

AMENDED IN SENATE JUNE 22, 2006

AMENDED IN SENATE JUNE 16, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

## ASSEMBLY BILL

**No. 774**

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**Introduced by Assembly Member Chan**

February 18, 2005

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An act to add Article 3 (commencing with Section 127400) to Chapter 2 of Part 2 of Division 107 of the Health and Safety Code, relating to hospitals.

### LEGISLATIVE COUNSEL'S DIGEST

AB 774, as amended, Chan. Hospitals: self-pay policies.

Existing law provides for the Office of Statewide Health Planning and Development, which is charged with the administration of health policy and planning relating to health facilities, including hospitals. *Existing law also provides for the licensure and regulation of health facilities by the State Department of Health Services.*

This bill would require each hospital, *as a condition of licensure*, to ~~develop a policy specifying how the hospital will determine financial liability for services rendered to both~~ *maintain written policies about discount payment and charity care for financially qualified patients and self-pay patients*, as defined. The bill would require ~~the policy to these policies to include, among other things, a section addressing charity care patients that specifies the financial criteria and the procedure used by the hospital to determine whether a patient is eligible for charity care~~ *eligibility criteria, as prescribed*. The bill would require each hospital to perform various functions in connection with the hospital ~~self-pay policy~~ *charity care and discount*

*pay policies, including notifying providing patients with a written summary of the policy, these policies and attempting to determine the availability of private or public health insurance coverage for each patient. The bill would also specify billing and collection procedures to be followed by a hospital, its assignee, collection agency, or billing service.*

*This bill would require each hospital to submit to the office a copy of the hospital's application for financially qualified patients and a copy of its self-pay policy, eligibility procedures, review process, and procedure for determining self-pay pricing. The bill would authorize the office to develop a uniform self-pay application to be used by all hospitals discount payment and charity care policies, eligibility procedures, review process, and the application for charity care or discounted payment.*

*The bill would authorize the director of the office Director of Health Services to levy civil administrative penalties for violations each violation by a hospital of the above provisions. Upon referral by the office, complaint by an individual consumer, or other information concerning violations, the bill would authorize the Attorney General to authorize an investigation to determine whether a hospital is in compliance with the above provisions.*

*This bill would also require the director to ensure that a hospital that overcharges a patient shall reimburse that patient, as described, or if the hospital cannot locate the patient, to use those funds towards providing care to financially qualified persons.*

*This bill would provide that to the extent that certain of the bill's requirements result in a specified federal determination relating to the hospital's established charge schedule, the requirement in question shall be inoperative with respect to a hospital that is licensed to and operated by a county or public hospital authority all general acute care hospitals.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Article 3 (commencing with Section 127400) is
- 2 added to Chapter 2 of Part 2 of Division 107 of the Health and
- 3 Safety Code, to read:

Article 3. ~~Self-Pay~~ Self-pay Policies

127400. As used in this article, the following terms have the following meanings:

(a) “Allowance for financially qualified patient” means, with respect to services rendered to a financially qualified patient, an allowance that is applied after the hospital’s charges are imposed on the patient, due to the patient’s determined financial inability to pay the charges.

(b) “Federal poverty level” means the poverty guidelines updated periodically in the Federal Register by the United States Department of Health and Human Services under authority of subsection (2) of Section 9902 of Title 42 of the United States Code.

(c) “Financially qualified patient” means both of the following:

(1) A patient who is a self-pay patient, as defined in subdivision (f) or ~~an underinsured patient~~ *a patient with inadequate insurance*, as defined in subdivision (g).

(2) A patient who has a family income that does not exceed 400 350 percent of the federal poverty level.

(d) “Hospital” means any facility that is required to be licensed under subdivision (a), (b), or (f) of Section 1250, except a facility operated by the State Department of Mental Health or the Department of Corrections.

(e) “Office” means the Office of Statewide Health Planning and Development.

(f) “Self-pay patient” means a patient who does not have third-party coverage from a health insurer, health care service plan, Medicare, or Medicaid, and whose injury is not a compensable injury for purposes of workers’ compensation, automobile insurance, or other insurance as determined and documented by the hospital. Self-pay patients may include charity care patients.

