areas that are based on the information available to members at the time of the meetings and the task force acknowledges that it was not possible to consider and understand all of the implications and

consequences of the recommendations. The task force encourages the Legislature to engage task force members and other stakeholders in additional discussion before moving forward on any of the recommendations.

The task force believes that any policy recommendations related to facility fees should be made in a manner that aligns with federal law, regulations and guidelines as they currently exist and continue to evolve with the goal of requiring providers and facilities to be transparent with respect to facility fees, and of minimizing the burden to patients that result from imposing facility fees. With these considerations in mind, the task force provides the following comments and recommendations. Unless otherwise noted, the task force's recommendations are unanimously supported by all members.

1. Definition of facility fee

- ❖ **Recommend that the Legislature review current definitions of “facility fee” and consider how best to define “facility fee”, including whether charges billed by ambulatory care facilities or other independent non-hospital-based facilities should be included in the scope of any legislation limiting the charging of a facility fee**

The task force recommends that the Legislature review current definitions of “facility fee” and consider how best to define “facility fee”, including whether charges billed by ambulatory care facilities or other independent non-hospital-based facilities should be included in the scope of any legislation limiting the charging of a facility fee. Under current law (as enacted in Public Law 2023, chapter 410) for the purposes of the annual reporting on facility fee payments by the Maine Health Data Organization, a facility fee is defined as “any fee charged or billed by a health care provider for outpatient services provided in a hospital-based facility or freestanding emergency facility that is intended to compensate the health care provider for the operational expenses of the health care provider, separate and distinct from a professional fee, and charged or billed regardless of how a health care service is provided.” The task force members note that the scope of this definition and definitions used in laws enacted in other states is limited to hospital-based facilities and freestanding emergency care facilities. During its meetings, the task force heard about the charging of facility fees to some patients by independent ambulatory surgical care centers or other independent providers. The task force suggests that the Legislature consider whether the scope of the definition of facility fee should be broadened to include ambulatory care centers or other non-hospital-based facilities. Before making any substantive recommendation to limit or prohibit facility fees, the task force believes the Legislature should have a comprehensive understanding of how to define “facility fee” and consider if a facility fee is appropriate to account for the operating and administrative expenses of a health care provider, what type of providers or facilities are entitled to a facility fees and for what type of services a facility fee may be imposed.

2. Data collection and reporting associated with facility fees

- ❖ **Recommend that the Maine Health Data Organization and the Office of Affordable Health Care be directed to review the available data reported by MHDO related to facility fees pursuant to the annual reporting requirement established by Public Law**

2023, chapter 410; identify any gaps in the data being reported and collected related to facility fees; and make recommendations for any additional data reporting requirements related to facility fees to the Legislature no later than December 31, 2024

The task force recommends that the Maine Health Data Organization and the Office of Affordable Health Care be directed to review the available data reported by MHDO related to facility fees pursuant to the annual reporting requirement established by Public Law 2023, chapter 410; identify any gaps in the data being reported and collected related to facility fees; and make recommendations for any additional data reporting requirements related to facility fees to the Legislature no later than December 31, 2024. Pursuant to Public Law 2023, chapter 410, in January 2024, the Maine Health Data Organization will be required to begin reporting on facility fee payments on an annual basis. At its first meeting, the task force members were briefed by MHDO on its progress in collecting data for the report and on the methodology being used to extract data from the existing MHDO all-payer claims database. During its discussion, the task force learned that a facility fee is billed using the UB-4 standard claim form for institutional providers and professional services rendered by physicians and other health care practitioners are billed using a different claim form, the CMS 1500. However, task force members believe that differentiating facility fee payments based on the type of claim form may not provide the most accurate picture of how “overhead” costs, including facility fees, are accounted for in the data currently available. The task force recommends that the Office of Affordable Health Care and the Maine Health Data Organization work in conjunction to review the first report carefully to identify any needs for additional data reporting requirements related to facility fees.

