

**Interested Party Comments/Recommendations
for
Substitute Senate Bill 6273**

February 11, 2019

Comment Form

DEFINITION OF GOOD FAITH UNDER WAC 246-453-010

Comments submitted on 2/11/19

Comments submitted by:

Names: Tony Gonzalez and Ann LoGerfo, Columbia Legal Services

Title: Tony Gonzalez, Staff Attorney, Columbia Legal Services; Ann LoGerfo, Directing Attorney, Columbia Legal Services

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Section commented on: WAC 246-453-010

Position (support/oppose): Support

DOH has not proposed any definition of “good faith” as to the “good faith efforts towards payment of hospital health care services” needed under WAC 246-453-010.

1. Statement of problem/comment and substantiation:

RCW 70.170.060(10)(b) addresses certain circumstances in which the hospital shall allow the responsible party (usually the patient) to use income at the time of application, rather than income at the time of service, for income verification. To use income at the time of application, rather than income at the time of service (outside of hospital discretion), the responsible party should have made “good faith efforts towards payment of health care services.”

In the initial proposal by Columbia Legal Services, we suggested language to assist with a definition of good faith. Following the December 19, 2018 work group, it’s clear that a regulation defining all possible permutations of good faith would be unwieldy and possibly lead to more questions than answers for the patient community and hospital. For patients who are low income, and have incurred necessary hospital bills which they cannot, in fact, pay, “good faith” is not bound by moral codes but by the necessities of survival. Yet neither should it be ignored that there may be those who are recalcitrant and are truly acting in bad faith. Therefore, rather than define every circumstance in which an unpaid bill reflects a lack of “good faith,” we now propose refraining from defining exactly what good faith may entail, and instead propose language which allows a finding of good faith where a patient/responsible party simply cannot pay or where the hospital has contributed to the problems. Please see below.

2. Suggested solution/proposed language:

(21) “good faith efforts towards payment of health care services” shall include situations where a patient is unable to pay; where the amount due is in dispute; where the amount due should have been subject to full or partial charity care sponsorship at or near the time of service; or where the hospital has failed to comply with its own obligations under WAC 246-453.

3. Applicable research and/or substantiation of suggested solution/proposed language:

If a patient has no money to pay a bill, then implying a lack of good faith is inaccurate because charity care, by definition, is meant to apply to those who are unable to pay, and it certainly is not bad faith to fail to perform a task that is impossible to do. Moreover, imposing a duty of “good faith” towards payment of a bill that is not owed, is in dispute, or for which there has been no screening for financial assistance, unreasonably shifts the responsibility from a large entity, the hospital, to a low-income patient.

4. Benefit of suggested solution/proposed language to the public:

Allows flexibility without penalizing patients.

5. Benefit of suggested solution/proposed language to hospitals:

6. Identified impacts (cost or otherwise) of suggested solution/proposed language to hospitals:

None known

Discussion Notes (DOH staff only):

Comment Form

Income to be used for Evaluating Charity Care Applications, Revised
WAC 246-253-030

Date of Comment – 2/11/2019

Comment submitted by:

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Section commented on: WAC 246-253-030

Position (support/oppose): Support, with changes

Support DOH position following the December 19, 2018 workgroup that this language should be in a new section of WAC 246-453, that it should clarify opportunities to apply for charity care when financial circumstances change, and it should replace references to “family income” with “annual family income.”

1. Statement of problem/comment and substantiation:

After discussions during the work group session on December 19, 2018, it appears that there is some concern about whether hospitals or patients should initiate an *additional* review of charity care eligibility should circumstances change. CLS has proposed language to address this concern, bearing in mind that the purpose of charity care is to allow low-income families and individuals to access hospital services and not to undergo financial devastation due to medical issues.

