



DATE: August 23, 2011

RE: Price Transparency and Posting for Urgent Care Centers, Health Care Clinics, and Physician Practices (Chapter 2011-122, Laws of Florida)

Chapter 2011-122, Laws of Florida (the “Act”) pertains to “health care price transparency” and took effect on July 1, 2011. The Act, which is ambiguous in various ways, was originally drafted to basically apply only to “urgent care centers” owned by hospitals. However, the Act was amended suddenly and substantially on the last day of the 2011 Session resulting in a much broader potential reach, additional ambiguity, and some surprise and lack of notice to the agencies, as well as the industry.

To better address the inherent ambiguities in the Act and answer key questions about the Act, the below will first quote the key provisions, than give a general overview of the Act, and finally specifically address key issues in a question and answer format.

I. THE ACT’S KEY LANGUAGE

The key new provisions of the Act are quoted below (all emphasis is added). The Act’s provisions basically address three types of entities: (1) primary care providers (“**PCPs**”); (2) urgent care centers (“**UCCs**”); and (3) health care clinics (“**HCCs**”).

PCPs – added to § 381.026(2), (4), Fla. Stat. (Patient’s Rights & Responsibilities):

(2)(c) “Health care provider” means a physician licensed under chapter 458, an osteopathic physician licensed under chapter 459, or a podiatric physician licensed under chapter 461.

(2)(d) “Primary care provider” means a health care provider [as defined above – a physician] licensed under chapter 458 [physician], chapter 459 [osteopathic], or chapter 464 [nurses, nursing assistants] who provides medical services to patients which are commonly provided without referral from another health care provider, including family and general practice, general pediatrics, and general internal medicine.

(4)(c)3 A primary care provider may publish a schedule of charges for the medical services that the provider offers to patients. The schedule must include the prices charged to an uninsured person paying for such services by cash, check, credit card, or debit card. The schedule must be posted in a conspicuous place in the reception area of the provider's office and must include, but is not limited to, the 50 services most frequently provided by the primary care provider. The schedule may group services by three price levels, listing services in each price level. The posting must be at least 15 square feet in size. A primary care provider who publishes and maintains a schedule of charges for medical services is exempt from the license fee requirements for a single period of renewal of a professional license under chapter 456 for that licensure term and is exempt from the continuing education requirements of chapter 456 and the rules implementing those requirements for a single 2-year period.

UCCs -- Parts added to Chapter 395, Fla. Stat. (Hospitals):

395.002 Definitions.—As used in this chapter:

(30) “Urgent care center” means a facility or clinic that provides **immediate** but not emergent ambulatory medical care to patients with or without an appointment. It does not include the emergency department of a hospital.

Section 3. Section 395.107, Florida Statutes, is created to read:

395.107 Urgent care centers; publishing and posting schedule of charges. An urgent care center must publish a schedule of charges for the medical services offered to patients. The schedule must include the prices charged to an uninsured person paying for such services by cash, check, credit card, or debit card. The schedule must be posted in a conspicuous place in the reception area of the urgent care center and must include, but is not limited to, the 50 services most frequently provided by the urgent care center. The schedule may group services by three price levels, listing services in each price level. The posting must be at least 15 square feet in size. The failure of an urgent care center to publish and post a schedule of charges as required by this section shall result in a fine of not more than \$1,000, per day, until the schedule is published and posted.

HCCs -- Parts added to Chapter § 400.9935 Fla. Stat. (HCC Responsibilities):

(1) [Each medical director or the clinical director shall:]

(h) Ensure that the clinic publishes a schedule of charges for the medical services offered to patients. The schedule must include the prices charged to an uninsured person paying for such services by cash, check, credit card, or debit card. The schedule must be posted in a conspicuous place in the reception area

of the urgent care center and must include, but is not limited to, the 50 services most frequently provided by the clinic. The schedule may group services by three price levels, listing services in each price level. The posting must be at least 15 square feet in size. The failure of a clinic to publish and post a schedule of charges as required by this section shall result in a fine of not more than \$1,000, per day, until the schedule is published and posted. ...