(g) ~~“Underinsured patient”~~ *“A patient with inadequate insurance”* means a person whose ~~deductibles, copayments, medical, or hospital bills after payment by third-party payers~~ *family income does not exceed 350 percent of the federal poverty level, as defined in subdivision (c), and annual deductibles that* exceed 5 percent of the patient’s annual income or a lower level

1 determined in accordance with a hospital's charity care policy, *if*  
2 *that individual does not receive a discounted rate from the*  
3 *hospital as a result of his or her coverage.*

4 127401. *Each general acute care hospital licensed pursuant*  
5 *to subdivision (a) of Section 1250 shall comply with the*  
6 *provisions of this article as a condition of licensure. The State*  
7 *Department of Health Services shall be responsible for the*  
8 *enforcement of these provisions.*

9 127405. (a) ~~Each hospital shall develop a policy specifying~~  
10 ~~how the hospital will determine the financial liability for services~~  
11 ~~rendered to both financially qualified patients and self-pay~~  
12 ~~patients. maintain an understandable written policy regarding~~  
13 ~~discount payments for financially qualified patients as well as an~~  
14 ~~understandable written charity care policy. Uninsured patients~~  
15 ~~or patients with inadequate insurance who are at or below 350~~  
16 ~~percent of the federal poverty level, as defined in subdivision (c)~~  
17 ~~of Section 127400, shall be eligible to apply for participation~~  
18 ~~under each hospital's charity care policy or discount payment~~  
19 ~~policy. Notwithstanding any other provision of this act, a hospital~~  
20 ~~may choose to grant eligibility for its discount payment policy or~~  
21 ~~charity care policies to patients with incomes over 350 percent of~~  
22 ~~the federal poverty level. Both the charity care policy and the~~  
23 ~~discount payment policy shall state the process used by the~~  
24 ~~hospital to determine whether a patient is eligible for charity~~  
25 ~~care or discounted payment. In the event of a dispute, a patient~~  
26 ~~may seek review from the business manager, chief financial~~  
27 ~~officer, or other appropriate manager as designated in the~~  
28 ~~charity care policy and the discount payment policy.~~

29 ~~(b) For financially qualified patients, each hospital shall~~  
30 ~~specify in its policy how the hospital will determine and apply~~  
31 ~~allowances for services provided to financially qualified patients.~~  
32 ~~The allowance, at a minimum, shall be equal to the difference~~  
33 ~~between the charge for the services set forth in the hospital's~~  
34 ~~established charge schedule and the greater of the payments the~~  
35 ~~hospital would receive from the Medicare Program, the Medicaid~~  
36 ~~Program, or workers' compensation.~~

37 ~~(c) No allowance for financially qualified patients shall be~~  
38 ~~required with respect to any service for which there is no~~  
39 ~~coverage under the Medi-Cal program or Medicare or workers'~~  
40 ~~compensation. At the hospital's discretion, the allowance for~~

~~financially qualified patients may be applied by the hospital to patients who do not meet the standards for financially qualified patients.~~

(b) *Each hospital's discount payment policy shall clearly state eligibility criteria based upon income consistent with the application of the federal poverty level. The discount payment policy shall also include an extended payment plan to allow payment of the discounted price over time. The policy shall provide that the hospital and the patient may negotiate the terms of the payment plan.*

(c) *The charity care policy shall clearly state eligibility criteria for charity care. In determining eligibility under its charity care policy, a hospital may consider income and monetary assets of the patient. For purposes of this determination, monetary assets shall not include retirement or deferred-compensation plans qualified under the Internal Revenue Code, or nonqualified deferred-compensation plans. Furthermore, the first ten thousand dollars (\$10,000) of a patient's monetary assets shall not be counted in determining eligibility, nor shall 50 percent of a patient's monetary assets over the first ten thousand dollars (\$10,000) be counted in determining eligibility.*

(d) *Each hospital shall limit expected payment for services it provides to any patient at or below 350 percent of the federal poverty level, as defined in subdivision (b) of Section 124700, eligible under its discount payment policy to the amount of payment the hospital would receive for providing services from Medicare, Medi-Cal, Healthy Families, or any other government-sponsored health program of health benefits in which the hospital participates, whichever is greater. If the hospital provides a service for which there is no established payment by Medicare or any other government-sponsored program of health benefits in which the hospital participates, the hospital shall establish an appropriate discounted payment.*

(e) *Any patient, or patient's legal representative, who requests a discounted payment, charity care, or other assistance in meeting their financial obligation to the hospital shall make every reasonable effort to provide the hospital with documentation of income.*

1 (1) For the purpose of determining eligibility for discounted  
2 payment, documentation of income shall be limited to recent pay  
3 stubs or income tax returns.

