

State of Arizona
House of Representatives
Fifty-second Legislature
First Regular Session
2015

HOUSE BILL 2417

AN ACT

AMENDING SECTIONS 32-3216 AND 36-437, ARIZONA REVISED STATUTES; REPEALING LAWS 2013, CHAPTER 202, SECTION 7; RELATING TO DIRECT PAYMENTS TO HEALTH CARE PROVIDERS AND FACILITIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 32-3216, Arizona Revised Statutes, is amended to
3 read:

4 32-3216. Health care providers; charges; public availability;
5 direct payment; notice; definitions

6 A. A health care provider must make available on request or online the
7 direct pay price for at least the twenty-five most commonly provided
8 services, if applicable, for the health care provider. The services may be
9 identified by a common procedural terminology code or by a plain-English
10 description. The direct pay prices must be updated at least annually and
11 must be based on the services from a twelve-month period that occurred within
12 the eighteen-month period preceding the annual update. The direct pay price
13 must be for the standard treatment provided for the service and may include
14 the cost of treatment for complications or exceptional treatment. Health
15 care providers who are owners or employees of a legal entity with fewer than
16 three licensed health care providers are exempt from the requirements of this
17 subsection.

18 B. Subsection A of this section does not apply to emergency services.

19 C. The health care services provided by health care providers in
20 veterans administration facilities, health facilities on military bases,
21 Indian health services hospitals and other Indian health service facilities,
22 tribal owned clinics, the Arizona state hospital and any health care facility
23 determined to be exempt pursuant to section 36-437, subsection D, are exempt
24 from the requirements ~~and provisions~~ of this section.

25 D. Subsection A of this section does not prevent a health care
26 provider from offering either additional discounts or additional lawful
27 health care services for an additional cost to a person or an employer paying
28 directly.

29 E. A health care provider is not required to report the direct pay
30 prices to a government agency or department or to a government-authorized or
31 government-created entity for review or filing. A government agency or
32 department or government-authorized or government-created entity may not
33 approve, disapprove or limit a health care provider's direct pay price for
34 services. A government agency or department or government-authorized or
35 government-created entity may not approve, disapprove or limit a health care
36 provider's ability to change the published or posted direct pay price for
37 services.

38 F. A health care system may not punish a person or employer for paying
39 directly for lawful health care services or a health care provider for
40 accepting direct payment from a person or employer for lawful health care
41 services.

42 G. Except as provided in subsection ~~J~~ N of this section, a health
43 care provider who receives direct payment from a person or employer for a
44 lawful health care service is deemed paid in full if the entire fee for the
45 service is paid and shall not submit a claim for payment or reimbursement for

1 the service to any health care system. This subsection does not prevent a
2 health care provider from pursuing a health care lien for customary charges
3 pursuant to title 33. This subsection does not affect the ability of a
4 health care provider to submit claims for the same service provided on other
5 occasions to the same or a different person if no direct payment occurs.
6 This subsection does not require a health care provider to refund or adjust
7 any capitated payment, bundled payment or other form of prepayment or global
8 payment made by a health care system to the health care provider for lawful
9 health care services to be provided by the health care provider for the
10 person who makes, or on whose behalf an employer makes, direct payment to the
11 health care provider.

12 H. Before a health care provider who is contracted as a network
13 provider for a health care system accepts direct payment from a person or an
14 employer, and the person is an enrollee of the same health care system, the
15 health care provider shall obtain the person's or employer's signature on a
16 notice in a form that is substantially similar to the following:

17 Important notice about direct payment
18 for your health care services

19 The Arizona Constitution permits you to pay a health care
20 provider directly for health care services. Before you make any
21 agreement to do so, please read the following important
22 information:

23 If you are an enrollee of a health care system (more
24 commonly referred to as a health insurance plan) and your health
25 care provider is contracted with the health insurance plan, the
26 following apply:

27 1. You may not be required to pay the health care
28 provider directly for the services covered by your plan, except
29 for cost share amounts that you are obligated to pay under your
30 plan, such as copayments, coinsurance and deductible amounts.

31 2. Your provider's agreement with the health insurance
32 plan may prevent the health care provider from billing you for
33 the difference between the provider's billed charges and the
34 amount allowed by your health insurance plan for covered
35 services.