(6) ... An entity seeking a certificate of exemption must publish and maintain a schedule of charges for the medical services offered to patients. The schedule must include the prices charged to an uninsured person paying for such services by cash, check, credit card, or debit card. The schedule must be posted in a conspicuous place in the reception area of the entity and must include, but is not limited to, the 50 services most frequently provided by the entity. The schedule may group services by three price levels, listing services in each price level. The posting must be at least 15 square feet in size. As a condition precedent to receiving a certificate of exemption, an applicant must provide to the agency documentation of compliance with these requirements.

II. OVERVIEW OF THE NEW LAW

In short, the Act requires the posting of a “price board” for the top 50 most common procedures:

- 1) PCPs - Posting is optional. Has incentive benefit of waiving license fees, and CME requirements for those physicians and practitioners who voluntarily participate.
- 2) UCCs - Posting is mandatory.
- 3) HCCs - Posting is mandatory.
- 4) “Exempt” HCCs - Posting is mandatory for those who seek an exemption for first time--but not for HCCs which already have obtained exemption (per AHCA verbal interpretation).

The Florida Agency for Health Care Administration (AHCA) has partial regulatory oversight of the portions relating to just HCCs and hospital-based UCCs, whereas the Department of Health (DOH) has oversight as to PCPs. To the extent a PCP, UCC, or HCC is required to publish prices, each part of the Act requires exactly the same type of schedule to be posted. That is, the Act’s language in each part provides that:

The schedule must [“may” as to PCPs] include the prices charged to an uninsured person paying for such services by cash, check, credit card, or debit card. The schedule must be posted in a conspicuous place in the reception area of the provider’s office and must include, but is not limited to, the 50 services most frequently provided by the [provider, UCC, or entity]. The schedule may group

services by three price levels, listing services in each price level. The posting must be at least 15 square feet in size.

Thus to the extent the Act applies to any facility, the price publishing requirements are the same: (1) publishing of a schedule of charges, (2) to uninsured persons who pay by cash, check, credit card, or debit card, (3) for the 50 most frequently performed medical services that are offered to the facility's patients, must be (4) posted in a conspicuous place in the reception area of the office, and (5) be at least 15 square feet in size. Accordingly, the Act apparently only requires prices to be posted as to uninsured patients who are paying cash or equivalent. It does not require posting of prices charged to those using insurance. As noted elsewhere herein, various ambiguities exist in the Act, including that it is unclear what is meant by "three price levels." Some examples of price posting are mentioned in the final Staff Analysis to HB 935. See the following links: (1) <http://www.solantic.com>; (2) <http://lwruc.com/selfpaycosts.shtml>; and (3) <http://walkincliniccoralsprings.com/feeschedule.html>. Neither AHCA nor DOH have published any guidelines or begun a rule adoption process.

PCPs. The foregoing price publishing requirements are *optional* for PCPs. PCPs are defined to include physicians practicing in the fields of family and general medical practice, general pediatrics, and general internal medicine, advanced registered nurse practitioners and physician assistants.

UCCs. The price publishing requirements are *mandatory* for UCCs. The Act defines the term "urgent care center" so as to exclude emergent care and emergency departments of hospitals. Thus, a UCC is defined as follows: "a facility or clinic that provides immediate [but not emergent ambulatory] medical services to patients with or without an appointment." The definition is inherently ambiguous, in part due to the inherent ambiguity of the word "immediate" in this context, especially when juxtaposed with the phrase "with ... an appointment." The potential reach of this definition could include simple walk-in patients, convenience care patients seeking quick "immediate" treatment, and all even though they arrive for a pre-scheduled appointment. Given the ambiguity and the possibility of substantial fines, a conservative interpretation is in order, and so it should be assumed that the statute has a broad reach. Note that the failure of a UCC to post a schedule as required by the Act "shall result in a fine of not more than \$1,000, per day," until the schedule is posted. Moreover, hospitals and other health care facilities have a general duty under Medicare and other laws to fully comply with all state laws. However, it should be noted that AHCA, through its Hospital Unit, only has regulatory oversight jurisdiction over hospital-owned UCCs that bill on an outpatient provider based manner using the Hospital's provider number; (2) AHCA's HCC Unit will only enforce as to licensed HCCs; (3) even in those limited cases, AHCA intends to have a 6-month "grace period" until December 31, 2011 whereby fines will not be imposed for any violations.