4 (2) For the purpose of determining eligibility for charity care,  
5 documentation of assets may include information on all monetary  
6 assets, but shall not include statements on retirement or  
7 deferred-compensation plans qualified under the Internal  
8 Revenue Code, or nonqualified deferred-compensation plans. A  
9 hospital may require waivers or releases from the patient or the  
10 patient's family, authorizing the hospital to obtain account  
11 information from financial or commercial institutions, or other  
12 entities that hold or maintain the monetary assets to verify their  
13 value. Information obtained pursuant to this paragraph shall not  
14 be used for collections activities.

15 (3) Eligibility for discounted payments or charity care may be  
16 determined at any time the hospital is in receipt of information  
17 specified in paragraph (1) or paragraph (2), respectively.

18 ~~127407. Each hospital shall include in its policy on~~  
19 ~~financially qualified and self-pay patients a section addressing~~  
20 ~~charity care patients. The charity care section of the policy shall~~  
21 ~~specify the financial criteria and the procedure used by the~~  
22 ~~hospital to determine whether a patient is eligible for charity~~  
23 ~~care. The hospital may specify that no persons are eligible for~~  
24 ~~charity care under any circumstances. The policy shall include all~~  
25 ~~of the following:~~

26 ~~(a) Financial eligibility criteria.~~

27 ~~(b) Financial information required of the patient.~~

28 ~~(c) A review process for charity care decisions.~~

29 ~~127410. (a) Each hospital shall provide patients with oral and~~  
30 ~~a written notice summary of the hospital's policy for financially~~  
31 ~~qualified and self-pay patients at the time of admission and~~  
32 ~~discharge. The written summary shall be consistent~~  
33 ~~with the written estimate provided pursuant to Section 1339.585,~~  
34 ~~and shall contain information about availability of the hospital's~~  
35 ~~discount payment and charity care policies, including eligibility~~  
36 ~~criteria, as well as contact information for a hospital employee~~  
37 ~~or office from which the person may obtain further information~~  
38 ~~about these policies. This written summary shall be provided in~~  
39 ~~addition to the estimate provided pursuant to Section 1339.585.~~  
40 ~~The notice summary shall also be provided to patients who~~

1 receive emergency or outpatient care and who may be billed for  
2 that care, but who were not admitted. The notice shall be in the  
3 language spoken by the patient. That language shall be  
4 determined in a manner similar to that required pursuant to  
5 Section 12693.30 of the *were not admitted. The summary shall*  
6 *be provided in English, and in languages other than English. The*  
7 *languages to be provided shall be determined in a manner*  
8 *similar to that required pursuant to Section 12693.30 of the*  
9 Insurance Code. All written correspondence to the patient  
10 required by this article shall also be ~~language appropriate in the~~  
11 ~~language spoken by the patient, consistent with this section.~~

12 (b) Notice of the hospital's policy for financially qualified and  
13 self-pay patients shall be clearly and conspicuously posted in  
14 locations that are visible to the public, including, but not limited  
15 to, all of the following:

- 16 (1) Emergency department, if any.
- 17 (2) Billing office.
- 18 (3) Admissions office.
- 19 (4) ~~Any other locations that may be determined by the office;~~  
20 ~~to ensure that patients are informed of the policy and how to~~  
21 ~~obtain a copy of the policy and related information.~~
- 22 (4) *Other outpatient settings.*

23 ~~127415. Each hospital shall submit to the office a copy of the~~  
24 ~~application for financially qualified patients used by the hospital,~~  
25 ~~including the charity care section of that application. The office,~~  
26 ~~in consultation with interested parties, may also develop a~~  
27 ~~uniform self-pay application to be used by all hospitals. In~~  
28 ~~developing the application, the office shall consider whether the~~  
29 ~~application used for the Medi-Cal program and the Healthy~~  
30 ~~Families Program can be used as, or incorporated in, the uniform~~  
31 ~~self-pay application.~~

32 127420. (a) Each hospital shall make all reasonable efforts to  
33 obtain from the patient or his or her representative information  
34 about whether private or public health insurance or sponsorship  
35 may fully or partially cover the charges for care rendered by the  
36 hospital to a patient, including, but not limited to, any of the  
37 following:

- 38 (1) Private health insurance.
- 39 (2) Medicare.