As previously commented, the clarification of a patient’s ability to re-apply or to initially apply when there has been a shift in financial circumstances should be clarified in the regulations, but at the same time, there should be no abrogation in hospital duties to assess a patient for charity care at or near the time of service. The provisions relating to applying when finances have changed such that a patient is no longer able to pay need not, and should not, affect a patient’s (responsible party’s) ability to obtain charity care at any time the hospital becomes aware of facts which indicate that a patient falls within the parameters of charity care eligibility.

In addition, RCW 70.170.060 (10) and (11) were not intended to relieve hospitals of their obligations to make an initial determination of charity care eligibility and to communicate this to patients. Hospitals should not be able to use the terms of RCW 70.170.060 (10) and (11) to limit a patient’s right to apply for charity care at any time, particularly when the hospital has failed any of its own obligations under WAC 246-253.

2. Suggested solution/proposed language:

See attached. CLS agrees with the language proposed by DOH, with modifications identified with double underscore.

3. Applicable research and/or substantiation of suggested solution/proposed language:

4. Benefit of suggested solution/proposed language to the public:

Reflects legislative intent and implements the essential purpose of charity care. The language below, in double underscore, in subsection (4), clarifies that a hospital has the discretion, notwithstanding anything else, to use a responsible party's income *at the time of application* based on changes in financial circumstances, so long as the responsible party has requested this or, if initiated by the hospital, the responsible party is aware of this new review and consents to any change to a prior charity care eligibility determination.

5. Benefit of suggested solution/proposed language to hospitals:

Provides clarity to hospitals as to which income timeframe should be considered, while at the same time informing hospitals that they must still comply with the essential purpose of the charity care program.

6. Identified impacts (cost or otherwise) of suggested solution/proposed language to hospitals:

Discussion Notes (DOH staff only):

Chapter 246-453 WAC

Chapter 246-453 WAC
HOSPITAL CHARITY CARE

[New Section].

Income at Time of Service Used for Eligibility Determinations, Except in Limited Circumstances.

(1) Except as provided in this section, a final determination of eligibility shall be made using the responsible party's annual family income as of the time the healthcare services were provided.

(2) A final determination of eligibility shall be made using the responsible party's annual family income at the time the responsible party applies for charity care sponsorship if:

(a) application is made within two years of the time the healthcare services were provided, and;

(b) the responsible party has been making good faith efforts toward payment of health care services provided.

(3) If the responsible party was previously denied charity care sponsorship or granted less than a full discount of the charges, and meets criteria (2)(a) and (2)(b), the responsible party may apply using family income at the time of the new application.

(4) The hospital may, at its discretion, and at the request of the responsible party or with the knowledge and consent of the responsible party, make a final determination of eligibility using the responsible party's annual family income at time of application at any time there is a change in the responsible party's financial circumstances, even if charity care was previously denied or approved in part, regardless of whether the criteria of 2(a) and (b) are met.

Comment Form

Pendency of Settlement – WAC 246-453

Date submitted: 2/11/2019

Comment submitted by:

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Position (support/oppose): Support in part

Section commented on:

Proposal of WSHA regarding new subsection to WAC 246-453, Pendency of Settlements. Please see WSHA proposal at:

https://www.doh.wa.gov/Portals/1/Documents/2300/HospPatientData/Rulemaking/7_%20WSHA%20Pendency%20of%20Third%20Party%20Settlement%20Proposal.pdf

1. Statement of problem/comment and substantiation:

We agree generally with the comments WSHA submitted as set out below:

SB 6273 creates a definition of “third-party coverage” in statute. The definition is based on the existing definition in WAC 246-453-010, but adds more sources of coverage and requires that hospitals cannot deny consideration of an eligible patient for charity care while waiting on settlements, judgments, or awards.

The new language regarding consideration of charity care during the pendency of settlements, judgements, or awards does not conflict with existing WAC, but does need to be clarified to make clear that consideration of charity care by the hospitals does not relieve a third-party tortfeasor or other party whose negligence acts caused the medical condition for which the patient received health care services of liability.

