

101 CMR: EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES

101 CMR 516.00: BEHAVIORAL HEALTH ACCESS AND CRISIS INTERVENTION
TRUST FUND SURCHARGE

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516.01: Scope and Purpose

101 CMR 516.00 governs the procedures for collecting a surcharge to fund the Behavioral Health Access and Crisis Intervention Trust Fund. The Behavioral Health Access and Crisis Intervention Trust Fund surcharge is a surcharge on certain payments made to Massachusetts acute hospitals and ambulatory surgical centers.

516.02: Definitions

Ambulatory Surgical Center. Any distinct entity located in Massachusetts that operates exclusively for the purpose of providing surgical services to patients not requiring hospitalization and meets the U.S. Centers for Medicare and Medicaid (CMS) requirements for participation in the Medicare program.

Ambulatory Surgical Center Services. Services described for purposes of the Medicare program pursuant to 42 U.S.C. § 1395k(a)(2)(F)(i). These services include only facility services and do not include physician fees.

Department of Public Health. The Massachusetts Department of Public Health.

EOHHS. The Executive Office of Health and Human Services established under M.G.L. c. 6A.

Fund. The Behavioral Health Access and Crisis Intervention Trust Fund established by M.G.L. c. 29 § 2WWWW.

General Appropriations Act. The act of the General Court, or any subsequent amendment or supplemental act enacting the Commonwealth's fiscal year budget.

Hospital. An acute hospital licensed under M.G.L. c. 111, § 51, that contains a majority of medical surgical, pediatric, obstetric and maternity beds, as defined by the Massachusetts Department of Public Health.

Hospital Services. Services listed on an acute hospital's license issued by the Massachusetts Department of Public Health.

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Indirect Payment. A payment made by a payer to a group of providers, including one or more Massachusetts acute care hospitals or ambulatory surgical centers, that then forward the payment to member hospitals or ambulatory surgical centers; or a payment made to an individual to reimburse him or her for a payment made to a hospital or ambulatory surgical center.

Managed Care Organization. A managed care organization as defined in M.G.L. c. 118E, § 64.

Medicaid. The medical assistance program administered by the Executive Office of Health and Human Services Office of Medicaid pursuant to M.G.L. c. 118E and in accordance with Titles XIX and XXI of the Federal Social Security Act, and a Section 1115 Demonstration Waiver.

Medicare Program. The medical insurance program established by Title XVIII of the Social Security Act.

Payer. A surcharge payer that meets the criteria set forth in 101 CMR 516.03 (2).

Payment. A check, draft, or other paper instrument, an electronic fund transfer, or any order, instruction, or authorization to a financial institution to debit one account and credit another.

Payments Subject to Surcharge. All amounts paid, directly or indirectly, by surcharge payers to acute hospitals for health services and ambulatory surgical centers for ambulatory surgical center services; provided however, that it does not include:

- (1) payments, settlements, and judgments arising out of third-party liability claims for bodily injury that are paid under the terms of property or casualty insurance policies; and
- (2) payments made on behalf of Medicaid recipients, Medicare beneficiaries or persons enrolled in policies issued under M.G.L. c. 176K or similar policies issued on a group basis; provided further, that it includes payments made by a managed care organization on behalf of:
 - (a) Medicaid recipients younger than 65 years old; and
 - (b) enrollees in the Commonwealth care health insurance program; and provided further, that it may exclude amounts established under regulations promulgated by EOHHS for which the costs and efficiency of billing a surcharge payer or enforcing collection of the surcharge from a surcharge payer would not be cost effective.

Surcharge. The surcharge on payments made to hospitals and ambulatory surgical centers established by M.G.L. c. 118E, § 69A.

Surcharge Payer. An individual or entity that pays for or arranges for the purchase of health care services provided by acute hospitals and ambulatory surgical center services provided by ambulatory surgical centers; provided however, that it includes a managed care organization; and provided further, that it does not include Title XVIII and Title XIX programs and their beneficiaries or recipients, other governmental programs of public assistance and their beneficiaries or recipients and the workers' compensation program established under M.G.L. c. 152.