36 3. If you pay directly for a health care service, your
37 health care provider will not be responsible for submitting
38 claim documentation to your health insurance plan for that
39 claim. Before paying your claim, your health insurance plan may
40 require you to provide information and submit documentation
41 necessary to determine whether the services are covered under
42 your plan.

43 4. If you do not pay directly for a health care service,
44 your health care provider may be responsible for submitting

1 claim documentation to your health insurance plan for the health
2 care service.

3 Your signature below acknowledges that you received this
4 notice before paying directly for a health care service.

5 I. A health care provider who receives direct payment for a lawful
6 health care service and who complies with subsection H of this section is not
7 responsible for submitting documentation of any kind for purposes of
8 reimbursement to any health care system for that claim if the failure to
9 submit such documentation does not conflict with the terms of any federal or
10 state contracts to which the health care system is a party and the health
11 care provider has agreed to serve patients under or with applicable state or
12 federal programs in which a health care provider and health care system
13 participate.

14 J. A HEALTH CARE PROVIDER WHO RECEIVES DIRECT PAYMENT PURSUANT TO THIS
15 SECTION SHALL PROVIDE THE PERSON MAKING THE DIRECT PAYMENT WITH A RECEIPT
16 THAT INCLUDES THE FOLLOWING INFORMATION:

17 1. THE AMOUNT OF THE DIRECT PAYMENT.

18 2. THE APPLICABLE PROCEDURE AND DIAGNOSIS CODES FOR THE SERVICES
19 RENDERED.

20 3. A CLEAR NOTATION THAT THE SERVICES WERE SUBJECT TO DIRECT PAYMENT
21 UNDER THIS SECTION.

22 K. IF AN ENROLLEE PAYS TO A HEALTH CARE PROVIDER WHO IS AN
23 OUT-OF-NETWORK PROVIDER THE DIRECT PAY PRICE FOR A LAWFUL HEALTH CARE SERVICE
24 THAT IS COVERED UNDER THE ENROLLEE'S HEALTH CARE PLAN, PURSUANT TO THE
25 REQUIREMENTS OF THIS SECTION, THE AMOUNT PAID BY THE ENROLLEE SHALL BE
26 APPLIED FIRST TO THE ENROLLEE'S IN-NETWORK DEDUCTIBLE WITH ANY REMAINING
27 MONIES BEING APPLIED TO THE ENROLLEE'S OUT-OF-NETWORK DEDUCTIBLE, IF
28 APPLICABLE. THE AMOUNT APPLIED TO THE IN-NETWORK DEDUCTIBLE SHALL BE THE
29 AMOUNT PAID DIRECTLY OR THE INSURER'S PREVAILING CONTRACTED COMMERCIAL RATE
30 FOR THE ENROLLEE'S HEALTH CARE PLAN IN THIS STATE FOR THE SERVICE OR
31 SERVICES. IF THE SERVICE OR SERVICES DO NOT MATCH STANDARD CODES OR BUNDLED
32 PAYMENT PROGRAMS IN USE IN THIS STATE BY THE INSURER, THE AMOUNT APPLIED TO
33 THE IN-NETWORK DEDUCTIBLE SHALL BE THE AMOUNT PAID DIRECTLY. FOR THE
34 PURPOSES OF THIS SUBSECTION, "PREVAILING CONTRACTED COMMERCIAL RATE" MEANS
35 THE MOST USUAL AND CUSTOMARY RATE THAT AN INSURER OFFERS AS PAYMENT FOR A
36 SPECIFIC SERVICE UNDER A SPECIFIC HEALTH CARE PLAN, NOT INCLUDING A PLAN
37 OFFERED UNDER MEDICARE OR MEDICAID OR ON A HEALTH INSURANCE EXCHANGE.

