

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

December 11, 2018

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

Comment submitted by:

Name: Randall Huyck

Title: Hospital Charity Care and Financial Data Manager, DOH

Phone/email: charitycare@doh.wa.gov

Section commented on: 246-453-030

Position (support/oppose): Support

1. Statement of problem/comment and substantiation:

New language in RCW 70.170.060(10) and (11) may be interpreted in more than one way. Assuming it is the legislature's intent to clarify for patients and hospitals what income data is to be used, and assuming the legislature intends that patients be given opportunities to re-apply for charity care if their financial conditions worsen over time, the proposed language should lend clarity.

2. Suggested solution/proposed language:

See attached

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

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

Reinforces the legislature's intent to allow "a second bite at the apple" for patients whose financial conditions deteriorate and clarifies the circumstances where a hospital must accept new or revised charity care requests.

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

Clarifies the hospitals' responsibilities under the new language in the law.

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

The new provisions in the RCW may increase the charity care burden to hospitals, but the proposed language should eliminate confusion about when the hospitals must use the different possible income timeframes. Also clarifies that requests to re-evaluate charity care applications when the patient has not been making good-faith efforts or more than two years have passed since services were rendered is discretionary. Hospitals need not be subjected to recurring requests to revise charity care decisions outside of two narrow criteria.

Discussion Notes (DOH staff only):

Chapter 246-453 WAC

HOSPITAL CHARITY CARE

246-453-030

Data requirements for the identification of indigent persons.

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

(3) The final determination of eligibility shall be made using the responsible party's family income at the time of application if:

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

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

_____ (c) If the responsible party previously applied for charity care sponsorship, was denied sponsorship or granted less than a full discount of the charges, and meets criteria (a) and (b), they may submit a second application using the responsible party's family income at the time of the second application.

(4) The hospital may, at its discretion, and at the request of the patient or responsible party, make a final determination of eligibility using the responsible party's family income at time of application at any time there is a change in the responsible party's financial circumstances, even if a previous application was denied or approved in part.

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CharityCare@DOH.WA.GOV

Comment submitted by:

Name: Tony Gonzalez and Ann LoGerfo, Columbia Legal Services

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

Phone/email: ann.logerfo@columbialegal.org; tony.gonzalez@columbialegal.org

Section commented on: WAC 246-253-030

Position (support/oppose): Support, with changes

Support DOH position that there needs to be a regulatory change as to the timeframe for the determination of income, consistent with legislative intent and statutory change. In particular, the revisions to RCW 70.170.060 (10) and (11) need to be clarified in WAC, consistent with legislative purpose. The law intends to provide for opportunities for patients to apply for charity when there has been a change in financial status after receiving hospital services, without limiting current patient rights.

1. Statement of problem/comment and substantiation:

The clarification of a patient's ability to re-apply or the apply initially 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.

Also, the provisions of 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. Suggest a new WAC which addresses when a patient/responsible party should use income at time of application, instead of income at time of service. It's important that the *timing* of

income not be conflated with the ability to apply for charity care. Addressing income in a separate section of the will add to clarity, simplicity and understanding for advocates, patients and hospital staff.

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.

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

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 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 family income at the time of 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 patient has been making good faith efforts toward payment of health care services provided,

(3) If the responsible party was denied sponsorship or granted less than a full discount of the charges, and meets criteria (a) and (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 patient or responsible party, make a final determination of eligibility using the responsible party's family income at time of application at any time there is a change in the responsible party's financial circumstances, even if previous application was denied or approved in part, regardless of whether the criteria of 2(a) and (b) are met.

(5) Nothing in this section shall limit or modify a hospital's obligations under WAC 246-453—020, including a hospital's obligation to make a determination of charity care eligibility at any time upon learning of facts or receiving documentation indicating that a responsible party's income at the time of service was at or below two hundred percent of the federal poverty standard as adjusted for family size.