Third-party Administrator. An entity that administers payments for health care services on behalf of a client plan in exchange for an administrative fee. A third-party administrator may provide

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client services for a self insured plan or an insurance carrier's plan. A third-party administrator will be deemed to use a client plan's funds to pay for health care services whether the third-party administrator pays providers with funds from a client plan, with funds advanced by the third-party administrator subject to reimbursement by the client plan, or with funds deposited with the third-party administrator by a client plan.

Total Behavioral Health Surcharge Amount. An amount equal to \$33,700,000.

516.03: Determination of Surcharge Liability and Payment

(1) EOHHS will collect a surcharge on certain payments to hospitals and ambulatory surgical centers. The surcharge amount equals the product of:

- (a) payments subject to the surcharge as defined in 101 CMR 516.03(3); and
- (b) the assessment percentage as defined in 101 CMR 516.03(4).

(2) Payers subject to surcharge:

- (a) Payers are subject to the surcharge if:
 - 1. the payer is a surcharge payer; and
 - 2. the payer's payments subject to surcharge were \$1,000,000 or more during the previous state fiscal year or the most recent state fiscal year for which data is available.
- (b) The same entity that pays the hospital or ambulatory surgical center for services must pay the surcharge.
- (c) A payer that pays for hospital or ambulatory surgical center services on behalf of a client plan must pay the surcharge on those services. A payer that administers payments for health care services on behalf of a client plan in exchange for an administrative fee will be deemed to use the client plan's funds to pay for health care services whether the payer pays providers with funds from the client plan, with funds advanced by the payer subject to reimbursement by the client plan, or with funds deposited with the payer by the client plan.
- (d) In the case of a transfer of ownership, a surcharge payer's liability to the Fund must be assumed by the successor in interest to the surcharge payer.

(3) Payments subject to the surcharge include direct and indirect payments made by surcharge payers in a time period as determined by EOHHS and released annually, to hospitals for the purchase of hospital services; and to ambulatory surgical centers for the purchase of ambulatory surgical center services.

(4) EOHHS will determine the surcharge percentage as follows:

- (a) EOHHS will, on an annual basis, collect the Total Behavioral Health Surcharge Amount by collecting a portion of the total amount from all payers.
- (b) EOHHS will require each payer to pay a portion of the total behavioral health surcharge amount proportional to their payments subject to surcharge during the most recent period for which data is available.
- (c) The surcharge percentage is determined by dividing the total amount to be collected determined under 101 CMR 516.03(4)(a) by total payments subject to surcharge determined under 101 CMR 516.03(4)(b).
- (d) EOHHS may establish the surcharge percentage by administrative bulletin. EOHHS may adjust the surcharge percentage by Administrative Bulletin if an adjustment is necessary to

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collect the revenue required to be collected.

(5) Each payer must determine its surcharge liability in accordance with guidance issued by EOHHS in administrative bulletins. The surcharge liability is the product of the payer's payments subject to the surcharge, as defined in 101 CMR 516.03(3) and the surcharge percentage as defined in 101 CMR 516.03(4)(c). The total amount to be collected may vary depending on the outcome of any administrative review of payments pursuant to 101 CMR 516.04.

(6) Payers that pay a global fee or capitation for services that include hospital or ambulatory surgical center services, as well as other services not subject to the surcharge, must develop a reasonable method for allocating the portion of the payment intended to be used for services provided by hospitals or ambulatory surgical centers. Such payers must file this allocation with EOHHS by February 1st of each year. If there is a significant change in the global fee or capitation payment arrangement that necessitates a change in the allocation method, the payer must notify EOHHS and file a new allocation method at least 45 days before the new payment arrangement takes effect. Payers may not change the allocation method later in the year unless there is a significant change in the payment arrangement.