However, we do not agree with all of WSHA’s proposed language. Please see our edits to the language submitted by WSHA in the first round of comments.

2. Suggested solution/proposed language:

Please see attached. We agree with WSHA that in the event a patient/responsible party receives an award or settlement sum of money for medically necessary services for which the hospital has awarded charity care, and for which the patient/responsible party has no obligation to pay due to the charity care award, the hospital has the right to claim that sum of money. Nonetheless, although charity care sums may be included in a settlement demand, request for payment to a third party, a complaint for damages, or in other methods of seeking payment for a liability owed by a third party, we do not agree that a patient/responsible party *must* collect this sum, with no regard to attorney fees paid by the patient/responsible party, or settlement and compromise of any or all portions of a claim. If a hospital wishes to ensure that the third party pays the hospital, the hospital should pursue a third party claim or otherwise involved itself in the legal issues.

3. Applicable research and/or substantiation of suggested solution/proposed language:

4. Benefit of suggested solution/proposed language to the public:

Make clear that consideration of a patient for charity care does not negatively impact a patient's position in relation to a liable third party

Make clear that the existence of third-party liability does not affect an indigent patient's ability to apply and be considered for charity care.

5. Benefit of suggested solution/proposed language to hospitals:

Make clear that consideration of a patient for charity care does not result in a situation where a hospital may not be reimbursed by a third party for charges incurred by the patient/responsible party, where that third party is found liable for those same charges through a legal action or has agreed to pay for such medically necessary cost of service in a settlement.

6. Identified impacts (cost or otherwise) of suggested solution/proposed language to hospitals:

7. Discussion Notes (DOH staff only):

New Section 246-453-XXX

Charity care consideration during the pendency of applicable settlements, judgments, or awards.

(1) A hospital must make a preliminary determination of a charity care application submitted by a patient or responsible party during the pendency of settlements, judgments, or awards related to the negligent acts of others which have resulted in the medical condition for which the patient received hospital health care services.

(2) A preliminary determination of eligibility of a charity care application does not limit the ability of a hospital, patient, responsible party, or other appropriate person to make a claim for costs of medical care against a liable third-party or a liable third party's obligations to pay the claim. This includes actions pursuant to chapter 60.44 RCW.

(3) In the event of a claim that a third party is liable for the injuries resulting in charges for which a patient or responsible party has been awarded charity care, a hospital may send to the patient or responsible party, to the attorney for the same, or to the allegedly responsible third party or third party's attorney, a statement of the charges incurred by the patient or responsible party to be considered as part of the damages incurred. To the extent there is a settlement or award to the patient or responsible party in which a sum is specifically identified for those hospital charges which were subject to charity care and not subject to payment by the patient or responsible party, that sum shall be reimbursable to the hospital.

CLS Comments in Tracked Change:

3. In the event of a claim that a third party is liable for the injuries resulting in charges for which a patient or responsible party has been awarded charity care, a hospital may send to the patient or responsible party, to the,~~patient's~~ attorney for the same, ~~or to the allegedly responsible third party or third party's attorney~~ other appropriate person a statement of the charges incurred by the patient or responsible party to be considered as part of the damages incurred by the patient or responsible party. To the extent there is a settlement or award to the patient or responsible party in which,~~as all or a portion of the damages,~~ a sum is specifically identified for those hospital charges~~for which the hospital has previously were awarded charity care,~~ that sum shall be reimbursable to the hospital. ~~and those charges shall be reimbursable to the hospital for purposes of any settlement or judgment.~~

Comment Form

Definition of Third-party Coverage - Revised

WAC 246-453-010, -020, -040

Date submitted: 2/11/2019

Comment submitted by:

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Position (support/oppose): Support

For all relevant comments on 1 through 6 below, please refer to first set of submitted comments.