Licensed HCCs. The price publishing is *mandatory* for licensed HCCs, and appears to apply whether or not the HCC meets the definition of a UCC, in that the Act simply states that the medical director or clinic director of a HCC licensed under the Florida Health Care Clinic Act, "shall" ensure compliance with specified publishing and posting requirement. Like UCCs, the failure of a licensed HCC to comply with the publishing and posting requirements results in a

fine of not more than \$1,000, per day, until the schedule of charges is published and posted as required.

HCCs that Prospectively Apply for Exemption. The price publishing is also *mandatory* for any facility that applies for an exemption from the Health Care Clinic Act. However, on its website, AHCA has recently taken the position that because the Act did not take effect until July 1, 2011, current exemption certificate holders who are not currently required to renew their certificate of exemption (because exemptions are indefinite in duration) are not required to comply. However, if the facility comes within the definition of urgent care center, it is independently required to comply as a statutory matter, although AHCA currently has no enforcement oversight to survey such an exempt facility. Thus, AHCA's position is that the Act requires that any facility *which applies* for an HCC exemption certificate must provide proof of compliance with the publishing and posting requirements of the Act prior to receiving the certificate of exemption. It is likely that AHCA's HCC Unit will only request *documentation* of proof compliance from applicants seeking exemption, and even after the exemption is obtained, there is no intent or plan to survey or monitor such exempt facilities.

HCCs that Are Already Exempt (Self-Determined Exemption, or Via Certificate). The price publishing requirement is *optional* for facilities that already have an HCC exemption. That is, there is no specific requirement in the Act that an HCC that is already exempt (whether an HCC possessing an exemption certificate, or one that has self-determined its exemption as permitted by the Health Care Clinic Act) comply with the price posting requirements set forth in the Act, and as noted above, AHCA has offered the interpretation that existing "exempt" facilities are not affected.

III. KEY QUESTIONS AND ANSWERS

1. What is the definition of "Urgent Care Center" and does it include "walk-in clinics" and "convenient care clinics"?

Answer: See above definition and the Part II "UCC" discussion. As noted there, the definition of a UCC is: "a facility or clinic that provides immediate [but not emergent ambulatory] medical services to patients with or without an appointment." This would appear to include "walk in clinics" and "convenient care clinics" that are operated by a hospital. If the "clinic" is actually a physician practice owned by a hospital, and the billing is under the physician billing numbers (as opposed to outpatient hospital) then it would be subject to the optional PCP requirement. A conservative interpretation is in order and absent a different policy, rule or ruling from AHCA, it should be assumed that the statute does reach walk-in-clinics and convenient care clinics that are owned and operated by the hospital. It should be noted that there are indications from AHCA that: (1) a hospital Unit only has regulatory oversight jurisdiction over hospital owned UCCs that bill on an outpatient provider based manner using the Hospital's provider number; (2) the HCC Unit will only enforce the Act as to licensed HCCs or those who apply for an HCC exemption certificate; (3) even in those limited cases, AHCA intends to have a

6-month “grace period” until December 31, 2011 whereby fines will not be imposed for any violations.

- 2. Generally, what is the impact of the new law on Health Care Clinics, and are all HCCs required to meet the fee schedule publication requirements of the statute or simply urgent care centers as defined above?**

Answer: See the above Part II “HCC” discussion. All *licensed* HCCs must meet the requirements. Also, any facility applying after July 1 for a HCC exemption certificate will have to document compliance with the Act as part of the application process. However, previously exempt HCCs (self-determined, or holding a certificate of exemption) are required to comply with the Act only if they meet the (broad) statutory definition of a UCC, but it should be noted that AHCA has indicated it has no regulatory oversight over such HCCs and will not attempt to survey or enforce that obligation. AHCA will exercise its regulatory authority over any HCC (exempt or licensed) that is provider based and bills through a hospital provider number.

