

Model Fair Accessible Individual Rate (FAIR) Care Act

**Consumers Union of U.S., Inc.
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This model bill was prepared by Consumers Union of U.S., Inc.

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Model Fair Accessible Individual Rate (FAIR) Hospital Bill

I. Preamble.

- A. Whereas, there are at least 46 million Americans, and (number) residents in State that lack health insurance and millions more are “underinsured” with a required and growing financial contribution to family medical expenses that renders their insurance wholly inadequate;
- B. Whereas, medical debt is a crushing burden on American families and has become the leading cause of personal bankruptcy;
- C. Whereas, hospital bills constitute the heaviest component of the family medical debt burden.
- D. This Legislature hereby requires each hospital, as a condition of licensure, to maintain and implement written policies providing for free and discounted care for financially qualified persons, and specified limitations on billing and collections, as set forth below. Each hospital shall maintain an understandable written policy regarding FAIR Care for financially qualified patients and shall provide a copy of this policy to the Department annually. Notwithstanding any other provision of this act, a hospital may choose to grant eligibility for FAIR care patients with incomes or assets beyond what the eligibility standards established in this Act.

II. Definitions. used in this article, the following terms have the following meanings:

- A. **Allowable Medical Expenses** Family medical bills from any provider that if paid, would qualify as deductible medical expenses for federal income tax purposes.
- B. **Annual Reduced Price Fee** The patient’s liability to the Hospital for Reduced Price Care as provided for in Section 3(B) in this Act.
- C. **Application** The standard application developed by the Department for Fair Accessible Individual Rate (FAIR). FAIR includes Charity Care, Reduced Price Care, and Medical Hardship Assistance. The Department shall ensure that the application is simple and easy-to-read, and that it requests only the information that is reasonably necessary to determine eligibility. The Department shall translate the application into the five languages most frequently used by the state’s population.
- D. **Available Assets** The resources, as distinct from Family Income that are taken into account in determining eligibility for Medical Hardship Assistance. Available assets do not include: the residence in which a patient and/or the patient’s family resides, automobiles used regularly by a patient or immediate family members, retirement and deferred compensation plans qualified under the Internal Revenue Code, non-qualified deferred compensation plans, college savings accounts, the first ten thousand dollars (\$10,000) per family member of a patient’s family’s monetary assets and 50 percent of a patient’s family’s monetary assets over the first ten thousand (\$10,000) per family member.
- E. **Bad Debt** Expenses resulting from treatment for services provided to a patient and/or guarantor who, having the requisite financial resources to pay for health care

services, has demonstrated by his/her actions an unwillingness to comply with the contractual arrangements to resolve a bill.

- F. **Charge**. The uniform price set by a Hospital for a specific service or supply by the Hospital.
- G. **Charity Care** No-cost inpatient and outpatient medical treatment and diagnostic service for uninsured or underinsured patients who cannot afford to pay for the care. Such treatment is provided without expectation of payment. Charity Care does not include bad debt or contractual shortfalls from government programs, but may include insurance co-payments or deductibles, or both. All payments meant to reimburse for the care of low income patients, such as disproportionate care hospital payments and Medicare graduate medical education payments should be netted out prior to calculating the hospital's level of charity care provided; that is, charity care standards should be based on the cost of unreimbursed care. Care provided under a Hill-Burton obligation is not counted as Charity Care under this definition.
- H. **Collection Action** Any activity by which a Hospital, a designated agent or assignee of the Hospital, or a purchaser or the patient account, requests payment for services from a patient or a patient's guarantor. Collection actions include pre-admission and pretreatment deposits, billing statements, letters, electronic mail, telephone and personal contacts related to the Hospital bills, court summonses and complaints and any other activity related to collecting a Hospital bill.
- I. **Cost of Service or Supply** The actual amount of money a Hospital spends to provide each service or supply.
- J. **Cost-to Charge Ratio** The ration of a Hospital's total cost of providing patient care to its total charges for patient care, as reported in its most recently settled Medicare Cost Report.
- K. **Department** (The state agency responsible for administering and monitoring compliance with this Act.)
- L. **Family Income** The sum of annual earnings and cash benefits from all sources after taxes, less payments made for alimony, child support, and student loans.
- M. **Fair Accessible Individual Rate (FAIR) Care** includes "Charity Care," "Reduced Price Care" and "Medical Hardship Assistance." All available medically necessary health care services including inpatient and outpatient treatment, medical equipment, in-home services, laboratory services, and medications shall be available to all individuals under this statute.
- N. **Federal Poverty Level** The poverty guidelines updated periodically in the Federal Register by the United States Department of Health and Human Services under authority of subsection (2) of Section 9902 of Title 42 of the United States Code.
- O. **Hospital** Any institution, licensed by the State, whether operated on a nonprofit or for-profit basis and including any facility that is funded by the State or any subdivision, which is advertised, announced, established or maintained for the

purpose of caring for persons admitted thereto for diagnosis or medical, surgical, restorative, psychiatric or rehabilitation treatment which is rendered by the institution.