Comment Form: “Timing to assess income”

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CharityCare@DOH.WA.GOV

Comment submitted by:

Name: Zosia Stanley

Title: Associate General Counsel, Washington State Hospital Association

Phone/email: (206) 216-2511 / zosias@wsha.org

Section commented on: new section in WAC 246-453

Position (support/oppose): Support

1. Statement of problem/comment and substantiation:

SB 6273 added language about the time period to use in assessing the annual income of a patient/responsible party for purposes of charity care. The bill also added language that a hospital may consider a charity care application at any time.

There is no language addressing these concepts in the current WAC.

2. Suggested solution/proposed language:

See attached.

Add a new section in WAC to clearly lay out the appropriate time period of time of service, the exception for responsible parties who apply within 2 years and have made a good faith effort to pay. Open to DOH language regarding consideration of an application at the hospital’s discretion.

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

See discussion above/below

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

Clear process and definition

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

Clear process and definition

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

Clear process and definition

Discussion Notes (DOH staff only):

New Section 246-453-XXX

Time period used to assess the responsible party's income

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

(2) (a) The final determination of eligibility shall be made using the responsible party's annual family income at the time of application if:

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

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

(b) For purposes of this section "good faith efforts toward payment of the health care services provided" means in the hospital's reasonable judgment the responsible party's actions exhibit sustained engagement with the hospital and significant efforts to make meaningful payments on an outstanding financial obligation to the hospital.

(c) If the responsible party previously applied for charity care sponsorship, was denied sponsorship or granted less than a full discount of the charges, and meets criteria (2a), the responsible party may submit a second application using the responsible party's annual family income at the time of the second application.

(3) The hospital may, at its discretion, or at the request of the responsible party, make a final determination of eligibility using the responsible party's family income at time of application any time there is a change in the responsible party's financial circumstances, even if a previous application was denied or approved in part.

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Comment submitted by:

Name: Randall Huyck

Title: Hospital Charity Care and Financial Data Manager, DOH

Phone/email: charitycare@doh.wa.gov

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

Position (support/oppose): Support

1. Statement of problem/comment and substantiation:

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.”

There has historically been tension between the department and the hospitals on how to interpret “appropriate hospital-based medical services” and whether it is analogous to “medically necessary.” The program’s longstanding position was that the two are not the same. As noted in item 3, below, that position may have been inaccurate.

2. Suggested solution/proposed language:

1. Revise definition of charity care in WAC to delete reference to “appropriate hospital-based medical services” and replace it with “medically necessary” and tie to RCW.
2. Remove definition of “appropriate hospital-based medical services” from WAC and replace with definition of “medically necessary” that ties to WAC 182-500-0070.
3. Replace other references to “appropriate hospital-based medical services” in WAC with “medically necessary.”

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

Columbia Legal Services noted during the first workgroup that the WAC definition of “appropriate hospital-based medical services” is the same as Washington Medicaid’s definition of “medically necessary.” WAC 182-500-0070 (Healthcare Authority’s glossary of terms for Medicaid) contains that language.

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

1. No net change to what is covered – one term replaces the other, but both have same definition as current term. Stability in regulation.
2. Consistency with HCA if they change their definition – we follow by reference.

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

1. WA hospitals won't be expected to pay for anything Medicaid wouldn't
2. Hospitals should be used to this standard – from both Medicaid rules and previous charity care standard.

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

Should be no net cost 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~~ medically necessary hospital health care provided rendered to indigent persons, as defined in ~~this section~~ [RCW 70.170.020\(4\)](#);

~~(7) "Appropriate hospital-based medical services" 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;~~

(7) "Medically necessary hospital health care" means services provided by a hospital or component of a hospital that meet the definition of "medically necessary" contained in [WAC 182-500-0070](#).

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.

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CharityCare@DOH.WA.GOV

Comment submitted by:

Name: Tony Gonzalez and Ann LoGerfo, Columbia Legal Services

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

Phone/email: ann.logerfo@columbialegal.org; tony.gonzalez@columbialegal.org

Section commented on: 246-453-010, 020, 040, 060 (relating to the term “medically necessary”)

Position (support/oppose): Choose an item.