1 (3) The Medi-Cal program, the Healthy Families Program, the  
2 California Childrens' Services Program, or other state-funded  
3 programs designed to provide health coverage.

4 (b) If a hospital bills a patient who has not provided proof of  
5 coverage by a third party at the time the care is provided or upon  
6 discharge, as a part of that billing, the hospital shall provide the  
7 patient with a clear and conspicuous notice that includes all of  
8 the following:

9 (1) A statement of charges for services rendered by the  
10 hospital.

11 (2) A request that the patient inform the hospital if the patient  
12 has health insurance coverage, Medicare, Healthy Families,  
13 Medi-Cal, or other coverage.

14 (3) A statement that if the consumer does not have health  
15 insurance coverage, the consumer may be eligible for Medicare,  
16 Healthy Families, Medi-Cal, California Childrens' Services  
17 Program, or charity care.

18 (4) A statement indicating how patients may obtain  
19 applications for the Medi-Cal program and the Healthy Families  
20 Program and that the hospital will provide these applications on  
21 request. If, at the time care is provided, the patient does not show  
22 proof of coverage by a third-party payer specified in subdivision  
23 (a), then the hospital shall send an application for the Medi-Cal  
24 program and the Healthy Families Program to the patient. This  
25 application may accompany the billing or may be sent separately.

26 (5) Information regarding the financially qualified patient and  
27 charity care application, including the following:

28 (A) The hospital contact for resources for additional  
29 information regarding charity care.

30 (B) A statement indicating how patients may obtain an  
31 application for a financially qualified patient. The statement shall  
32 provide information about the family income requirements for  
33 financially qualified patients as provided in this article.

34 ~~127425. (a) In order to facilitate payment by public or~~  
35 ~~private third-party payers, for at least 180 days after discharge or~~  
36 ~~after the final day service is provided, a hospital, its assignee,~~  
37 ~~collection agency, or billing service shall be limited to the~~  
38 ~~following debt collection activities:~~

39 ~~(1) Sending a bill to the patient in accordance with existing~~  
40 ~~law.~~

1     ~~(2) Attempting to negotiate payment of the bill or a payment~~  
2     ~~plan in accordance with this article.~~

3     ~~(3) Attempting to collect payment from any responsible~~  
4     ~~third-party payer, either public or private.~~

5     ~~(4) Providing any information that may assist the patient in~~  
6     ~~obtaining coverage through the Medi-Cal program or Healthy~~  
7     ~~Families Program, or any other public program for which the~~  
8     ~~patient may be eligible.~~

9     ~~(5) Attempting to make a final determination as to whether the~~  
10    ~~patient may be considered a self-pay patient under the hospital's~~  
11    ~~self-pay policy or is eligible for charity care under the hospital's~~  
12    ~~charity care policy.~~

13    ~~(6) Assisting a financially qualified patient in obtaining the~~  
14    ~~allowance for services provided for under this article and in~~  
15    ~~applying under the hospital's charity care policy, if any.~~

16    ~~(7) Providing any notices required by state or federal law.~~

17    ~~(b) A hospital, its assignee, collection agency, or billing~~  
18    ~~service shall use reasonable efforts to negotiate a payment plan.~~  
19    ~~For purposes of this section, "reasonable efforts to negotiate a~~  
20    ~~payment plan" means two efforts to contact the patient by~~  
21    ~~telephone and two efforts to contact the patient by mail. This~~  
22    ~~requirement shall not apply if the patient has requested that the~~  
23    ~~hospital, its assignee, collection agency, or agent not contact the~~  
24    ~~patient.~~