- P. **Medically Necessary Service** A service that is reasonably expected to prevent, diagnose, prevent the worsening of, alleviate, correct, or cure conditions that endanger life, cause suffering or pain, cause physical deformity or malfunction, threaten to cause or to aggravate a handicap, or result in illness or infirmity. Medically Necessary Services shall include inpatient and outpatient services as mandated under Title XIX of the Federal Social Security Act.
- Q. **Patient's Family** means the following:
- 1) For persons 18 years of age and older, spouse, domestic partner and dependent children under 21 years of age, whether living at home or not.
 - 2) For persons under 18 years of age, parent, caretaker relatives and other children, under 21 years of age, of the parent or caretaker relative.
- R. **Reduced Price Care** Discounted inpatient and outpatient medical treatment and diagnostic services for uninsured or underinsured patients according to criteria set forth in § 3(B) below.
- S. **Underinsured** A patient, including individuals in public insurance programs, whose deductibles, copayments, spend down, medical, or hospital bills after payment by third-party payers exceeds 5% of patient's income in the prior 12 months.
- T. **Uninsured** A patient who does not have health insurance and is not currently covered by any third-party payer program. This includes persons whose coverage is terminated while receiving services at a hospital and is thus individually liable for a portion of the bill.

III. **FAIR Care Eligibility Categories**

A. **Charity Care**

- 1) Eligibility. Uninsured Patients and Underinsured Patients whose family income is up to 300% of the Federal Poverty Income Guidelines.

B. **Reduced Price Care**

- 1) Eligibility. Uninsured Patients and Underinsured Patients whose family income is from 300% to 500% of the Federal Poverty Income Guidelines shall be eligible for Reduced Price Care from the Hospital.
- 2) Annual Reduced Price Fee
 - a) The Hospital shall calculate an Annual Reduced Price Deductible for the patient and the patient will be eligible for Charity Care after he or she has incurred expenses in the amount of the annual deductible. The deductible

shall equal 5% of the difference between the patient's Family Income and 300% of the Federal Poverty Income Guidelines.

- b) There is one Annual Reduced Price Deductible amount per Family per 12 month period. Allowable medical expenses billed by other providers during the same 12 month period shall be counted toward the deductible.
- c) Allowable medical expenses billed by the Hospital shall be calculated at the lower of: (i) the lowest rate that would be paid by Medicare/Medicaid or (ii) the actual unreimbursed cost to the hospital for such service.
- d) The Hospital shall bill a patient only for the Annual Reduced Price Deductible amount.

C. Medical Hardship Assistance Care

- 1) Eligibility. Uninsured Patients and Underinsured Patients who meet the following criteria shall be eligible for medical hardship assistance from the hospital.
 - a) A patient at any income level whose allowable medical expenses have depleted family income to the extent that he or she is unable to pay for medically necessary services. In order to qualify for the medical hardship assistance the patient shall meet both the expense and resource qualifications below.
- 2) Requirements
 - a) Expense Qualification. In order to be eligible for Medical Hardship Assistance, the patient's Allowable Medical Expenses must exceed 25% of his or her net Family Income after State and Federal taxes have been paid.
 - (i) The Hospital shall multiply the Net Family Income by 25% and compare that amount to the total amount of the patient's Allowable Medical Expenses.
 - (ii) If the total of Allowable Medical Expenses is greater than 25% of the Net Family Income, the patient meets the expense qualification.
 - b) Resource Qualification. The patient's Available Assets must be insufficient to cover the cost of Allowable Medical Expenses that exceed 25% of the Family Income.
- 3) Medical Hardship Assistance Fee
 - a) The Hospital shall calculate a patient's Medical Hardship Assistance Fee by adding 25% of the patient's family income to the patient's Available Assets.
 - b) There is one Medical Hardship Assistance Fee per Family per calendar year. Allowable Medical Expenses billed by other Providers during the same

calendar year shall be counted toward the Fee. It is the patient's responsibility to document expenses incurred from other Providers.

c) The patient will remain responsible for all Allowable Medical Expenses to the extent of the Medical Hardship Assistance Fee. The patient is eligible for Charity Care for all expenses for Medically Necessary Services in excess of the Medical Hardship Assistance Fee for the period of Charity Care eligibility.

d) A Hospital shall bill a patient only for the Fee amount.