Support using the term “medically necessary;” however, we are submitting suggested changes to the approach used by DOH in its initial draft.

1. Statement of problem/comment and substantiation:

“Medically necessary” is used in the statutory language under RCW 70.170.060(4), and the WACs should be consistent.

2. Suggested solution/proposed language:

See attached. Define “medically necessary” in WAC. Currently there is a definition of covered services in WAC and deleting it without providing a definition may be confusing. Easiest for patients, hospitals and advocates if the definition appears both in WAC and in statute.

Also, we are seeking a clarification as to the language proposed by DOH in defining “medically necessary hospital health care” as “services provided by a hospital or component of a hospital that meet the definition of ‘medically necessary’ contained in WAC 182-500-0070.” We would like to understand whether DOH interprets these terms differently from the current language of “appropriate hospital based medical services,” and if so, how they are different.

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

Although the current definition of covered services in WAC 246-453-010(7) is nearly identical to the definition of “medically necessary” under WAC 182-500-0070 in the Medicaid regulations, the Medicaid program and charity care scheme have many differences. For example, Medicaid applies in many situations in which charity care does not. Tying the charity care definition to the Medicaid definition

may result in confusion or problems in the future. Although these definitions are quite similar at the present time, it's important that charity reserve its own definitions, since ultimately, Medicaid and charity care are not the same programs and do not follow the same overall rules.

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

Easy to find definition, with consistency between the statute and the regulation.

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

Easy to find definition for hospital staff, with consistency between the statute and the regulation.

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 medically necessary hospital health care rendered to indigent persons, as defined in RCW 70.170.020(4);

(7) "Medically necessary hospital health care" means hospital based services and services provided by a component of a hospital, 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 and 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 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 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 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 medically necessary hospital health care, including experimental services, to any individual.

Comment Form: “Definition charity care”

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CharityCare@DOH.WA.GOV

Comment submitted by:

Name: Zosia Stanley

Title: Associate General Counsel, Washington State Hospital Association

Phone/email: (206) 216-2511 / zosias@wsha.org

Section commented on: WAC 246-453-010(5)

Position (support/oppose): Support

1. Statement of problem/comment and substantiation:

SB 6273 added to the definition of “charity care” in statute. The new definition is not consistent with the definition of “charity care” in WAC 246-453-010(5)

2. Suggested solution/proposed language:

See attached.

Based on proposed DOH language, incorporate the definition of “medically necessary” from Medicaid, but include the second important facet of Medicaid processes – covered services.

Add language about third-party exhaustion to the definition of charity care.

Replace all references to “appropriate hospital-based medical services” to “medically necessary hospital health care.”

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

The legislature amended the definition of “charity care” to specify that charity care is *medically* necessary hospital health care. The legislature also specified that charity care is available after any third-party coverage is exhausted.

Pursuant to rules of statutory interpretation, effect should be imputed to the language the legislature chooses.

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

Consistency with HCA/Medicaid program and definitions.

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

Consistency with HCA/Medicaid program and definitions.

Agree with DOH that hospitals will not be expected to pay for anything Medicaid would not.

6. Identified impacts (cost or otherwise) of suggested solution/proposed language to hospitals:
Provide reliable, known definition and standard

Discussion Notes (DOH staff only):

WAC 246-453-010

(5) "Charity care" means ~~appropriate hospital-based medical services~~ medically necessary hospital health care provided to indigent persons when third-party coverage, if any, has been exhausted, as defined in this section RCW 70.170.020(4),

7) "Medically necessary hospital health care" means services that meet the definition of "medically necessary" contained in WAC 182-500-0070 and which would qualify as covered services for medicaid beneficiaries, when 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 observation or, where appropriate, no treatment at all.