25    ~~(c) After the time period specified in subdivision (a) has~~  
26    ~~elapsed, the hospital, its assignee, collection agency, or billing~~  
27    ~~service may engage in any other debt collection activities~~  
28    ~~otherwise permitted by law, including, but not limited to,~~  
29    ~~reporting adverse information to a consumer credit reporting~~  
30    ~~agency or commencing civil action against the patient for~~  
31    ~~nonpayment.~~

32    ~~(d) Notwithstanding subdivision (c), a hospital, its agent,~~  
33    ~~collection agency, or assignee shall not use wage garnishment or~~  
34    ~~a lien on a primary residence as a means of debt collection from~~  
35    ~~a financially qualified patient.~~

36    ~~127425. (a) Each hospital shall have a written policy about~~  
37    ~~when and under whose authority patient debt is advanced for~~  
38    ~~collection, whether the collection activity is conducted by the~~  
39    ~~hospital, an affiliate or subsidiary of the hospital, or by an~~  
40    ~~external collection agency.~~

1 (b) Each hospital shall establish a written policy defining  
2 standards and practices for the collection of debt, and shall  
3 obtain a written agreement from any agency that collects  
4 hospital receivables that it will adhere to the hospital's standards  
5 and scope of practices. In determining the amount of a debt a  
6 hospital may seek to recover from patients who are eligible  
7 under the hospital's charity care policy or discount payment  
8 policy, the hospital may consider only income and monetary  
9 assets as limited by Section 127405.

10 (c) At time of billing, each hospital shall provide a written  
11 summary consistent with Section 124710, which includes the  
12 same information concerning services and charges provided to  
13 all other patients who receive care at the hospital.

14 (d) When sending a bill to a patient, each hospital shall also  
15 include all of the following:

16 (1) A statement that indicates that if the patient meets certain  
17 low income requirements, the patient may be eligible for a  
18 government-sponsored program.

19 (2) A statement that indicates that if the patient lacks  
20 insurance or is under-insured, and meets certain low and  
21 moderate income requirements, the patient may qualify for  
22 discounted payment or charity care.

23 (3) The name and telephone number of a hospital employee or  
24 office from whom or which the patient may obtain information  
25 about the hospital's discount payment and charity care policies,  
26 and how to apply for that assistance.

27 (e) For a patient that lacks coverage, or for a patient that  
28 provides information that he or she may be under-insured, as  
29 defined in this article, a hospital, any assignee of the hospital, or  
30 other owner of the patient debt, including a collection agency,  
31 shall not report adverse information to a consumer credit  
32 reporting agency or commence civil action against the patient for  
33 nonpayment, prior to 150 days after initial billing. For purposes  
34 of this subdivision, a hospital may sell or assign debt to another  
35 entity if that entity does not report adverse information to a  
36 consumer credit agency.

37 (f) If a patient qualifies for eligibility under the hospital's  
38 charity care or discount payment policy and is attempting in  
39 good faith to settle an outstanding bill with the hospital by  
40 negotiating a reasonable payment plan or by making regular

1 *partial payments of a reasonable amount, the hospital shall not*  
2 *send the unpaid bill to any collection agency if doing so may*  
3 *negatively impact a patient's credit.*

4 *(g) The hospital or collection agency operating on behalf of*  
5 *the hospital shall not, in dealing with patients eligible under the*  
6 *hospital's charity care or discount payment policies, use wage*  
7 *garnishments or liens on primary residences as a means of*  
8 *collecting unpaid hospital bills. This requirement does not*  
9 *preclude a hospital from pursuing reimbursement from*  
10 *third-party liability settlements, tortfeasors, or other legally*  
11 *responsible parties.*

12 *(h) Any extended payment plans offered by a hospital to assist*  
13 *patients eligible under the hospital's charity care policy,*  
14 *discount payment policy, or any other policy adopted by the*  
15 *hospital for assisting low-income patients with no or inadequate*  
16 *insurance in settling outstanding past due hospital bills, shall be*  
17 *interest free.*

18 ~~(e)~~

19 *(i) Nothing in this section shall be construed to diminish or*  
20 *eliminate any protections consumers have under existing federal*  
21 *and state debt ~~protection laws~~ collection laws, or any other*  
22 *consumer protections available under state or federal law.*

