The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
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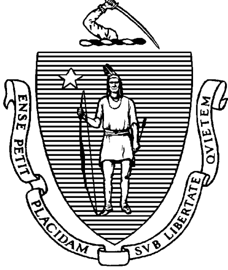

Healthcare Provider Disclosure Obligations related to Scheduling Admissions, Procedures or Services, or Making Referrals to another Provider.

On January 1, 2021, Governor Baker signed *An Act Promoting a Resilient Health Care System that Puts Patients First* ("*Patients First*") into law which makes significant changes to the state's healthcare laws. Among the changes are updates to G.L. c. 111, s. 228 that require health care providers to notify patients about charges and payments for proposed admissions, procedures, services, and referrals that are specific to the patient's insurance carrier. These requirements take effect on January 1, 2022, and also authorize the Department of Public Health, consistent with its authority to regulate health care providers, to penalize providers who fail to comply with a penalty up to $2,500 for each instance of non-compliance. These penalties will take effect July 1, 2022.

- **Impacted Health Care Providers**

The requirements of G.L. c. 111, s. 228 apply to health care providers as defined at G.L. c. 111, s. 1 and include doctors of medicine, osteopathy and dental science; registered nurses; social workers; doctors of chiropractic; psychologists; interns, residents, fellows or medical officers licensed per c. 112, s. 9; registered pharmacists; hospitals, clinics or nursing homes; and public hospitals.

- **Notice Requirements**

The law requires health care providers to notify patients or prospective patients on whether the provider participates in the patient's health plan, upon scheduling an admission, procedure, or service that is related to a non-emergency medical condition.

    - This notice must be given at the time an admission, procedure, or service is scheduled for a condition that is not an emergency medical condition, or upon request by the patient.
    - After initial notice is provided, patients can waive this requirement for subsequent admissions, procedures, or services that are part of a continued course of treatment.

There are also various requirements described below for health care providers based on the provider's participation in the patient's health plan, and for referrals.

Provider DOES participate in a patient's health plan (in-network)

Requirements in G.L. c. 111, s. 228: At the time of scheduling an admission, procedure or service that is not for an emergency medical condition, a health care provider must provide notice that:

- The health care provider participates in the patient's health benefit plan.
- Patients may request the allowed amount and any facility fees for the admission, procedure, or service, to be disclosed by the health care provider.
    - This information must be provided within two days upon the patient's request.
- Where a health care provider is unable to quote a specific amount due to the inability to predict specific treatment or diagnostic codes, the provider must disclose the estimated maximum amount and any facility fees.
- Patients may obtain additional information in real time about applicable out-of-pocket costs from their insurance carrier's toll-free number or website.

Provider does NOT participate in a patient's health plan (out-of-network)

Requirements in G.L. c. 111, s. 228:

- If the appointment was scheduled **more than 7 days in advance** of the admission, procedure, or service, the health care provider must inform the patient the health care provider does not participate in the patient's health plan verbally and in writing at the time of scheduling (no less than 7 days before the appointment).
    - Providers who fail to provide such notice are prohibited from billing the

insured beyond any applicable copayment, coinsurance, or deductible that would be payable if the insured received the service from a provider who participates in the patient's health plan.

- If the appointment was scheduled **less than 7 days in advance** of the admission, procedure, or service the health care provider must verbally inform the patient that the health care provider does not participate in the patient's health plan, at the time of scheduling (no less than two days or as soon as practicable before the appointment). The provider must also give written notice upon the patient's arrival for the appointment.
    - Providers who fail to provide such notice are prohibited from billing the insured beyond any applicable copayment, coinsurance, or deductible that would be payable if the insured received the service from a provider who participates in the patient's health plan.
- Provide the charge and amount of any facility fees for the admission, procedure, or service at the time of scheduling.
- Notice that the patient will be responsible for the charges not covered through the patient's plan.
- Notice that the patient may be able to obtain the admission, procedure or service at a lower cost from a health care provider who participates in the patient's health plan.