38 L. IF AN ENROLLEE IS ENROLLED IN A HIGH DEDUCTIBLE PLAN THAT QUALIFIES
39 THE ENROLLEE FOR A HEALTH SAVINGS ACCOUNT AS DEFINED IN 26 UNITED STATES CODE
40 SECTION 223, THE HEALTH CARE SYSTEM IS NOT LIABLE IF THE ENROLLEE SUBMITS A
41 CLAIM FOR DEDUCTIBLE APPLICATION OF A DIRECT PAY AMOUNT PURSUANT TO
42 SUBSECTION K OF THIS SECTION THAT JEOPARDIZES THE ENROLLEE'S STATUS AS AN
43 INDIVIDUAL ELIGIBLE FOR FAVORABLE TAX TREATMENT OF THE HEALTH SAVINGS
44 ACCOUNT.

1 M. THIS SECTION DOES NOT CREATE ANY PRIVATE RIGHT OR CAUSE OF ACTION
2 FOR OR ON BEHALF OF ANY PERSON AGAINST THE HEALTH INSURER. THIS SECTION
3 PROVIDES SOLELY AN ADMINISTRATIVE REMEDY FOR ANY VIOLATION OF THIS SECTION OR
4 ANY RELATED RULE.

5 ~~J.~~ N. This section does not impair the provisions of a health care
6 system's private health care network provider contract, except that a health
7 care provider may accept direct payment from a person or employer or may
8 decline to bill the health care system directly for services paid directly by
9 a person or employer if the health care provider has complied with subsection
10 H of this section and the health care provider's receipt of direct payment
11 and the declination to bill the health care system do not conflict with the
12 terms of any federal or state contract to which the health care system is a
13 party and the health care provider has agreed to serve patients under or with
14 applicable state or federal programs in which both a health care provider and
15 health care system participate.

16 ~~K.~~ O. A health care provider who does not comply with the
17 requirements of this section commits unprofessional conduct. Any
18 disciplinary action taken by the health professional's licensing board may
19 not include revocation of the health care provider's license.

20 ~~L.~~ P. For the purposes of this section:

21 1. "Direct pay price" means the price that will be charged by a health
22 care provider for a lawful health care service, regardless of the health
23 insurance status of the person, if the entire fee for the service is paid in
24 full directly to a health care provider by the person, including the person's
25 health savings account, or by the person's employer and that does not
26 prohibit a provider from establishing a payment plan with the person paying
27 directly for services.

28 2. "Emergency services" means lawful health care services needed to
29 evaluate and stabilize an emergency medical condition as defined in 42 United
30 States Code section 1396u-2(b)(2)(C).

31 3. "Enrollee" means a person who is enrolled in a health care plan
32 provided by a health insurer.

33 4. "Health care plan" means a policy, contract or evidence of coverage
34 issued to an enrollee. Health care plan does not include limited benefit
35 coverage as defined in section 20-1137.

36 5. "Health care provider" means a person who is licensed pursuant to
37 chapter 7, 8, 13, 16, 17, 19 or 34 of this title.

38 6. "Health care system" means a public or private entity whose
39 function or purpose is the management, processing or enrollment of
40 individuals or the payment, in full or in part, of health care services.

41 7. "Health insurer":

42 (a) Means a disability insurer, group disability insurer, blanket
43 disability insurer, health care services organization, hospital service
44 corporation, medical service corporation or hospital and medical service
45 corporation as defined in title 20.

1 (b) DOES NOT INCLUDE A GOVERNMENTAL PLAN AS DEFINED IN THE EMPLOYEE
2 RETIREMENT INCOME SECURITY ACT OF 1974 (P.L. 93-406; 88 STAT. 829; 29 UNITED
3 STATES CODE SECTION 1002).

4 8. "Lawful health care services" means any health-related service or
5 treatment, to the extent that the service or treatment is permitted or not
6 prohibited by law or regulation, that may be provided by persons or
7 businesses otherwise permitted to offer the services or treatments.

8 9. "Punish" means to impose any penalty, surcharge or named fee with a
9 similar effect that is used to discourage the exercise of rights under this
10 section.

11 Sec. 2. Section 36-437, Arizona Revised Statutes, is amended to read:
12 36-437. Health care facilities; charges; public availability;
13 direct payment; notice; definitions

14 A. A health care facility with more than fifty inpatient beds must
15 make available on request or online the direct pay price for at least the
16 fifty most used diagnosis-related group codes, if applicable, for the
17 facility and at least the fifty most used outpatient service codes, if
18 applicable, for the facility. The services may be identified by a common
19 procedural terminology code or by a plain-English description. The health
20 care facility must update the direct pay prices at least annually based on
21 the services from a twelve-month period that occurred within the
22 eighteen-month period preceding the annual update. The direct pay price must
23 be for the standard treatment provided for the service and may include the
24 cost of treatment for complications or exceptional treatment.