CLS supports the language proposed by DOH, which can be found at:

https://www.doh.wa.gov/Portals/1/Documents/2300/HospPatientData/Rulemaking/3_%20Definition%20of%20Third%20Party.pdf

1. Statement of problem/comment and substantiation:

2. Suggested solution/proposed language:

3. Applicable research and/or substantiation of suggested solution/proposed language:

4. Benefit of suggested solution/proposed language to the public:

5. Benefit of suggested solution/proposed language to hospitals:

6. Identified impacts (cost or otherwise) of suggested solution/proposed language to hospitals:

Comment Form

Thank you for taking the time to comment on the WAC 246-453 draft rules. Please submit any comment(s) you have as soon as possible prior to a scheduled meeting. Please submit a separate form for each section of the rules on which you would like to comment via email to:

CharityCare@DOH.WA.GOV

Date submitted: 2/11/2019

Comment submitted by:

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Section commented on: 246-453-010, -020, -040, 060

Position (support/oppose): Support using the term medically necessary, but oppose grammatical changes because of possible misinterpretation

1. Statement of problem/comment and substantiation:

Columbia Legal Services (“CLS”) agrees with the following statements from the Department of Health:

The new language in RCW 70.170.060(4) adds the word “medically” to the definition of charity care, meaning that it is now “...medically necessary hospital health care rendered to indigent persons...”

The term “medically necessary” is not defined in either the statute or current WAC. Instead, the WAC currently defines charity care as “...appropriate hospital-based medical services rendered to indigent persons...” The WAC then defines “appropriate hospital-based medical services.

It is CLS’s position that the addition of the word “medically” should not impact access to “necessary” healthcare. Although this should be obvious, “necessary” hospital services are by their very nature “medically necessary.” And, if the patient is eligible for charity care, these charges for services should be covered under the charity care laws.

We have heard of instances where treatment, such as breast reconstruction after a cancer-related mastectomy is denied for charity care as not being “medically necessary.” Even with the best insurance plan, a co-pay or deductible for cancer treatment can mean deep financial loss. A narrowed definition of what services are covered does not reflect the legislative intent

in the amendments to the charity care laws.

Therefore, we do not agree with the addition of a comma between “equally effective” and “more conservative.” While a more conservative AND equally effective course of treatment might be appropriate, using this in the alternative – either “equally effective” or “more conservative” or “substantially less costly” is quite confusing. Certainly, the intent is that the course of treatment be equally effective, regardless. And, the real-life application of this makes little sense. After a patient who is charity care eligible has received care, would that patient then be denied charity care for a high deductible because some less effective, albeit less costly, treatment existed but the patient either chose an effective treatment or never knew about the alternative? We believe that the law allows for *equally effective* but possibly less conservative or costly treatment. We do not believe the law contemplates that a hospital can provide sub-standard, ineffective care simply because it’s less costly.

“Equally effective” should be a clear qualifier to the terms “more conservative” and “substantially less costly.” Although there may be arguments that adding this comma makes no difference, there is no reason to create any possible misinterpretation. We have suggested deleting the comma below.

2. Suggested solution/proposed language:

3. Applicable research and/or substantiation of suggested solution/proposed language:

4. Benefit of suggested solution/proposed language to the public:

5. Benefit of suggested solution/proposed language to hospitals:

6. Identified impacts (cost or otherwise) of suggested solution/proposed language to hospitals:

Discussion Notes (DOH staff only):

Chapter 246-453 WAC

HOSPITAL CHARITY

CARE

246-453-010

Definitions.

As used in this chapter, unless the context requires otherwise,

(5) "Charity care" means ~~appropriate hospital-based medical services provided~~ medically necessary hospital health care rendered to indigent persons, as defined ~~in this section~~ RCW 70.170.020(4);

(7) "~~Appropriate hospital-based medical services~~ Medically necessary hospital health care" means those hospital services which are reasonably calculated to diagnose, correct, cure, alleviate, or prevent the worsening of conditions that endanger life, or cause suffering or pain, or result in illness or infirmity, or threaten to cause or aggravate a handicap, or cause physical deformity or malfunction, and there is no other equally effective, ~~more conservative or~~ substantially less costly course of treatment available or suitable for the person requesting the service. For purpose of this section, "course of treatment" may include mere observation or, where appropriate, no treatment at all;

246-453-020

Uniform procedures for the identification of indigent persons.