3. Notice or transparency requirements related to facility fees

- ❖ **Recommend that the Legislature consider the introduction of legislation to require health care providers that charge a facility fee post notice on their website and on signs in common areas of the facility, including information on how to access the Maine Health Data Organization website for more information about facility fees and under what circumstances facility fees may be charged depending on the payor for a service and the setting in which a service is provided to patient**

The task force recommends that the Legislature consider the introduction of legislation to require health care providers that charge a facility fee post notice on their website and on signs in common areas of the facility, including information on how to access the Maine Health Data Organization website for more information about facility fees and under what circumstances facility fees may be charged depending on the payor for a service and the setting in which a service is provided to patient. The task force believes that patients lack a complete understanding if and when facility fees may be charged. Testimony provided at the public hearing on LD 1795 and input provided by Consumers for Affordable Health Care in a presentation to the task force indicates that patients are surprised and confused when facility fees are charged, particularly for services provided in an office setting. The task force supports additional transparency measures related to facility fees and urges the Legislature to consider requirements for health care providers to post notice about facility fees in their facilities and on their websites so patients are more aware of facility fees and under what circumstances facility

fees may be charged depending on the payor for a service and the setting in which a service is provided to patient.

- ❖ **Recommend that the Maine Health Data Organization be directed to develop information on its publicly accessible website designed to educate patients about facility fees and whether and in what circumstances depending on payor and type of service a facility fee may be charged**

The task force recommends that the Maine Health Data Organization be directed to develop information on its publicly accessible website designed to educate patients about facility fees and whether and in what circumstances depending on payor and type of service a facility fee may be charged. In order to provide a single, trusted and uniform source of information, the task force believes that MHDO is the appropriate entity to develop information about facility fees to educate patients and the general public.

- ❖ **Recommend that the Legislature consider the introduction of legislation to require health care providers to notify patients prior to a scheduled service if they will be charged a facility fee associated with their scheduled service**

Six members of the task force recommend that the Legislature consider the introduction of legislation to require health care providers to notify patients prior to a scheduled service if they will be charged a facility fee associated with their scheduled service. In the interest of transparency, the members supporting the recommendation believe that the Legislature should consider legislation requiring providers to notify patients individually if they will be charged a facility prior to receiving a scheduled service.

The task force members opposed to the recommendation (Jeff Austin and Mark Souders) note that posting general notices about facility fees on a provider's website and in their offices would provide adequate notice to a patient and an additional written notice to a patient is not necessary.

- ❖ **Recommend that the Legislature consider the introduction of legislation to require that, if a health care provider charges a patient a facility fee, a health care provider and any health care payor must identify any facility fee separately in an itemized manner on any bill or explanation of benefits sent to a patient, to the extent possible**

Six members of the task force recommend that the Legislature consider the introduction of legislation to require that, if a health care provider charges a patient a facility fee, a health care provider and any health care payor must identify any facility fee separately in an itemized manner on any bill or explanation of benefits sent to a patient, to the extent possible. In the interest of transparency, the members supporting the recommendation believe that it is reasonable to require providers to itemize any facility fee separately on any bill or explanation of benefits sent to a patient.

The task force members opposed to the recommendation (Jeff Austin and Mark Souders) reiterate that posting general notices about facility fees on a provider's website and in their

offices would provide adequate notice to a patient and an itemized bill would add an unnecessary administrative burden on a provider.

4. Limitations on facility fees associated with telehealth services

- ❖ **Recommend that the Legislature consider the introduction of legislation to prohibit a health care provider from charging a facility fee for telehealth services when a patient is not in a facility**

Six members of the task force recommend that the Legislature consider the introduction of legislation to prohibit a health care provider from charging a facility fee for telehealth services when a patient is not in a facility. As a matter of policy, the members supporting the recommendation do not believe a facility fee is an appropriate charge in association with a telehealth visit when the patient receiving those telehealth services is not present in a facility.

The task force members opposed to the recommendation (Jeff Austin and Mark Souders) believe that the data available to the task force is limited and does not appear to demonstrate that facility fees are being charged inappropriately for telehealth visits on a widespread basis in the State.

5. Limitations on facility fees based on location or type of service

- ❖ **Recommend that the Maine Health Data Organization be directed to review its available data to determine if any health care providers have charged more than one facility fee per medical encounter on the same date of service and report back to the Legislature on its findings**

The task force recommends that the Maine Health Data Organization be directed to review its available data to determine if any health care providers have charged more than one facility fee per medical encounter on the same date of service and report back to the Legislature on its findings. One of the anecdotal examples provided to the task force about the impact of facility fees on patients related to a patient who was charged three separate facility fees in the same amount associated with three separately-coded services provided to that patient during one encounter for eye surgery in an ambulatory surgical center. On its face, this is the type of circumstance that task force members believe the charging of more than one facility fee for the same medical encounter is inappropriate. However, members want to determine if this is an example of a billing error or an example of a larger issue with how facility fees are being billed. Before making any substantive recommendation, the task force want the Maine Health Data Organization to review its data to determine if there are other examples of multiple facility fees being charged for the same medical encounter.