25 B. A health care facility with fifty or fewer inpatient beds must make
26 available on request or online the direct pay price for at least the
27 thirty-five most used diagnosis-related group codes, if applicable, for the
28 facility and at least the thirty-five most used outpatient service codes if
29 applicable, for the facility. The services may be identified by a common
30 procedural terminology code or by a plain-English description. The health
31 care facility must update the direct pay prices at least annually based on
32 the services from a twelve-month period that occurred within the
33 eighteen-month period preceding the annual update. The direct pay price must
34 be for the standard treatment provided for the service and may include the
35 cost of treatment for complications or exceptional treatment.

36 C. Subsections A and B of this section do not apply if a discussion of
37 the direct pay price would be a violation of the federal emergency medical
38 treatment and labor act.

39 D. Veterans administration facilities, health facilities on military
40 bases, Indian health services hospitals and other Indian health services
41 facilities, tribal owned clinics and the Arizona state hospital are exempt
42 from the requirements ~~and provisions~~ of this section. If the director of the
43 Arizona department of health services determines that a health care facility
44 does not serve the general public, the health care facility shall be exempt

1 from the requirements ~~and provisions~~ of this section if the facility does not
2 serve the general public.

3 E. Subsections A and B of this section do not prevent a health care
4 facility from offering either additional discounts or additional lawful
5 health care services for an additional cost to a person or an employer paying
6 directly.

7 F. A health care facility is not required to report the direct pay
8 prices to a government agency or department or to a government-authorized or
9 government-created entity for review. A government agency or department or
10 government-authorized or government-created entity may not approve,
11 disapprove or limit a health care facility's direct pay price for services.
12 A government agency or department or government-authorized or
13 government-created entity may not approve, disapprove or limit a health care
14 facility's ability to change the published or posted direct pay price for
15 services.

16 G. A health care system may not punish a person or employer for paying
17 directly for lawful health care services or a health care facility for
18 accepting direct payment from a person or employer for lawful health care
19 services.

20 H. Except as provided in subsection ~~K~~ 0 of this section, a health
21 care facility that receives direct payment from a person or employer for a
22 lawful health care service is deemed paid in full if the entire fee for the
23 service is paid and shall not submit a claim for payment or reimbursement for
24 the service to any health care system. This subsection does not prevent a
25 health care facility from pursuing a health care lien for customary charges
26 pursuant to title 33. This subsection does not affect the ability of a
27 health care facility to submit claims for the same service provided on other
28 occasions to the same or a different person if no direct payment occurs.
29 This subsection does not require a health care facility to refund or adjust
30 any capitated payment, bundled payment or ~~any~~ other form of prepayment or
31 global payment made by a health care system to the health care facility for
32 lawful health care services to be provided by the health care facility for
33 the person who makes, or on whose behalf an employer makes, direct payment to
34 the health care facility.

35 I. Before a health care facility that is contracted as a network
36 provider for a health care system accepts direct payment from a person or an
37 employer, and the person is an enrollee of the same health care system, the
38 health care facility shall obtain the person's or employer's signature on a
39 notice in a form that is substantially similar to the following:

40 Important notice about direct payment
41 for your health care services

42 The Arizona Constitution permits you to pay a health care
43 facility directly for health care services. Before you make any
44 agreement to do so, please read the following important
45 information:

1 If you are an enrollee of a health care system (more
2 commonly referred to as a health insurance plan) and your health
3 care facility is contracted with the health insurance plan, the
4 following apply:

5 1. You may not be required to pay the health care
6 facility directly for the services covered by your plan, except
7 for cost share amounts that you are obligated to pay under your
8 plan, such as copayments, coinsurance and deductible amounts.

9 2. Your provider's agreement with the health insurance
10 plan may prevent the health care facility from billing you for
11 the difference between the facility's billed charges and the
12 amount allowed by your health insurance plan for covered
13 services.