Provider referring a patient to another health care provider (referral)

Requirements in G.L. c. 111, s. 228:

- Disclose if the referred provider is part of or represented by the same provider organization as the referring provider.
- Inform the patient that the referred provider may not participate in the patient's health plan, that there may be applicable out-of-network rates, and that the patient has an opportunity to verify whether the referred provider participates in their health plan prior to making an appointment or agreeing to use the provider's services.
- Provide the patient with sufficient information about the referred provider so that the patient may obtain additional information about whether the referred provider participates in their health plan and any applicable out-of-pocket costs should the patient use the referred provider's services.

Provider directly scheduling, ordering, or otherwise arranging health care services for a patient with another provider (referral)

Requirements in G.L. c. 111, s. 228: Prior to a provider directly scheduling, ordering, or otherwise arranging health care services for a patient with another provider ("referred provider") must:

- Verify whether the referred provider participates in the patient's health plan.
- Notify the patient if the referred provider does not participate in the patient's health plan or if the network status of the referred provider could not be verified.

- **Penalties**

The law authorizes the Massachusetts Department of Public Health (MDPH) to penalize health care providers who fail to comply with these requirements, with a penalty of up to $2,500 in each instance. These penalties will take effect July 1, 2022.

Any patient who has not received the required notice may submit a complaint, in writing, to the health care provider's professional licensing board, or in the case of a licensed facility, to the Bureau of Health Care Safety and Quality. The board will notify the health care provider of the complaint and give the provider 10 days to submit written documentation demonstrating compliance with the notice requirements.

Please see options below for how a patient/patient designee can file a complaint.

MDPH Bureau of Health Professions Licensure (BHPL):

- Nursing complaint instructions: https://www.mass.gov/how-to/file-a-complaint-about-a-nurse
- Nursing complaint form: https://www.mass.gov/doc/nursing-complaint-form-1/download
- Pharmacy complaint instructions: https://www.mass.gov/how-to/file-a-complaint-with-the-bureau-of-health-professions-licensure
- Pharmacy complaint form: https://www.mass.gov/doc/pharmacy-complaint-form/download

MDPH Bureau of Health Care Safety and Quality (BHCSQ):

- Hospital complaints: https://www.mass.gov/how-to/file-a-complaint-regarding-a-hospital
- Long Term Care Facility and other MDPH licensed health care facility complaints (including clinics): https://www.mass.gov/how-to/file-a-complaint-regarding-a-nursing-home-or-other-health-care-facility

Division of Occupational Licensure (DOL):

Consumers have the right to file a complaint if they feel as though a licensee or unlicensed individual has violated the standards of professional conduct:

https://www.mass.gov/how-to/file-a-complaint-against-a-division-of-occupational-licensure-licensee

Board of Registration in Medicine's (BORIM) Consumer Protection Division:

All complaints and reports to BORIM: https://www.mass.gov/submit-a-complaint

Patient or patient representative complaints against physicians:
https://www.mass.gov/service-details/submit-a-complaint-against-a-physician

For purposes of determining compliance, the Department will review the patient's complaint and the health care provider's documentation that it has provided the required notice to the patient. If the health care provider submits documentation that the required notice was provided at the appropriate time, the Department will dismiss the complaint. Where health care providers are required to provide notice only upon patient request for certain information, providers should document whether a patient made the request for such information.

The applicable professional licensing board or licensure entity within the Department will impose the following penalties for failure to comply with these requirements:

- Any failure to notify a patient that the health care provider does not participate in the patient's health plan: $2,500 for each instance.

- For all other failures to comply with the notice requirements in the law, the fines shall be
  - $500 for each instance, for the first substantiated complaint against a health care provider;
  - $1,00 for each instance, for the second substantiated complaint against a health care provider; and
  - $2,500 for each instance, for all following substantiated complaints against a health care provider.

Once the Department has issued a penalty to a health care provider, the provider shall have 10 business days to request administrative reconsideration. A provider may request administrative reconsideration by submitting a written request which provides specific grounds for the request for reconsideration, along with documentation supporting the request. The Department will act on the request within 10 business days.

All health care providers must provide patients with information on how to file a complaint with the Department of Public Health if the patient has not received all required notices.