- ❖ **Recommend that the Office of Affordable Health Care be directed to review other state laws that impose limitations or prohibitions on facility fees to determine if similar limitations or prohibitions would reduce the cost of care for consumers in Maine and report back to the Legislature on its findings**

The task force recommends that the Office of Affordable Health Care be directed to review other state laws that impose limitations or prohibitions on facility fees to determine if similar limitations or prohibitions would reduce the cost of care for consumers in Maine and report back to the Legislature on its findings. While the task force reviewed the laws enacted in other states that limit facility fees and received a presentation on the impact of such a law on costs in Connecticut, the task force did not have enough time to research and understand the potential impact a limitation on facility fees might have on patients here in Maine. Task force members want to understand the impact a limitation on facility fees may have on the cost of care for patients, but did not have enough time to do so. The task force believes the more information is needed and that the Office of Affordable Health Care should be directed to review and analyze the limitations adopted in other state laws to help determine if one or more of the limitations imposed in other states would reduce the cost of care for Maine patients.

- ❖ **Recommend that the Legislature consider the introduction of legislation to require hospitals to bill uninsured patients using a single invoice that itemizes any facility fees and professional fees on the invoice in order to eliminate any confusion for patients who may have previously received separate bills for facility fees and professional fees associated with the same service**

The task force recommends that the Legislature consider the introduction of legislation to require hospitals to bill uninsured patients using a single invoice that itemizes any facility fees and professional fees on the invoice in order to eliminate any confusion for patients who may have previously received separate bills for facility fees and professional fees associated with the same service. The task force believes that the current practice of health care providers to bill for health care services rendered in a hospital-based facility using two separate invoices – one that bills for the facility fee or “overhead” costs of receiving services in that facility and another invoice that bills for the professional services of physicians or other health care practitioners – may be contributing to a patient’s confusion about facility fees and whether they are appropriately being charged. Members suggest that, if a patient received one invoice that separately identified the charges for the use of the facility and the charges for the services of health care professionals during one medical encounter, a patient may better understand the necessary billing components for the patient’s medical encounter.

- ❖ **Recommend that the Legislature consider the introduction of legislation to regulate facility fees charged, billed or collected by a health care provider, except for the charging, billing or collection of facility fees from MaineCare, by imposing the limitations on facility fees included in the NASHP model legislation as follows:**
 - **Prohibit facility fees charged by hospital-affiliated providers except for services provided on a hospital’s campus (all buildings within 250 yards of main building); at a facility that includes a licensed hospital emergency department; or emergency services provided at a licensed freestanding emergency facility; and**
 - **Prohibit facility fees for outpatient evaluation and management services regardless of where the services are provided.**

Five members of the task force recommend that the Legislature consider the introduction of legislation to regulate facility fees charged, billed or collected by a health care provider, except for the charging, billing or collection of facility fees from MaineCare, by imposing the limitations on facility fees included in the NASHP model legislation. The Legislature should evaluate the two limitations proposed in the NAHP model legislation separately: (1) the first component of the model proposes to prohibit facility fees charged by hospital-affiliated or hospital-owned providers except for services provided on a hospital's campus (all buildings within 250 yards of main building); at a facility that includes a licensed hospital emergency department; or emergency services provided at a licensed freestanding emergency facility; and (2) the second component proposes to prohibit facility fees for outpatient evaluation and management services regardless of where the services are provided.

The task force members supporting the recommendation acknowledge that there was limited time to discuss and understand the potential consequences of such a proposal but felt it was important that such a proposal be brought forward to the Legislature to consider given the reasons why the original bill, LD 1795, was proposed. Policymakers in other states have enacted similar laws to limit the charging of facility fees based on the components of the NASHP model legislation. These task force members suggest that the Legislature should consider whether to limit or restrict the charging of facility fees associated with the delivery of health care services, particularly in a setting away from a hospital campus or for certain evaluation and management services traditionally delivered in an office setting. The task force members also urge the Legislature to consider and discuss the impact of such a limitation on facility fees on different payors for health care services, including Medicare and self-insured health plans, and the potential that federal law or regulations may preempt state action.