D. Any amount owed by an uninsured or underinsured individual shall be calculated at the lower of: (i) the lowest rate that would be paid by Medicare/Medicaid or (ii) the actual unreimbursed cost to the hospital for such service. The unreimbursed cost shall be determined by using the cost-to-charge ratio in the hospital's most recently settled Medicare Cost Report.

IV. Minimum level of FAIR Care

A. Fair Accessible Individual Rate (FAIR) Care Provision.

All hospitals shall provide annually no less than 5% of its annual patient operating revenues or expenses, whichever is greater, in FAIR care which includes Charity Care, Reduced Price Care, and Medical Hardship Assistance measured as the lower of: (i) the lowest rate that would be paid by Medicare/Medicaid or (ii) the actual unreimbursed cost to the hospital for such service. The cost-to-charge ratio in the hospital's most recently settled Medicare Cost report shall be used to determine the hospital's unreimbursed cost of providing charity care.

B. **State Pool.** If a hospital fails to provide at least 5% of its total operating expenses or revenues, whichever is greater, in FAIR Care, the hospital shall pay the difference between the amount that it provided and 5% of its total operating expenses or revenues to a fund administered by the Department. The Department shall administer this fund by keeping a separate account, and shall publicly report the funds received and distributed annually. No more than 3% of the fund may be used for administrative purposes. The Department shall establish an application system in which to re-distribute these monies to hospitals that provided more than 5% of their total operating expenses in FAIR care.

V. Non-discrimination.

A. This hospital shall render services to all members of the community who are in need of medical care regardless of the ability of the patient to pay for such services. The determination of FAIR Care will be based on the patient's ability to pay and will not be abridged on the basis of age, sex, race, creed, disability, sexual orientation or national origin.

B. Confidentiality.

The need for FAIR Care may be a sensitive and deeply personal issue for patients. Confidentiality of information and preservation of individual dignity shall be maintained for all who seek charitable services. Orientation of staff and the selection of personnel who will implement this statute and procedures hereunder should be

guided by these values. No information obtained in the patient's Application may be released unless the patient gives express permission for such release.

VI. Application Process

A. Application.

The Hospital shall use the FAIR Care Application developed by the Department for patients to apply for Charity Care, Reduced Price Care, and Medical Hardship Assistance from the hospital.

B. Application Assistance.

The Hospital will provide application assistance to patients. Translation services and assistance will be offered to all patients.

C. Requests for Information.

The hospital shall send anyone who requests information on the hospital's FAIR Care Program a letter describing its Free and Reduced Price care program and application form.

D. Additional Requestors.

FAIR Care requests may be proposed by sources other than the patient, such as the patient's physician, family members, community or religious groups, social service organizations, or hospital personnel. The patient shall be informed of such a request. This type of request shall be processed like any other.

E. Timing.

All attempts should be made by the hospital to have the patient fill out a FAIR Care application at or before the time services are rendered. A patient may file an application at any time.

VII. Eligibility Determination Process.

A. Preferred Order for Determining Eligibility.

The determination of FAIR Care should be made at or before the time of providing services. If complete information on the patient's insurance or financial situation is unavailable at the time of service, or if the patient's financial condition changes, the designation of FAIR Care may be made after rendering services. All efforts will be made to establish whether the patient is eligible for FAIR Care before leaving the hospital.

B. Application and Document Review.

The Department shall specify the forms of documentation an applicant must submit in order to verify residency and Family Income, and for purposes of an application for Medical Hardship assistance only, to verify Available Assets. In developing specifications, the Department shall ensure that the lack of official forms of documentations is not a barrier to FAIR Care. Upon review of the patient's financial and employment situation as completed in the Application, the hospital will determine whether the patient qualifies for FAIR Care. If verification of financial information is needed, the hospital shall request such information from the patient. Patients may use a variety of information to substantiate financial circumstances, such as paycheck stubs, W-2 forms, income tax returns, receipts, employer letter, self-

employed files, unemployment, or disability statements. If those items are not reasonably available, an affidavit signed by the applicant shall be sufficient. An applicant for FAIR Care shall not be required to provide a social security number.