For the purpose of identifying those patients that will be classified as indigent persons, all hospitals shall adopt and implement the following procedures:

(11) In the event that a responsible party pays a portion or all of the charges related to ~~appropriate hospital-based medical care~~ medically necessary hospital health care services, and is subsequently found to have met the charity care criteria at the time that services were provided, any payments in excess of the amount determined to be appropriate in accordance with WAC 246-453-040 shall be refunded to the patient within thirty days of achieving the charity care designation.

246-453-040

Uniform criteria for the identification of indigent persons.

For the purpose of identifying indigent persons, all hospitals shall use the following criteria:

(1) All responsible parties with family income equal to or below one hundred percent of the federal poverty standard, adjusted for family size, shall be determined to be indigent persons qualifying for charity sponsorship for the full amount of hospital charges related to ~~appropriate~~

~~hospital-based medical services~~ medically necessary hospital health care that are not covered by private or public third-party sponsorship;

(2) All responsible parties with family income between one hundred one and two hundred percent of the federal poverty standard, adjusted for family size, shall be determined to be indigent persons qualifying

for discounts from charges related to ~~appropriate hospital-based medical services~~medically necessary hospital health care in accordance with the hospital's sliding fee schedule and policies regarding individual financial circumstances;

246-453-060

Denial of access to emergency care based upon ability to pay and transfer of patients with emergency medical conditions or active labor.

(4) Except as required by federal law and subsection (2) of this section, nothing in this section shall be interpreted to indicate that hospitals and their medical staff are required to provide ~~appropriate hospital-based medical services~~medically necessary hospital health care, including experimental services, to any individual.

Comment Form

DEFINITION OF PUBLICLY AVAILABLE – REVISED
WAC 246-453-010

Date of Comments: 2/11/2019

Comment submitted by:

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Section commented on: 246-453-010

Position (support/oppose): Support

Support DOH's proposed language, attached.

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1. Statement of problem/comment and substantiation:

See prior comments.

2. Suggested solution/proposed language:

Columbia Legal Services agrees with the attached proposal by DOH, reflecting both written submissions and the discussion during the December 19, 2018 work group session.

Please note, however, we are proposing clarifying language as to certain circumstances in which hospitals need not provide notice of charity care. See attached.

Hospitals should be required to issue a notice of charity care when the intended target of their collection efforts is the patient or responsible party directly. However, we agree with comments by hospitals that the notice requirements should not apply to such publications as generic listings of chargemaster rates.

3. Applicable research and/or substantiation of suggested solution/proposed language:

4. Benefit of suggested solution/proposed language to the public:

This language ensures that members of the public will receive notification about the availability of charity care, both at the time of service when they are also asked about coverage and when they receive

bills. This allows for an engagement with the hospital about payment when the patient is at the hospital, but also later, when the patient is not in a healthcare crisis.

5. Benefit of suggested solution/proposed language to hospitals:
Clarifies obligations.

6. Identified impacts (cost or otherwise) of suggested solution/proposed language to hospitals:

Discussion Notes (DOH staff only):

246-453-010

Definitions.

As used in this chapter, unless the context requires otherwise,

(16) "Publicly available" means:

(a) posted or prominently displayed within public areas of the hospital, including:

(i) areas where patients are admitted or registered,

(ii) emergency departments,

(iii) financial service or billing areas accessible to patients, and

(b) ~~and~~ provided to the individual in writing and explained, at the time that the hospital requests information from the responsible party with regard to the availability of any third-party coverage, and

(c) posted to the hospital's website (if any) in the form of the hospital's approved charity care policy, a plain language summary of the hospital's charity care policy, and the hospital's charity care application form, and

(d) on all hospital billing statements and other written communications concerning billing or collection of a hospital bill in accordance with RCW 70.170.060(8), which does not include generic publication of hospital charge rates not specifically directed to a patient or responsible party in regard to future or past hospital services and charges.