The task force members opposed to the recommendation (Sen. Bailey, Jeff Austin and Mark Souders) felt strongly that such a proposal would have a devastating financial impact on hospitals, including the potential closure of some facilities and the loss of patient access to health care services.

Following the task force's final meeting, task force co-chair, Rep. Arford, who voted in support of making the recommendation shared additional comments expressing her view that the Legislature's consideration, at least initially, should focus on the regulation of facility fees charged in association with outpatient office visits for evaluation and management services regardless of where the services are provided. In offering this suggestion, Rep. Arford believes that more research and study needs to take place to avoid unintended and possibly harmful consequences before a broader recommendation to limit the charging of facility fees by hospital-affiliated providers or independent providers moves forward. Concerns were expressed that such a limitation could result in harmful financial consequences to these facilities. Until further study determines the potential consequences on access to care and the cost of care for patients, Rep. Arford has indicated she can no longer support a recommendation related to the first component of the NASHP model legislation.

**6. Assistance to patients experiencing
general billing issues, including billing of facility fees**

- ❖ **Recommend that the Legislature consider the introduction of legislation to establish a complaint mechanism for patients experiencing billing issues with health care providers, including facility fees**

The task force recommends that the Legislature consider the introduction of legislation to establish a complaint mechanism for patients experiencing billing issues with health care providers, including facility fees. The task force recognizes that patients with health insurance coverage are able to make complaints about billing or claims issues with their health insurance carrier to the Bureau of Insurance, but there is no State regulatory entity to assist patients in resolving billing issues with health care providers, such as hospitals. While patients may be able to resolve issues directly with a health care provider in certain instances, the task force suggests that patients may be better served if there is a mechanism to make complaints about billing issues with providers in a similar manner to the mechanism available for complaints about health insurance carriers.

**7. Financial impact on patients
for services depending on the setting or site of service**

- ❖ **Does not recommend any action related to this issue as cost sharing obligations are applied by health insurance carriers in a consistent manner according to the terms and benefits of a patient's health plans**

The task force discussed whether the financial impact on patients might be different in terms of patient's cost sharing obligations depending on the setting of a health care service and on any facility fee charges. Based on information provided by the Maine Association of Health Plans, task force members noted that cost sharing obligations may differ when services are provided in an inpatient, outpatient or office setting. If services are provided in an office setting, regardless of where the office is located, health insurance carriers do not accept any claims for facility fees in part due to the application of the standardized claim form requirements in Title 24-A, sections 2753, 2823-B and 4235. If services are provided in a hospital facility, then facility fees may be imposed and the amounts may differ depending on whether inpatient, outpatient or emergency services are provided. The cost sharing obligation of the patient is determined under the terms and benefits of the patient's specific health plan based on the total overall cost and is not tied in any way to the amount of any facility fee. In light of the information that cost sharing obligations are applied in a consistent manner according to the terms and benefits of a patient's health plans, the task force did not make any recommendation related to this topic.

V. Conclusion

The task force believes it is important that policymakers understand how facility fees charged by health care facilities and health care providers impact Maine patients and Maine's health care system; determine how facility fees should be communicated to patients in a transparent manner; and take steps to minimize the burden to patients that result from imposing facility fees. With

these considerations in mind, the task force has made the recommendations included in this report. In the limited time available, however, it was not possible for the task force to consider and understand all of implications and consequences of its recommendations. The task force encourages the Legislature to carefully consider its recommendations and engage task force members and other stakeholders in further discussions before moving forward with these recommendations.

APPENDIX A

Authorizing Legislation: Public Law 2023, chapter 410

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND TWENTY-THREE

S.P. 720 - L.D. 1795

An Act to Create Greater Transparency for Facility Fees Charged by Health Care Providers and to Establish the Task Force to Evaluate the Impact of Facility Fees on Patients

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 22 MRSA §8712, sub-§2-A is enacted to read:

2-A. Facility fees charged by health care providers. By January 1, 2024, and annually thereafter, the organization shall produce and post on its publicly accessible website a report on the payments for facility fees made by payors to the extent that payment information is already reported to the organization. The organization shall submit the report required by this subsection to the Office of Affordable Health Care established in Title 5, section 3122 and the joint standing committee of the Legislature having jurisdiction over health data reporting and health insurance matters. The joint standing committee may report out legislation based on the report to a first regular or second regular session of the Legislature, depending on the year in which the report is submitted.