(a) EOHHS will review allocation plans within 90 days of receipt. During this review period, EOHHS may require a payer to submit supporting documentation or to make changes in this allocation method if it finds that the method does not reasonably allocate the portion of the global payment or capitation intended to be used for services provided by hospitals or ambulatory surgical centers.

(b) A payer must include the portion of the global payment or capitation intended to be used for services provided by hospitals or ambulatory surgical centers, as determined by this allocation method, in its determination of payments subject to the surcharge.

(7) A payer must include all payments made as a result of settlements, judgments or audits in its determination of payments subject to the surcharge. A payer may include payments made by Massachusetts hospitals or ambulatory surgical centers to the payer as a result of settlements, judgments or audits as a credit in its determination of payments subject to the surcharge.

(8) Each payer must pay its surcharge liability in the first quarter of each calendar year in accordance with a schedule developed and released by the EOHHS through administrative bulletin.

(9) Penalties for Non-payment.

(a) If a payer does not pay the amount calculated pursuant to 101 CMR 516.03(4)(c), or a specified portion thereof, by the due date established by EOHHS, EOHHS may assess up to a 3% penalty on the outstanding balance. EOHHS will calculate the penalty on the outstanding balance as of the due date. EOHHS may assess up to an additional 3% penalty against the outstanding balance and prior penalties for each month that a payer remains delinquent. EOHHS will credit partial payments from delinquent payers to the current outstanding liability. If any amount remains from the partial payment, EOHHS will then credit such amount to the penalty amount.

(b) In determining the penalty amount, EOHHS may consider factors including, but not be limited to, the payer's payment history, financial situation, and relative share of the payments.

516.04: Administrative Review

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- (1) Surcharge Liability. EOHHS may conduct an administrative review of surcharge liability payments at any time.
- (2) Reviews and Audits. In conducting such review, EOHHS will review data submitted by hospitals, ambulatory surgical centers, and any other relevant data, including surcharge data. All information provided by, or required from, any payer, pursuant to 101 CMR 516 will be subject to audit by EOHHS. For surcharge liability payments based upon a global fee or capitation payment allocated according to an allocation method accepted by EOHHS pursuant to 101 CMR 516.03(4)(b), EOHHS' review will be limited to determining whether this method was followed accurately and whether the amounts reported were accurate.
 - (a) EOHHS may require the payer to submit additional documentation reconciling the data it submitted with data received from hospitals and ambulatory surgical centers.
 - (b) If EOHHS determines through its review that a payer's surcharge liability payment was materially incorrect, EOHHS will require a payment adjustment.
- (3) Notification. EOHHS will notify the payer in writing if it determines there should be a payment adjustment. The notification will include a detailed explanation of the proposed adjustment.
- (4) Objection Process. A payer may object to proposed adjustment in writing, within 15 business days of the mailing of the notification letter. The payer may request an extension of this period for cause. The written objection must, at a minimum, contain:
 - (a) the specific reason(s) for each of the payer's objections; and
 - (b) all documentation that supports the payer's position.
- (5) Written Determination. Following review of the payer's objection, EOHHS will notify the payer of its determination in writing, with an explanation of its reasoning.
- (6) Payment of Adjustment Amounts. Payment of adjustment amounts are due within 30 days following the mailing of the determination letter.

516.05: Other Provisions

- (1) Reporting Requirements. Each payer must file or make available information that is required or that EOHHS deems reasonably necessary for calculating and collecting the surcharge.
- (2) Administrative Bulletins. EOHHS may issue administrative bulletins to clarify policies, update administrative requirements, and specify information and documentation necessary to implement 101 CMR 516.

516.06: Severability

The provisions of 101 CMR 516 are severable. If any provision or the application of any provision is held to be invalid or unconstitutional, such invalidity shall not be construed to affect the validity or constitutionality of any remaining provisions of 101 CMR 516 or the application of such provisions.

REGULATORY AUTHORITY

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101 CMR 516: M.G.L. c. 118E, § 69A