14 3. If you pay directly for a health care service, your
15 health care facility will not be responsible for submitting
16 claim documentation to your health insurance plan for that
17 claim. Before paying your claim, your health insurance plan may
18 require you to provide information and submit documentation
19 necessary to determine whether the services are covered under
20 your plan.

21 4. If you do not pay directly for a health care service,
22 your health care facility may be responsible for submitting
23 claim documentation to your health insurance plan for the health
24 care service.

25 Your signature below acknowledges that you received this
26 notice before paying directly for a health care service.

27 J. A health care facility that receives direct payment for a lawful
28 health care service and that complies with subsection I of this section is
29 not responsible for submitting documentation of any kind for purposes of
30 reimbursement to any health care system for that claim if the failure to
31 submit such documentation does not conflict with the terms of any federal or
32 state contracts to which the health care system is a party and the health
33 care facility has agreed to serve patients under or with applicable state or
34 federal programs in which a health care facility and health care system
35 participate.

36 K. A HEALTH CARE FACILITY THAT RECEIVES DIRECT PAYMENT PURSUANT TO
37 THIS SECTION SHALL PROVIDE THE PERSON MAKING THE DIRECT PAYMENT WITH A
38 RECEIPT THAT INCLUDES THE FOLLOWING INFORMATION:

39 1. THE AMOUNT OF THE DIRECT PAYMENT.

40 2. THE APPLICABLE PROCEDURE AND DIAGNOSIS CODES FOR THE SERVICES
41 RENDERED.

42 3. A CLEAR NOTATION THAT THE SERVICES WERE SUBJECT TO DIRECT PAYMENT
43 UNDER THIS SECTION.

44 L. IF AN ENROLLEE PAYS TO A HEALTH CARE FACILITY THAT IS AN
45 OUT-OF-NETWORK PROVIDER THE DIRECT PAY PRICE FOR A LAWFUL HEALTH CARE SERVICE

1 THAT IS COVERED UNDER THE ENROLLEE'S HEALTH CARE PLAN, PURSUANT TO THE
2 REQUIREMENTS OF THIS SECTION, THE AMOUNT PAID BY THE ENROLLEE SHALL BE
3 APPLIED FIRST TO THE ENROLLEE'S IN-NETWORK DEDUCTIBLE WITH ANY REMAINING
4 MONIES BEING APPLIED TO THE ENROLLEE'S OUT-OF-NETWORK DEDUCTIBLE, IF
5 APPLICABLE. THE AMOUNT APPLIED TO THE IN-NETWORK DEDUCTIBLE SHALL BE THE
6 AMOUNT PAID DIRECTLY OR THE INSURER'S PREVAILING CONTRACTED COMMERCIAL RATE
7 FOR THE ENROLLEE'S HEALTH CARE PLAN IN THIS STATE FOR THE SERVICE OR
8 SERVICES. IF THE SERVICE OR SERVICES DO NOT MATCH STANDARD CODES OR BUNDLED
9 PAYMENT PROGRAMS IN USE IN THIS STATE BY THE INSURER, THE AMOUNT APPLIED TO
10 THE IN-NETWORK DEDUCTIBLE SHALL BE THE AMOUNT PAID DIRECTLY. FOR THE
11 PURPOSES OF THIS SUBSECTION, "PREVAILING CONTRACTED COMMERCIAL RATE" MEANS
12 THE MOST USUAL AND CUSTOMARY RATE THAT AN INSURER OFFERS AS PAYMENT FOR A
13 SPECIFIC SERVICE UNDER A SPECIFIC HEALTH CARE PLAN, NOT INCLUDING A PLAN
14 OFFERED UNDER MEDICARE OR MEDICAID OR ON A HEALTH INSURANCE EXCHANGE.

15 M. IF AN ENROLLEE IS ENROLLED IN A HIGH DEDUCTIBLE PLAN THAT QUALIFIES
16 THE ENROLLEE FOR A HEALTH SAVINGS ACCOUNT AS DEFINED IN 26 UNITED STATES CODE
17 SECTION 223, THE HEALTH CARE SYSTEM IS NOT LIABLE IF THE ENROLLEE SUBMITS A
18 CLAIM FOR DEDUCTIBLE APPLICATION OF A DIRECT PAY AMOUNT PURSUANT TO
19 SUBSECTION L OF THIS SECTION THAT JEOPARDIZES THE ENROLLEE'S STATUS AS AN
20 INDIVIDUAL ELIGIBLE FOR FAVORABLE TAX TREATMENT OF THE HEALTH SAVINGS
21 ACCOUNT.