For the purposes of this subsection, unless the context otherwise indicates, the following terms have the following meanings.

A. "Facility fee" means any fee charged or billed by a health care provider for outpatient services provided in a hospital-based facility or freestanding emergency facility that is intended to compensate the health care provider for the operational expenses of the health care provider, separate and distinct from a professional fee, and charged or billed regardless of how a health care service is provided.

B. "Health care provider" means a person, whether for profit or nonprofit, that furnishes bills or is paid for health care service delivery in the normal course of business. "Health care provider" includes, but is not limited to, a health system, hospital, hospital-based facility, freestanding emergency facility or urgent care clinic.

Sec. 2. Task force established. The Task Force to Evaluate the Impact of Facility Fees on Patients, referred to in this section as "the task force," is established as follows.

1. Appointments; composition. Notwithstanding Joint Rule 353, the task force consists of 8 voting members and 2 ex officio nonvoting members as follows:

- A. Four members must be appointed by the President of the Senate as follows:
 - (1) One member of the Senate;
 - (2) One member representing a statewide organization supporting the interests of health care consumers;
 - (3) One member representing the interests of health insurance carriers; and
 - (4) One member with expertise, knowledge and background in health care policy;
- B. Four members must be appointed by the Speaker of the House of Representatives as follows:
 - (1) One member of the House of Representatives;
 - (2) One member representing a statewide organization of retired persons;
 - (3) One member representing a statewide organization of hospitals; and
 - (4) One member representing a hospital in the State; and
- C. Two ex officio nonvoting members as follows:
 - (1) The Director of the Office of MaineCare Services within the Department of Health and Human Services or the director's designee; and
 - (2) The Director of the Office of Affordable Health Care or the director's designee.

2. Chairs. The member of the Senate is the Senate chair and the member of the House of Representatives is the House chair of the task force. Notwithstanding Joint Rule 353, the chairs may appoint, as nonvoting members, individuals with expertise in health care policy, health care financing or health care delivery. Any additional members appointed pursuant to this subsection are not entitled to compensation or reimbursement under subsection 5.

3. Appointments; convening. All appointments must be made no later than 30 days following the effective date of this Act. The appointing authorities shall notify the Executive Director of the Legislative Council once all appointments have been completed. After appointment of all members, the chairs shall call and convene the first meeting of the task force. If 30 days or more after the effective date of this Act a majority of but not all appointments have been made, the chairs may request authority and the Legislative Council may grant authority for the task force to meet and conduct its business.

4. Duties. The task force shall:

- A. Review the industry practices for charging facility fees, uses of the funds received as facility fees and impacts on patients of paying facility fees charged by health care providers;
- B. Review federal transparency requirements for hospitals and health insurance carriers regarding cost of treatment, identify any gaps or redundancies between state laws and federal laws and identify any problems with enforcement of those laws;
- C. Consider efforts in other states and by national organizations related to regulation of, or minimization of, facility fees and the potential effects such efforts might have on health care costs in this State; and
- D. Make recommendations for changes in laws or rules regarding facility fees and medical cost transparency based on the information examined under this subsection.

5. Compensation. The legislative members of the task force are entitled to receive the legislative per diem, as set out in the Maine Revised Statutes, Title 3, section 2, and reimbursement for travel and other necessary expenses related to their attendance at authorized meetings of the task force. Public members not otherwise compensated by their employers or other entities that they represent are entitled to receive reimbursement of necessary expenses and, upon a demonstration of financial hardship, a per diem equal to the legislative per diem for their attendance at authorized meetings of the task force.

6. Quorum. A quorum is a majority of the voting members of the task force, including those members invited to participate who have accepted the invitation to participate.

7. Staffing. The Legislative Council shall provide staff support for the task force. To the extent needed when the Legislature is in session, the Legislative Council may contract for such staff support if sufficient funding is available.

8. Consultants; additional staff assistance. The task force may solicit the services of one or more outside consultants to assist the task force to the extent resources are available. Upon request, the Office of Affordable Health Care, the Department of Health and Human Services, the Department of Professional and Financial Regulation, Bureau of Insurance and the Maine Health Data Organization shall provide additional staffing assistance to the task force to ensure the task force has the information necessary to fulfill their duties under this section.