- 3. Are primary care practices, with normal routine weekday schedules but open hours on Saturday morning, covered under UCC requirements?**

Answer: The Act is intended to make physician practice locations (PCPs) only subject to the optional requirement for PCPs. The Act does not make the applicability of the “optional” requirements for PCPs dependent upon the office hours of the practice, and whether they are open on Saturdays. Thus, if it is a PCP (physician practice), compliance with price posting would be optional. If the facility is a UCC -- i.e. a facility that is owned and operated by a hospital and billing as outpatient hospital department services, then the mandatory UCC price posting requirements would apply.

- 4. Are primary care practices, with normal routine weekday schedules but which have open hours in the evening (“after-hours”), covered under UCC requirements?**

Answer: Probably not. The Act does not make the definition of a PCP dependent upon the hours of operation of the PCP (physician practice). It seems that the distinction between UCC and PCP will be whether it is operated as a physician practice or group practice, as opposed to an outpatient department of a hospital.

- 5. Under Section 3 of the Act, which requires schedules to include “the prices charged to an uninsured person ...” what is the definition of the “prices charged”? Is this the consistent price for each service or the amount expected to be paid after any uninsured discount by patient?**

Answer: While the Act does not speak directly to the difference between “charges” and “reimbursement” that is received from an uninsured patient, it appears that the intent is to post the amount that the uninsured patient will actually be required to pay

for services. Therefore, if a consistent discount is offered, the price should include the amount after the discount.

- 6. Under Section 3 referenced above, if a practice has one established price for a service and offers various payer and uninsured discounts, is it appropriate to publish the established non-discounted price?**

Answer: It appears that the intent is to advise uninsured patients the amounts they will be expected to pay. However, there is nothing specifically stated in the Act that would prevent also publishing non-discounted prices. Whether to publish such non-discounted prices would be a business/operational decision.

- 7. Is an Urgent Care Center required to disclose such an uninsured discount policy?**

Answer: The Act requires posting of the price to be actually paid by the uninsured patient. There is nothing that requires (or precludes) a facility from publishing their policy on discounts for uninsured patients. Whether to disclose the discount policy would be a business judgment decision.

- 8. How often is a UCC required to update its pricing?**

Answer: There is no clear delineation in the Act on this issue. A reasonable approach would be to update the posting whenever prices substantially change so that the posted prices are no longer accurate.

- 9. If a UCC adopts a 3-tiered pricing model as the Act allows, is the 50 diagnosis requirement waived?**

Answer: No, there is no indication in the Act or the legislative staff analyses that the requirement of “50 services most frequently provided” can be waived in this or any other manner. Although the Act is not at all clear what is meant by the “price levels,” a reasonable interpretation would be that the 50 most common services could be grouped into “buckets” and that all services in the defined level would be at or below the stated price for that “bucket.” For example and by way of illustration only -- Bucket A specifies the services (from the 50 most common) that are \$50 or less; Bucket B specifies services (from the 50 most common) that are \$100 or less; and Bucket C includes services (from the 50 most common) that are \$150 or less. To meet the intent of fair notice to the patient in advance of delivering services, the patient should be informed of the price (of maximum) that could be expected for the specific service. Please note that the Act is unclear, and there may be other interpretation as to how to accomplish “price level” posting.

10. Under Section 1(4)(c)6 of the Act which references "Each licensed facility," what is definition of each licensed facility?

Answer: It refers to a hospital as regulated by Chapter 395, Florida Statutes. That is, Section 381.026(2)(b) defines "health care facility" as "a facility licensed under chapter 395." Also, note that the "Each licensed facility" language in the Act was not amended by the Act, but instead was pre-existing language included in the Act for context.

If you have any questions regarding this new Price Transparency law or issues relating to Urgent Care Centers, Health Care Clinics, or Primary Care Practice operations or regulations one of the attorneys at Smith & Associates will be happy to help you.

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