(7) "~~Appropriate hospital-based medical services~~" 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;~~

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Comment submitted by:

Name: Randall Huyck

Title: Hospital Charity Care and Financial Data Manager, DOH

Phone/email: charitycare@doh.wa.gov

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

Position (support/oppose): Support

1. Statement of problem/comment and substantiation:

The legislature added a definition of “third-party coverage” to RCW 70.170.020. There was already a definition of that term in WAC that is different from the new definition. The term “third-party sponsorship” was also used in WAC.

The new definition in RCW is sufficiently clear and comprehensive that it does not need clarification in WAC.

2. Suggested solution/proposed language:

See attached. In order to avoid conflict between RCW and WAC and to accommodate any changes the legislature may make in the future to the defined term, I am recommending the repeal of WAC 246-453-010(9), the definition of “third-party coverage” and “third party sponsorship.” I am also recommending each reference to “third-party sponsorship” in existing WAC be replaced with “third-party coverage.”

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

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

Removes the possibility of conflicts between RCW and WAC definitions of the same term

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

Removes the possibility of conflicts between RCW and WAC definitions of the same term.

6. Identified impacts (cost or otherwise) of suggested solution/proposed language to hospitals:
Should be no impact on 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,

~~(9) "Third party coverage" and "third party sponsorship" means an obligation on the part of an insurance company or governmental program which contracts with hospitals and patients to pay for the care of covered patients and services, and may include settlements, judgments, or awards actually received related to the negligent acts of others which have resulted in the medical condition for which the patient has received hospital services;~~

(14) "Responsible party" means that individual who is responsible for the payment of any hospital charges which are not subject to ~~third party sponsorship~~third-party coverage;

(20) "Final determination of sponsorship status" means the verification of third party coverage or lack of third party coverage, as evidenced by payment received from the third party sponsor or denial of payment by the alleged third party sponsor, and verification of the responsible party's qualification for classification as an indigent person, subsequent to the completion of any appeals to which the responsible party may be entitled and which on their merits have a reasonable chance of achieving ~~third party sponsorship~~third-party coverage in full or in part.

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:

(4) Hospitals must make every reasonable effort to determine the existence or nonexistence of ~~third party sponsorship~~third-party coverage that might cover in full or in part the charges for services provided to each patient.

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 that are not covered by ~~private or public third party sponsorship~~third-party coverage;

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Comment submitted by:

Name: Tony Gonzalez and Ann LoGerfo, Columbia Legal Services

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

Phone/email: ann.logerfo@columbialegal.org; tony.gonzalez@columbialegal.org

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

Position (support/oppose): Choose an item.

Support, with modification

1. Statement of problem/comment and substantiation:

In 2018, the legislature modified the definition of “third-party coverage” in RCW 70.170.020. The WACs need to reflect these changes.

2. Suggested solution/proposed language:

See attached. Suggest adding the RCW definition to the regulations, for clarity, ease of reference, consistency and completeness. We suggest adding the new RCW definition to the WAC, rather than simply referencing the RCW within the WAC.

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

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

Provides clarity directly in the regulations, ensures ease of access to an important definition, and implements legislative intent

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

Provides clarity directly in the regulations, ensures ease of access to an important definition, and implements legislative intent

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,

(9) "Third party coverage" means an obligation on the part of an insurance company, health care service contractor, health maintenance organization, group health plan, government program, tribal health benefits, or health care sharing ministry as defined in 26 U.S.C. Sec. 5000A to pay for the care of covered patients and services, and may include settlements, judgments, or awards actually received related to the negligent acts of others which have resulted in the medical condition for which the patient has received hospital health care service. The pendency of such settlements, judgments, or awards must not stay hospital obligations to consider an eligible patient of charity care.

(14) "Responsible party " means that individual who is responsible for the payment of any hospital charges which are not subject to third-party coverage;

(20) "Final determination of sponsorship status" means the verification of third party coverage or lack of third party coverage, as evidenced by payment received from the third party sponsor or denial of payment by the alleged third party sponsor, and verification of the responsible party's qualification for classification as an indigent person, subsequent to the completion of any appeals to which the responsible party may be entitled and which on their merits have a reasonable chance of achieving third-party coverage in full or in part.