9. Reports. The task force shall submit a report no later than December 6, 2023 that includes its findings and recommendations, including suggested legislation, to the Joint Standing Committee on Health Coverage, Insurance and Financial Services and the committee may report out a bill based on the report to the Second Regular Session of the 131st Legislature.

10. Additional funding; sources. The task force may apply for and receive funds, grants or contracts from public and private sources to support its activities under this section.

11. Definition. For purposes of this section, "facility fees" and "healthcare provider" have the same meanings as in the Maine Revised Statutes, Title 22, section 8712, subsection 2-A.

APPENDIX B

Membership list: Task Force to Evaluate the Impact of Facility Fees on Patients

TASK FORCE TO EVALUATE THE IMPACT OF FACILITY FEES ON PATIENTS

Membership List

Name	Representation
Sen. Donna Bailey	Senate Chair, appointed by the President of the Senate
Rep. Poppy Arford	House Chair, appointed by the Speaker of the House
Kate Ende	Representing a statewide organization supporting the interests of health care consumers, appointed by the President of the Senate
Maureen Hensley-Quinn	Member with expertise, knowledge and background in health care policy, appointed by the President of the Senate
Kristine Ossenfort	Representing the interests of health insurance carriers, appointed by the President of the Senate
Jessica Maurer	Representing a statewide organization of retired persons, appointed by the Speaker of the House
Jeff Austin	Representing a statewide organization of hospitals, appointed by the Speaker of the House
Mark Souders	Representing a hospital in the State, appointed by the Speaker of the House
Michelle Probert	The Director of the Office of MaineCare Services within the Department of Health and Human Services or the director's designee
Meg Garratt-Reed	The Director of the Office of Affordable Health Care or the director's designee

APPENDIX C

Overview of Other State Laws Related to Regulation of Facility Fees

OVERVIEW OF OTHER STATE LAWS RELATED TO REGULATION OF FACILITY FEES

State	Statutory Citations	Summary of Provisions
Connecticut	Conn. Gen. Stat. § 19a-906 ; Conn. Gen. Stat. § 19a-508c ; Conn. H.B. 6669 (2023)	<ul style="list-style-type: none"> • Prohibits a hospital or health system from charging a facility fee on telehealth services or specific health care evaluation and management (E/M) services provided on a hospital campus outside of an emergency department. • Requires providers/health systems to give patients notice at the time the appointment is made if/when they do charge facility fees and post signs in their common areas outlining that in plain language. • Requires a health care provider to provide a standardized bill to patients that lists any facility fee and include contact information for filing an appeal. • Requires each hospital and health system to submit annual to the State reports on facility fees collected. • Prohibits telehealth providers and hospitals from charging facility fees for telehealth services.
Colorado	Colo. Rev. Stat. § 6-20-102 ; Colo. Rev. Stat. § 25.5-4-216	<ul style="list-style-type: none"> • Prohibits the collection of a facility fee from a patient for preventive services that are not covered by a patient’s insurance • Requires providers/health systems to give patients notice at the time the appointment is made that they charge facility fees and post signs in their common areas • Requires a health care provider to issue a standardized bill to patients that lists any facility fee and include contact information for filing an appeal. • Authorizes a report on facility fees to be completed by October 2024.
Florida	Fla. Stat. § 395.1041 ; Fla. Stat. § 395.301	<ul style="list-style-type: none"> • Requires hospital owned outpatient emergency departments to post signs in their common areas that they charge facility fees.