23 127426. (a) *The period described in Section 127425 shall be*  
24 *extended if the patient has a pending appeal for coverage of the*  
25 *services, until a final determination of that appeal is made, if the*  
26 *patient makes a reasonable effort to communicate with the*  
27 *hospital about the progress of any pending appeals.*

28 (b) *For purposes of this section, "pending appeal" includes any*  
29 *of the following:*

30 (1) *A grievance against a health care service plan, as described*  
31 *in Chapter 2.2 (commencing with Section 1340) of Division 2, or*  
32 *against an insurer, as described in Chapter 1 (commencing with*  
33 *Section 10110) of Part 2 of Division 2 of the Insurance Code.*

34 (2) *An independent medical review, as described in Section*  
35 *10145.3 or 10169 of the Insurance Code.*

36 (3) *A fair hearing for a review of a Medi-Cal claim pursuant to*  
37 *Section 10950 of the Welfare and Institutions Code.*

38 (4) *An appeal regarding Medicare coverage consistent with*  
39 *federal law and regulations.*

1 127430. (a) Prior to commencing collection activities against  
2 a patient, the hospital, any assignee of the hospital, or other  
3 owner of the patient debt, including a collection agency, shall  
4 provide the patient with a clear and conspicuous written notice  
5 containing both of the following:

6 (1) A plain language summary of the patient's rights pursuant  
7 to this article, the Rosenthal Fair Debt Collection Practices Act  
8 (Title 1.6C (commencing with Section 1788) of Part 4 of  
9 Division 3 of the Civil Code), and the federal Fair Debt  
10 Collection Practices Act (Subchapter V (commencing with  
11 Section 1692) of Chapter 41 of Title 15 of the United States  
12 Code). The summary shall include a statement that the Federal  
13 Trade Commission enforces the federal act.

14 The summary shall be sufficient if it appears in substantially  
15 the following form: "State and federal law require debt collectors  
16 to treat you fairly and prohibit debt collectors from making false  
17 statements or threats of violence, using obscene or profane  
18 language, and making improper communications with third  
19 parties, including your employer. Except under unusual  
20 circumstances, debt collectors may not contact you before 8:00  
21 a.m. or after 9:00 p.m. In general, a debt collector may not give  
22 information about your debt to another person, other than your  
23 attorney or spouse. A debt collector may contact another person  
24 to confirm your location or to enforce a judgment. For more  
25 information about debt collection activities, you may contact the  
26 Federal Trade Commission by telephone at 1-877-FTC-HELP  
27 (382-4357) or online at [www.ftc.gov](http://www.ftc.gov)."

28 (2) Information about nonprofit credit counseling services in  
29 the area.

30 (b) The notice required by subdivision (a) shall also  
31 accompany any document indicating that the commencement of  
32 collection activities may occur.

33 *(c) The requirements of this section shall apply to the entity*  
34 *engaged in the collection activities. If a hospital assigns or sells*  
35 *the debt to another entity, the obligations shall apply to the*  
36 *entity, including a collection agency, engaged in the debt*  
37 *collection activity.*

38 127435. Each hospital shall provide to the office ~~in a format~~  
39 ~~determined by the office a copy of its self-pay policy, eligibility~~  
40 ~~procedures, review process, and procedure for determining~~

1 ~~self-pay pricing~~, a copy of its discount payment policy, charity  
2 care policy, eligibility procedures for those policies, review  
3 process, and the application for charity care or discounted  
4 payment programs. The office may determine whether the  
5 information is to be provided electronically or in some other  
6 manner. The information shall be provided at least biennially on  
7 January 1, or when a significant change is made. If no significant  
8 change has been made by the hospital since the information was  
9 previously provided, notifying the office of the lack of change  
10 shall meet the requirements of this section. The office shall make  
11 this information available to the public.