C. **Approval Notification.**

The patient shall be notified in writing within ten (10) working days after receipt of the Application and any supporting materials as to whether the patient is eligible for FAIR Care. When the patient is notified that s/he is eligible for FAIR Care, the hospital shall also notify the patient in writing that FAIR Care eligibility extends for one year and issue a uniform eligibility card developed by the Department.

D. **FAIR Care Likelihood.**

If there is reason to believe that the patient is eligible for FAIR Care, i.e., the patient is uninsured, unemployed and/or homeless, the patient's record will be flagged and no bill will be sent until the question regarding FAIR Care eligibility is resolved.

E. **Expired Patients.**

Patients who have died and have no estate are deemed to have no income for the purpose of determining FAIR Care eligibility.

F. **Denial.**

If the hospital determines that a patient is ineligible for FAIR Care, the hospital shall inform the patient in writing within five (5) working days of the denial. All reason(s) for denial shall be provided at that time and the patient shall be informed of the appeal process under § 15.

G. **Appeal.**

Each patient denied FAIR Care may petition the Department within ninety (90) days for reconsideration. . The Department shall send a copy of the complaint to the Hospital and ask for the Hospital's written response.

VIII. **Translation.**

All publications and informational materials related to FAIR Care shall be translated into languages appropriate to the hospital's community.

IX. **Notification.**

A. **Patient Notification Inside Hospital.**

The hospital shall provide all patients with oral and written notice of the hospital's FAIR Care in the language spoken by the patient during any pre-admission, admission, and discharge process This information will be available at or below a sixth grade reading level.

B. **Patient Notification on Bill.**

On all bills sent to patients, a contact number and a statement will be included regarding the availability of all financial assistance programs including FAIR Care. This information will be available at or below a sixth grade reading level.

C. **Patient on Payment Plan Notification.**

Any patient who is on a payment plan and whose payment is 30 days late shall be sent information on FAIR Care.

X. **Collection Activity.**

A. **Restriction on Referral.**

The hospital, any agents of the hospital, and any assignee shall not use wage garnishments or liens on primary residences as a means of collecting unpaid hospital bills. The hospital will not refer patients to collections or report adverse information to a consumer credit agency until at least 180 days after FAIR Care and other payment programs are offered and any application for such programs is processed. The hospital will not refer a patient to outside collection unless there is a demonstrated ability to repay a significant portion of the debt, all insurance and/or other payors have completed processing of the claim, and the patient has applied for Charity Care and been determined ineligible. The hospital shall impose these restrictions by contract on any entity to whom it sells or assigns the debt.

B. **Equitable Payment Schedule.**

In all instances, the hospital will work with the patient to determine an equitable payment schedule considering the patient's financial and medical circumstances. Any payment plans offered by the hospital to assist patients eligible under the hospital's FAIRCare policy, or any additional policy adopted by the hospital for assisting low-income patients with no or inadequate insurance in settling outstanding past due hospital bills, shall be interest-free.

C. **FAIR Care Notification.**

The hospital shall not send a patient to collections before it notifies the patient about the availability of FAIR Care and allows at least 180 days in which to apply for Charity Care, Reduced Price Care and Medical Hardship Assistance. Such notice shall be sent via certified mail.

D. **Prohibition on Medical Record Notation.**

The hospital shall make no notations in the patient's medical record regarding financial matters, including whether the patient paid all or part of any medical bill.

E. **Applicability to Existing Hospital Bills.**

The hospital shall send each patient with outstanding hospital bills on the effective date of this statute, a letter explaining how to qualify for FAIRCare, and how to get more information

XI. **Recordkeeping.**

A. **Internal Recordkeeping.**

All Applications shall be logged in each hospital's "FAIR Care control log" and shall be given a sequential control number. The completed Applications will be kept on file for five (5) years. A copy of the patient's Application and all correspondence with the patient regarding the Application, approval, denial and appeal shall be maintained in the patient's financial file

B. Accounting.

Charity Care, Reduced Price Care, and Medical Hardship Assistance shall be recorded using the direct write-off method and shall comply with all accounting regulations by the American Institute for Certified Public Accounting.

XII. Reporting.

A. External Reporting.

The hospital shall in its annual financial statements include a copy of the hospital's FAIR Care policy, the amount of Charity Care, Reduced Price Care, and Medical Hardship Assistance provided in cost and charges, and the data detailed in this Section; post such information on the hospital web site and make it available to any member of the public requesting the data. The hospital shall also file a copy of the aggregate data detailed in this Section with the Department.