OVERVIEW OF OTHER STATE LAWS RELATED TO REGULATION OF FACILITY FEES

State	Statutory Citations	Summary of Provisions
		<ul style="list-style-type: none"> • Requires facility fees to be included in good faith estimates provided to patients.
Georgia	Ga. Code Ann. § 33-20E-24	<ul style="list-style-type: none"> • Prohibits insurers from being required to pay a facility fee to a hospital for telehealth services unless the hospital is the originating site.
Indiana	Ind. Code Ann. § 16-51-1-11 ; Ind. Code Ann. §§ 16-21-6-3 ; Ind. Code Ann. §§ 25-1-9.8-11 ; Ind. Code Ann. §§ 16-21-17-1 ; 16-21-17-2	<ul style="list-style-type: none"> • Bans facility fees by prohibiting an insurer or other person responsible for the payment of the cost services from accepting a bill submitted on an “institutional provider form”, which is what hospitals use to bill for facility fees, for services provided in an office setting • Limits the restrictions in this bill to non-profit health systems with more than \$2 billion in patient service revenue in 2021. • Requires providers to supply, upon request, a good faith estimate of the amount the provider intends to charge for services, including any charge for use of the provider facility, at least five days before a scheduled appointment. • Requires ambulatory outpatient surgical centers to post on their website the standard charge per item or service, including facility fees. • Requires each hospital to file an annual report to the state including information on facility fees collected.
Maryland	Md. Ins. Code § 19-349.2 ; Md. Ins. Code § 15-139	<ul style="list-style-type: none"> • Requires providers/health systems to give patients notice at the time the appointment is made that they charge facility fees, including expected amounts and how a patient can file a complaint about a facility fee. • Requires each hospital to file an annual report to the Health Services Cost Review Commission including information on outpatient facility fees collected. • Prohibits providers from charging facility fees for telehealth services unless they are not authorized to bill a professional fee separately for the service.

OVERVIEW OF OTHER STATE LAWS RELATED TO REGULATION OF FACILITY FEES

State	Statutory Citations	Summary of Provisions
		<ul style="list-style-type: none"> Prohibits hospitals from charging facility fees for administering COVID-19 vaccines and monoclonal antibody infusions and injections.
Massachusetts	Mass. Ann. Laws ch. 111, §§ 228; Mass. Ann. Laws ch. 176O, §§ 6, 23	<ul style="list-style-type: none"> Requires providers/health systems to give patients notice at the time the appointment is made that they charge facility fees, including expected amounts. Requires insurers explain any facility fee a consumer may be responsible to pay in its evidence of coverage and allow opportunity for enrollees to request and obtain facility fee estimates.
Minnesota	Minn. Stat. Ann. § 62J.824 (2022)	<ul style="list-style-type: none"> Requires providers/health systems to give patients notice prior to the delivery of non-emergency services that they may charge facility fees, including for telehealth services
New York	N.Y. Public Health Law § 2830-2	<ul style="list-style-type: none"> Prohibits the collection of a facility fee from a patient for preventive services, or any service not covered by the patient’s insurance, unless the patient received prior notification that a facility fee would be charged. Requires providers/health systems to give patients notice in advance that they charge facility fees and post signs in their common areas outlining that.
Ohio	Ohio Rev. Code § 4743.09	<ul style="list-style-type: none"> Prohibits a health care professional from charging a patient or a health plan issuer a facility fee when providing telehealth services.
Texas	Tex. Health and Safety Code §241.222; §254.1555; §254.156	<ul style="list-style-type: none"> Requires facilities to notify patients that they may be charged a facility fee, including median amounts of fees charged. Prohibits freestanding emergency departments from charging facility fees on drive-thru services, and requires freestanding emergency departments to notify patients that they may be charged a facility fee, including the amount.
Washington	Wash. Rev. Code § 70.01.040; Rev. Code Wash. § 4.43.735	<ul style="list-style-type: none"> Requires providers/health systems to give patients notice prior to the delivery of non-emergency services that they may charge facility fees.

OVERVIEW OF OTHER STATE LAWS RELATED TO REGULATION OF FACILITY FEES

State	Statutory Citations	Summary of Provisions
		<ul style="list-style-type: none"><li data-bbox="863 256 1860 318">• Prohibits a telehealth distant site or a hospital that is an originating site for audio-only telemedicine from charging a facility fee.

Sources: National Conference of State Legislatures;

“State Laws to Promote Fair Billing” November 2023 Issue Brief, United States of Care, <https://unitedstatesofcare.org/new-resource-state-successes-passing-laws-to-promote-fair-billing/>

“Regulating Outpatient Facility Fees: States Are Leading the Way to Protect Consumers” July 2023 Issue Brief, Georgetown University Center on Health Insurance Reforms, <https://georgetown.app.box.com/v/statefacilityfeeissuebrief>

National Academy of State Health Policy Legislative Tracker: State Legislative Action to Lower Health System Costs, <https://nashp.org/state-legislative-action-to-lower-health-system-costs/>