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:

(4) Hospitals must make every reasonable effort to determine the existence or nonexistence of third-party coverage that might cover in full or in part the charges for services provided to each patient.

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 that are not covered by third-party coverage;

Comment Form- “Third party coverage”

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CharityCare@DOH.WA.GOV

Comment submitted by:

Name: Zosia Stanley

Title: Associate General Counsel, Washington State Hospital Association

Phone/email: (206) 216-2511 / zosias@wsha.org

Section commented on: WAC 246-453-010

Position (support/oppose): Support

1. Statement of problem/comment and substantiation:

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 definition does not conflict with existing WAC, but includes new coverage sources and specificity.

2. Suggested solution/proposed language:

See attached.

Replace current WAC 246-453-010 (9) with the language from RCW 70.170.020(5). While this will be a reiteration of the statute, it will be helpful for the reader to have the definition included in the WAC.

Replace references in WAC to “third party sponsorship” with “third-party coverage.”

Replace references in WAC to “third party sponsor” to “source of third-party coverage.”

Agree with DOH proposed edits to WAC 246-453-020, -040

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

See discussion above and below

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

Consistency between RCW and WAC, ease of use for those reviewing the WAC

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

Consistency between RCW and WAC, ease of use for those reviewing the WAC

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

Improved clarity and consistency

Discussion Notes (DOH staff only):

246-453-010

Definitions.

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

(9) "Third-party coverage" means an obligation on the part of an insurance company, health care service contractor, health maintenance organization, group health plan, government program, tribal health benefits, or health care sharing ministry as defined in 26 U.S.C. Sec. 5000A ~~which contracts with hospitals and patients to pay for the care of covered patients and services, and may include settlements, judgments, or awards actually received related to the negligent acts of others which have resulted in the medical condition for which the patient has received hospital health care service. The pendency of such settlements, judgments, or awards must not stay hospital obligations to consider an eligible patient for charity care.~~

(14) "Responsible party" means that individual who is responsible for the payment of any hospital charges which are not subject to ~~third-party sponsorship~~ third-party coverage;

(19) "Initial determination of sponsorship status" means an indication, pending verification, that the services provided by the hospital may or may not be covered by ~~third party sponsorship~~ third-party coverage, or an indication from the responsible party, pending verification, that he or she may meet the criteria for designation as an indigent person qualifying for charity care; and

(20) "Final determination of sponsorship status" means the verification of third-party coverage or lack of third party coverage, as evidenced by payment received from the source of third-party coverage ~~third party sponsor~~ or denial of payment by the source of third-party coverage ~~third party sponsor~~, and verification of the responsible party's qualification for classification as an indigent person, subsequent to the completion of any appeals to which the responsible party may be entitled and which, on their merits, have a reasonable chance of achieving ~~third party sponsorship~~ third-party coverage in full or in part.

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CharityCare@DOH.WA.GOV

Comment submitted by:

Name: Randall Huyck

Title: Hospital Charity Care and Financial Data Manager, DOH

Phone/email: charitycare@doh.wa.gov

Section commented on: 246-453-010

Position (support/oppose): Support

1. Statement of problem/comment and substantiation:

New language in RCW 70.170.060(6), (7), and (8) introduced notice requirements for public posting about charity care availability and also required that information about charity care be posted on hospital web sites and printed on billing and collection documents. WAC 246-453-010(16) already had a definition of “publicly available” that is inconsistent with the new language in RCW.

2. Suggested solution/proposed language:

See attached. I am recommending expanding the definition in WAC to incorporate the language in RCW, but also retain the clarity the previous WAC definition added.

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 should be amply provided with notification about the availability of charity care.

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

Clarifies the hospitals’ responsibilities under the new language in the law.