(e) All written notifications shall be made in any language spoken by more than ten percent of the population in the hospital's service area, and verbal explanations shall be interpreted for ~~other~~ non-English speaking or limited-English speaking or other patients who cannot read or understand the writing and explanation;

Comment Form

Guidelines for the Development of Sliding Fee Schedules – REVISED
WAC 246-453-050

Date of Comments: 2/11/2019

Comments submitted by:

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Section commented on: 246-453-050

Position (support/oppose): Support

Support. Due to amendments to RCW 70.170.060(5)-(9), the Legislature has made it clear that notice of charity care availability is of paramount importance. The sliding fee schedules that hospitals are required to develop are also a crucial component of a hospital's charity care policy and should be made available in the same meaningful manner as the other components of a hospital's charity care policy.

1. Statement of problem/comment and substantiation:

During the December 19, 2018, work group session, concerns over a “wall paper” effect was expressed in connection with posting the sliding fee schedule. In short, the concern was that hospitals would merely be adding another piece of paper along the wall, garnering little attention from patients.

Sliding fee schedules are one of the easiest methods of providing patients with charity care information. Interpreting the meaning of making charity care information publicly available in regard to a sliding fee schedule under RCW 70.170.020(6) (“a hospital-determined, publicly available schedule of discounts”) as only simply referring to a wall placement does a disservice to the citizens of Washington State. Instead, the regulations should be amended to comply with the language in the RCWs and current WAC 246-453-010(16).

“‘Publicly available’ means posted or prominently displayed within public areas of the hospital, and provided to the individual in writing and explained, at the time that the hospital requests information from the responsible party with regard to the availability of any third-party coverage, in any language spoken by more than ten percent of the population in the hospital's service area, and interpreted for other non-English speaking or limited-English speaking or other patients who can not read or understand the writing and explanation.”

2. Suggested solution/proposed language:

Amend WAC 246-453-050 as follows:

All hospitals shall, within ninety days of the adoption of these rules, implement a sliding fee schedule for determination of discounts from billed charges for responsible parties meeting the criteria in WAC 246-453-040(2). Notwithstanding WAC 246-453-010(16), and in lieu of posting the schedule within public areas of the hospital, These sliding fee schedules must be referenced on all postings, with instructions on how to obtain this information; must be available within the hospital and easily obtained; must be posted on the ~~made available~~ hospital's website; and must be provided to the individual in writing and explained, at the time that the hospital requests information from the responsible party with regard to the availability of any third-party coverage, in any language spoken by more than ten percent of the population in the hospital's service area, and interpreted for other non-English speaking or limited-English speaking or other patients who can not read or understand the writing and explanation.

3. Applicable research and/or substantiation of suggested solution/proposed language:

The regulations must be amended to carry out the legislature's intent to distribute notice of charity care availability in the broadest way possible. Currently, the regulations fall short when the best educational tool is made available only "upon request," thereby placing the burden on the patient to know what to ask for. However, hospital concerns should not be ignored. As hospitals noted in the December 19th work group, another piece of paper on the wall may not be the most meaningful way to communicate charity care availability, and there may be better ways to comply with statutory intent.

4. Benefit of suggested solution/proposed language to the public:

This language ensures that members of the public will understand whether they are eligible for charity care, and understand the extent of hospital charges which will be their responsibility.

5. Benefit of suggested solution/proposed language to hospitals:

Addresses hospital concerns over "wall paper" effect. Clarifies and realigns the charity care regulations to be consistent overall with the recent changes to the RCWs.

6. Identified impacts (cost or otherwise) of suggested solution/proposed language to hospitals:

None.

Discussion Notes (DOH staff only):