22 N. THIS SECTION DOES NOT CREATE ANY PRIVATE RIGHT OR CAUSE OF ACTION
23 FOR OR ON BEHALF OF ANY PERSON AGAINST THE HEALTH INSURER. THIS SECTION
24 PROVIDES SOLELY AN ADMINISTRATIVE REMEDY FOR ANY VIOLATION OF THIS SECTION OR
25 ANY RELATED RULE.

26 ~~K.~~ O. This section does not impair the provisions of a health care
27 system's private health care network provider contract, except that a health
28 care facility may accept direct payment from a person or employer or may
29 decline to bill the health care system directly for services paid directly by
30 a person or employer if the health care facility has complied with subsection
31 I of this section and the health care facility's receipt of direct payment
32 and the declination to bill the health care system do not conflict with the
33 terms of any federal or state contract to which the health care system is a
34 party and the health care facility has agreed to serve patients under or with
35 applicable state or federal programs in which a health care facility and
36 health care system participate.

37 ~~L.~~ P. This section may not prevent the ~~Arizona~~ department of health
38 services from performing an investigation of a health care facility under the
39 department's powers and duties as ~~defined~~ PRESCRIBED in THIS title 36. If a
40 health care facility fails to comply with this section, the penalty shall not
41 include the revocation of the license to deliver health care services.

42 ~~M.~~ Q. For the purposes of this section:

43 1. "Direct pay price" means the entire price that will be charged by a
44 health care facility for a lawful health care service, regardless of the
45 health insurance status of the person, if the entire fee for the service is

1 paid in full directly to a health care facility by the person, including the
2 person's health savings account, or by the person's employer and that does
3 not prohibit a facility from establishing a payment plan with the person
4 paying directly for services.

5 2. "Enrollee" means a person who is enrolled in a health care plan
6 provided by a health insurer.

7 3. "Health care facility" means a hospital, outpatient surgical
8 center, health care laboratory, diagnostic imaging center or urgent care
9 center.

10 4. "Health care plan" means a policy, contract or evidence of coverage
11 issued to an enrollee. Health care plan does not include limited benefit
12 coverage as defined in section 20-1137.

13 5. "Health care provider" means a person who is licensed pursuant to
14 [TITLE 32](#), chapter 7, 8, 13, 16, 17, 19 or 34 ~~of title 32~~.

15 6. "Health care system" means a public or private entity whose
16 function or purpose is the management, processing or enrollment of
17 individuals or the payment, in full or in part, of health care services.

18 7. "Health insurer":

19 (a) Means a disability insurer, group disability insurer, blanket
20 disability insurer, health care services organization, hospital service
21 corporation, medical service corporation or hospital and medical service
22 corporation as defined in title 20.

23 (b) [DOES NOT INCLUDE A GOVERNMENTAL PLAN AS DEFINED IN THE EMPLOYEE
24 RETIREMENT INCOME SECURITY ACT OF 1974 \(P.L. 93-406; 88 STAT. 829; 29 UNITED
25 STATES CODE SECTION 1002\)](#).

26 8. "Lawful health care services" means any health-related service or
27 treatment, to the extent that the service or treatment is permitted or not
28 prohibited by law or regulation, that may be provided by persons or
29 businesses otherwise permitted to offer the services or treatments.

30 9. "Punish" means to impose any penalty, surcharge or named fee with a
31 similar effect that is used to discourage the exercise of rights under this
32 section.

33 Sec. 3. [Repeal](#)

34 Laws 2013, chapter 202, section 7 is repealed.

35 Sec. 4. [Effective date](#)

36 Sections 32-3216 and 36-437, Arizona Revised Statutes, as amended by
37 this act, are effective from and after December 31, 2016 and apply to
38 policies, contracts and plans that are issued or renewed from and after
39 December 31, 2016.