6. Identified impacts (cost or otherwise) of suggested solution/proposed language to hospitals:
The proposed WAC language adds no costs to the status quo or to the new language in RCW. It retains the current WAC requirement that charity care information be provided to patients in writing and explained when they are asked for information about third-party coverage and incorporates the new notice requirements in RCW

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,

(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

(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,

(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).

(d) 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 can not read or understand the writing and explanation;

Comment Form

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CharityCare@DOH.WA.GOV

Comment submitted by:

Name: Tony Gonzalez and Ann LoGerfo, Columbia Legal Services

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

Phone/email: ann.logerfo@columbialegal.org; tony.gonzalez@columbialegal.org

Section commented on: 246-453-010 (publicly available)

Position (support/oppose): Choose an item.

Support, with modification

1. Statement of problem/comment and substantiation:

Definition of “publicly available” in WAC and new requirements of RCW 70.170.060

2. Suggested solution/proposed language:

See attached. Suggest small changes for consistency with RCW and to address implementation:

1. The language in RCW 70.170.060 (6) lists areas of the hospital for posting, but requires that the postings be in “at least” the delineated areas. We have added “at least” to the WAC, as well.
2. Removed “if any” to the language about websites as all hospitals have websites.
3. Removed the word “other” in regard to interpretation of charity care for those who can’t understand the explanation in English, as it adds an ambiguity as to who is covered – everyone who can’t understand the explanation should receive interpretation.

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

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

Provides clarity and implements legislative intent

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

Provides clarity and implements legislative intent

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,

(16) "Publicly available" means:

(a) posted or prominently displayed within public areas of the hospital, **including at least the following areas**;

(i) areas where patients are admitted or registered,

(ii) emergency departments,

(iii) financial service or billing areas accessible to patients

(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,

(c) posted to the hospital's website **[deleted "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)

(d) 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 **[deleted other]** non-English speaking or limited-English speaking or other patients who cannot read or understand the writing and explanation.

Comment Form: “Publicly available”

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CharityCare@DOH.WA.GOV

Comment submitted by:

Name: Zosia Stanley

Title: Associate General Counsel, Washington State Hospital Association

Phone/email: (206) 216-2511 / zosias@wsha.org

Section commented on: WAC 246-453-010

Position (support/oppose): Support

1. Statement of problem/comment and substantiation:

New language in RCW 70.170.060(6) requires public posting about charity care availability in specific locations in a hospital.

New language in RCW 70.170.060(7) requires specific documents about charity care be posted on hospital web sites

New language in RCW 70.170.060(8) requires notice about charity care be printed on billing and collection documents.

WAC 246-453-010(16) already had a definition of “publicly available” that is inconsistent with the new language in RCW.

2. Suggested solution/proposed language:

See attached.

Incorporate the new obligations into a revised definition of “publicly available.”

Regarding notice on billing and collections communications, clarify that the obligation applies to communications by hospitals via third parties, but does not apply to generalized communication that are not about specific estimates or amounts owed.

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

See discussion above/below

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

Clarity what hospitals need to do to meet the obligation to make information about charity care “publicly available”

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

Create clear list of requirements for hospitals regarding the obligation to make information about charity care “publicly available”

6. Identified impacts (cost or otherwise) of suggested solution/proposed language to hospitals:
Create clear list of requirements for hospitals regarding the obligation to make information about charity care “publicly available”

Discussion Notes (DOH staff only):

(16) "Publicly available" means:

(a) Notice of charity care availability:

(i) posted or prominently displayed ~~within public areas of the hospital~~ in at least the following locations;

(A) areas where patients are admitted or registered,

(B) emergency departments,

(C) financial service or billing areas if these areas are accessible to patients; and

(ii) 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

(b) Posting 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 on the hospital’s website in compliance with translation requirements in RCW 70.170.060(7);

(c) Including the statements required under RCW 70.170.060(8) on all hospital billing statements and other written communications concerning billing or collection of a hospital bill by a hospital or third-party vendor on behalf of the hospital. Generalized communications that are not about specific estimates or amounts owed are not included in this requirement; and

(d) 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 can not read or understand the writing and explanation;

Comment Form

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CharityCare@DOH.WA.GOV

Comment submitted by:

Name: Tony Gonzalez and Ann LoGerfo, Columbia Legal Services

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

Phone/email: ann.logerfo@columbialegal.org; tony.gonzalez@columbialegal.org

Section commented on:

WAC 246-453-050

Position (support/oppose): Support – DOH has not submitted any proposed rule on this issue, but sliding fee schedules for purposes of providing partial charity care towards a hospital bill are a mandatory component of a hospital’s charity care policy, and should be subject to the same terms of notice and public availability.