12 127440. (a) For violations of this article, the ~~director of the~~  
13 ~~office~~ *Director of Health Services* may, after appropriate notice  
14 and opportunity for hearing, ~~levy civil penalties as follows:~~

15 ~~—(1) A hospital that violates any provision of this article, except~~  
16 ~~for subdivision (c) of Section 127405, shall be liable for civil~~  
17 ~~penalties of not more than five hundred dollars (\$500) per day~~  
18 ~~per patient affected for each violation.~~

19 ~~—(2) A hospital that bills a patient for amounts in excess of~~  
20 ~~those provided for in Section 127405 shall be liable for a civil~~  
21 ~~penalty of three times the amount billed in error to the patient.~~  
22 *levy administrative penalties. When assessing administrative*  
23 *penalties against a health facility, the director shall determine*  
24 *the appropriate amount of the penalty for each violation. In*  
25 *making that determination, the director may consider the*  
26 *following factors:*

27 (1) *The nature, scope, and gravity of the violation.*  
28 (2) *The facility's history of violations.*  
29 (3) *The demonstrated willfulness of the violation.*  
30 (4) *The behavior of the facility with respect to violations,*  
31 *including whether the facility mitigated any damage or injury*  
32 *from the violations.*

33 ~~(3) In lieu of the civil penalty, require the hospital to provide~~  
34 ~~(b) In lieu of an administrative penalty, the director may~~  
35 ~~require the hospital to provide care at no cost to financially~~  
36 ~~qualified persons in a value comparable to three times the value~~  
37 ~~of the care provided in violation of Section 127405.~~

38 ~~(4) Require the hospital to provide notice to the public in a~~  
39 ~~newspaper of general distribution of its policies pursuant to this~~  
40 ~~article, of any violations of this act, and of the penalties assessed.~~

~~(b) Any money that is received by the office pursuant to this section shall be paid into the General Fund.~~

~~127441. Upon referral by the office, complaint by an individual consumer or other information concerning violations of this article, the Attorney General may authorize an investigation to determine whether a hospital is in compliance with this article.~~

~~127442. The Attorney General may seek to recover all of the following:~~

~~(a) Actual damages.~~

~~(b) Civil penalties of not more than five hundred dollars (\$500) per day for each violation.~~

~~(c) For a violation of subdivision (c) of Section 127405, three times the amount billed to the patient.~~

~~(d) For intentional or willful violations of this article, exemplary damages, in an amount the court deems proper.~~

~~(e) Equitable relief as the court deems proper.~~

~~(f) Reasonable attorneys' fees and court costs.~~

*127441. The director shall order the hospital to reimburse the patient or patients that were overcharged the amount of actual financial damages, including interest. If the hospital is unable to locate a patient or patients, the hospital shall use the remaining funds to provide care at no cost to financially qualified persons.*

*127442. A hospital may appeal an administrative penalty within 30 days, as consistent with section 100171. The facility may also seek to adjudicate the validity of the violation or the penalty.*

*127443. The rights, remedies, and penalties established by this article are cumulative, and shall not supersede the rights, remedies, or penalties established under other laws.*

*127444. Nothing in this article shall be construed to prohibit a hospital from uniformly imposing charges from its established charge schedule or published rates, nor shall this article preclude the recognition of a hospital's established charge schedule or published rates for the Medi-Cal program and the Medicare Program reimbursement charges.*

*127445. Notwithstanding any other provision of law, the amounts paid by patients for services resulting from the self-pay allowances or charity care arrangements that are applied under a*

1 hospital's self-pay and charity care policies shall not constitute a  
2 hospital's uniform, published, prevailing, or customary charges,  
3 its usual fees to the general public, or its charges to  
4 non-Medi-Cal purchasers under comparable circumstances, for  
5 purposes of any payment limit under federal Medicaid law,  
6 Medi-Cal law, or any other federal or state-financed health care  
7 program.

8 127446. To the extent that any requirement of Section  
9 127400, *127401*, or 127405 results in a federal determination that  
10 a hospital's established charge schedule or published rates are not  
11 the hospital's customary or prevailing charges for services, the  
12 requirement in question shall be inoperative ~~with respect to~~ *for*  
13 *all general acute care hospitals, including, but not limited to,* a  
14 hospital that is licensed to and operated by a county or a hospital  
15 authority established pursuant to Section 101850. The State  
16 Department of Health Services shall seek federal guidance  
17 regarding modifications to the requirement in question. All other  
18 requirements of this article shall remain in effect.