B. The hospital annually shall aggregate and make anonymous information regarding the provision of Charity Care , Reduced Price Care, and Medical Hardship Assistance including:

- 1) The total number of Applications granted and denied by zip code and ethnicity.
- 2) The number of Charity Care, Reduced Price Care, and Medical Hardship appeals filed and granted by zip code and ethnicity.
- 3) The total number of uninsured and underinsured patients served each year.
- 4) A breakdown of the percentage of emergency or scheduled services provided as Charity Care compared to the total amount.
- 5) A breakdown of the percentage of care provided as inpatient, outpatient, or ancillary Charity Care compared to the total amount.
- 6) The total number of Charity Care, Reduced Price Care, and Medical Hardship patient days.
- 7) A listing of all diagnoses for Charity Care, Reduced Price Care, and Medical Hardship Care patients.
- 8) The total number of referrals made to other facilities, their names, and a list of reasons for referrals.
- 9) The total cost of Charity Care, Reduced Price, and Medical Hardship Care delivered for the hospital's fiscal year.

C. The following also shall be included in the FAIR Care annual report:

- 1) Charity Care- Proportion Data
 - a) "In [year], xx% of all services was provided on a charity basis".

- b) "In [year], xxx inpatients out of xxx total and xxx outpatients out of xxx total received charity care."
 - c) "The largest proportion of services provided on a Charity Care basis was (describe service, such as cancer, emergency services, etc.)"
- 2) Reduced Price Care Proportion – Data
The following also shall be included in the annual Reduced Price Care report:
- a) "In [year], xx% of all services was provided on a Reduced Price Care basis".
 - b) "In [year], xxx inpatients out of xxx total and xxx outpatients out of xxx total received Reduced Price Care."
 - c) "The largest proportion of services provided on a Reduced Price Care basis was (describe service, such as cancer, emergency services, etc.)"

3) Medical Hardship Assistance Care Data

- a) "In [year], xx% of all services was provided on a Medical Hardship Care basis".
- b) "In [year], xxx inpatients out of xxx total and xxx outpatients out of xxx total received Medical Hardship Assistance Care."
- c) "The largest proportion of services provided on a Medical Hardship Care basis was (describe service, such as cancer, emergency services, etc.)"

D. **Corporate Responsibility.**

The principal executive officer or officers and the principal financial officer or officers, or persons performing similar functions, shall certify in each annual financial report and report filed with state and local agencies that includes information about Charity Care, Reduced Price Care, and Medical Hardship Assistance that the signing officer has reviewed the report and based on the officer's knowledge, the report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements.

XIII. Regulatory Oversight

- A. The Department shall be responsible for administering and ensuring compliance with this Act, including development of a uniform FAIR Care application
- B. The Department shall conduct a site visit to each Hospital, at least annually, to monitor compliance with the provision of this Act.
- C. The Department shall publish an annual FAIR Care report containing all Hospitals' FAIR Care annual reports.

XIV. Penalties

- A. The Department may, after notice and opportunity for hearing, impose a civil penalty on any Hospital that fails to comply with any provision of this Act in an amount of not less than \$1,000 for each failure to comply.
- B. Any decision by the Department shall be considered a final administrative decision for purposes of appeal.

XV. Grievance and Appeal

A person who is aggrieved by a hospital's determination on his or her application for Charity Care or Reduced Price Care may initiate the following process:

- A. The patient shall send a written complaint to the Department, including any supporting documentation.
- B. The Department shall send a copy of the complaint to the hospital and ask for the hospital's written response, including any additional documentation the hospital may have. The hospital shall have 30 days to provide the response.
- C. The Department shall have 30 days from the receipt of the information to review and issue a written decision upholding, reversing, or modifying the hospital's determination. The decision will explain the basis for the Department's action.
- D. The Department's determination shall constitute a final administrative decision and may be appealed by either party to a court of competent jurisdiction.

XVI. Private Right of Action

Any individual who suffers actual or consequential damages as a result of a hospital non-compliance with any provision of this Act may bring suit against the hospital in a court of competent jurisdiction to recover those damages. Any applicable charitable immunity provision shall not apply in connection with any suit brought pursuant to this section.

XVII. Severability

The provisions of this Act are declared to be severable. If any of its provisions or the application of its provisions are held to be invalid or unconstitutional, that invalidity shall not be construed to affect the validity or constitutionality of the remaining provisions of this Act.