1. Statement of problem/comment and substantiation:

Need to change language in regard to sliding fee schedules: “these sliding fee schedules must be made available *upon request*.” (emphasis added). Alter that language to be consistent with New RCW 70.170.060(6) and (7) and the existing definition of “publicly available.” WAC 246-453-010(16)

2. Suggested solution/proposed language:

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). These sliding fee schedules must be made available upon request; posted or prominently displayed within public areas of the hospital; made available on the hospital’s website; 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 cannot read or understand the writing and explanation.

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

RCW 70.170.020(5) currently defines "Sliding fee schedule" to mean "a hospital-determined, *publicly available* schedule of discounts to charges for persons deemed eligible for charity care; such schedules shall be established after consideration of guidelines developed by the department." (emphasis added).

"Publicly available" is currently defined in WAC 246-453-010(16) to mean "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 cannot read or understand the writing and explanation."

RCW 70.170.060 was amended to include new subsections (6) and (7), which add notice and posting requirements of the hospital's charity care policy:

(6) Each hospital shall post and prominently display notice of charity care availability. Notice must be posted in all languages spoken by more than ten percent of the population of the hospital service area. Notice must be displayed in at least the following locations:

- (a) Areas where patients are admitted or registered;
- b) Emergency departments, if any; and
- (c) Financial service or billing areas where accessible to patients.

(7) Current versions of the hospital's charity care policy, a plain language summary of the hospital's charity care policy, and the hospital's charity care application form must be available on the hospital's website. The summary and application form must be available in all languages spoken by more than ten percent of the population of the hospital service area.

Even under the current WACs, sliding fee schedules were never meant to be displayed to patients only "upon request." See WAC 246-453-010(16) and RCW 70.170.020(5). The current definition of "publicly available" mandates that hospitals make the sliding fee schedule to be posted and prominently displayed in public areas of the hospital, provided to patients at the time the hospital requests information about third party coverage, available in languages spoken by more than 10 percent of the hospital service area, and interpreted for anyone else who cannot read or understand the writing and explanation. WAC 246-453-010(16)

With the legislature's additions of RCW 70.170.060(6) and (7), the current definition of "publicly available" found in WAC 246-453-010(16), and the overall clear intent of the legislature to make charity care information as accessible to the public as possible, there is no reason sliding fee schedules should be made available only "upon request."

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

Ensures that information that consumers need to understand their potential eligibility is uniformly and broadly available and accessible, not just when they request it, because individuals may not know to request it.

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

Making the sliding fee schedule as available as possible ensures that all hospitals are able to quickly explain the charity care income thresholds, while leaving room for patients to understand that verification is still needed.

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

None. The new RCWs require hospitals to display their charity care policy, plain language summary, and application on their website. Logically, the sliding fee schedule should be included.

Discussion Notes (DOH staff only):

Comment Form

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Comment 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

Phone/email: tony.gonzalez@columbialegal.org; ann.logerfo@columbialegal.org

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. This term should be defined.

1. Statement of problem/comment and substantiation:

RCW 70.170.060(10)(b) addresses certain circumstances when the responsible party (usually the patient) can 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, the responsible party should have made “good faith efforts towards payment of health care services.” Leaving this term undefined is problematic for hospital financial representatives, patients and health care advocates.

2. Suggested solution/proposed language:

(21) “good faith efforts towards payment of health care services” means that the patient has made some attempt to communicate with the hospital to make payment arrangements on the related outstanding balance or to inform the hospital of a financial or other inability to make payments. It is consistent with good faith to refuse or fail to make a payment or payments where the amount due is in dispute, or 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:

“Good faith” is a legal term that is currently undefined and imposed upon patients as a requirement, which will be determined by a hospital at its discretion. In order for the general public to understand the requirements of “good faith,” the department should adopt a definition that allows patients the opportunity to demonstrate their efforts in communicating with the hospital, but also incorporates the underlying affirmative duties hospitals owe to patients.

For example, 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:

Easy to find definition, with consistency between the statute and the regulation. The definition supplied above serves both the public and hospitals by providing a clear mandate of communication by the patient, while securing the availability of charity care for those it was intended to serve. It also serves to provide clear guidance to patient advocates, whether they are friends or professionals, who may not be well versed with the overall charity care structure.

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

Easy to understand for hospital staff, and provides an understanding of staff obligations, as well as patient obligations.

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

None known

Discussion Notes (DOH staff only):

Comment Form: “Pendency of settlements”

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CharityCare@DOH.WA.GOV

Comment submitted by:

Name: Zosia Stanley

Title: Associate General Counsel, Washington State Hospital Association

Phone/email: (206) 216-2511 / zosias@wsha.org

Section commented on: new subsection to WAC 246-453

Position (support/oppose): Support

1. Statement of problem/comment and substantiation:

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.

2. Suggested solution/proposed language:

See attached. Add a new subsection to WAC 246-453 to

1. Make clear that consideration of a patient for charity care does not limit liability of a third party. Consideration for charity care does not affect the ability of either the hospital or the patient to make a claim for costs of medical care against a liable third party. Conversely, the existence of third-party liability does not affect an indigent patient’s ability to apply and be considered for charity care.
2. Clarify how hospitals operationalize the obligation to consider eligible patients for charity care during the pendency of settlements, judgements or awards actually related to the negligent acts of others which have resulted in the medical condition for which the patient has received hospital health care service.

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

Without clarification via rule, liable third parties could argue that a patient approved for full charity care has not actually incurred a medical cost and so the third party is not liable to pay for care provided. The legislature likely did not intend to alter the ability of either the hospital or the patient to make a claim for costs of medical care against a liable third-party. Neither the hospital nor the patient should be

placed in a worse position vis-à-vis a liable third-party based on the fact the patient has been considered for and/or granted charity care (in full or in part).

If the patient submits a charity care application, and is found fully eligible, the hospital will not send the patient a bill, and in fact, will report the costs of care as charity to the DOH and IRS. Furthermore, the patient has incurred no medical costs. Therefore, the liable third-party could argue that it cannot be held liable for medical expenses, because none have been incurred by the patient, and the hospital is getting the benefit of reporting it as charity care. The hospital is not going to be at the settlement negotiation, in the courtroom, or otherwise able to represent its interests against the third-party in getting paid for the costs of care it provided to the indigent patient. And if the hospital does get to present a claim for payment to the third-party, if it has reported the costs of the patient's care as charity, it will be in the position of having made an inaccurate report to DOH and IRS. So basically, as written and without further clarification, the liable third-party is getting a free pass at the hospital's expense.

The rule needs to clarify that hospital can still send the patient or the patient's attorney a statement of the charges incurred and clarify that these charges are to be considered part of the damages incurred by the patient for purposes of any settlement or judgment.

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 negatively impact the position of a hospital or patient in relation to a liable third party

Give hospitals clarity about how to process charity care applications during the pendency of claims against liable third parties.

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

Provide clarity for the of process of charity care consideration during the pendency of a third-party liability. Without clarification, liable third parties could attempt to avoid paying for medical care provided to injured parties.

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) A hospital may send the patient, patient's attorney, or other appropriate person a statement of the charges incurred to be considered as part of the damages incurred by the patient and those charges shall be reimbursable to the hospital for purposes of any settlement or judgment.