



## FAQs on New Itemized Billing Law

Senate Bill 490 by Sen. Bryan Hughes (R-Mineola) and Rep. Caroline Harris (R-Round Rock) adds a new Chapter 185 to the Texas Health and Safety Code and is effective Sept. 1, 2023. SB 490 requires hospitals to provide itemized bills to their patients after services are provided and before the hospital initiates debt collection actions. This new law is in addition to laws already in place regarding the provision of itemized statements upon patient request. This FAQ provides THA members with guidance on how to comply with SB 490 and navigate potential conflicts with current laws.

1. **Where is the new law located?**

The new law will be located in a new Chapter 185, Subtitle J, of Title 2, Health & Safety Code.

2. **When does the new law go into effect?**

Sept. 1, 2023.

3. **Are hospitals required and expected to comply by the effective date of Sept. 1, 2023?**

Yes.

4. **Will the Texas Health and Human Services Commission (HHSC) be promulgating any rules for this new law?**

SB 490 does not require HHSC to enact rules; however, HHSC may elect to propose rules to implement the law.

5. **Whom does SB 490 apply to?**

Hospitals, ambulatory surgical centers, birthing centers, freestanding emergency centers and any other facility that is required to be licensed by this state to provide health care services.

6. **Does SB 490 apply to individual physicians?**

SB 490 does not apply to individual physicians who have their own practice. Individual physicians were exempted from the legislation through a floor amendment. It would apply to a facility that is owned by physicians, if the facility is required to be licensed to provide health care services.

7. **Does SB 490 apply to federally qualified health centers (FQHCs)?**

No, FQHCs are exempt from this law.

8. **When must hospitals provide their patients with an itemized bill?**

Hospitals must provide an itemized bill when requesting payment *after* services have been provided and no later than the 30<sup>th</sup> day from the date the hospital receives final payment from a third party (i.e., insurance or other payer). Please refer to question 10 for additional information.

9. **When must a hospital provide an itemized bill to a patient that does not have insurance?**

If a patient does not have insurance, SB 490 requires hospitals to provide the itemized bill when the hospital is requesting payment. If the hospital sends a bill to an uninsured or self-pay patient, that bill must include the itemized bill required by the law.

10. **Does the hospital have to provide a bill to every single patient?**

Under SB 490, a hospital is only required to provide an itemized bill to patients from whom the hospital is seeking to directly collect any payment. However, hospitals are also required, under a separate law already in place,<sup>1</sup> to provide patients with an itemized statement upon patient request. Hospitals are also required to notify patients of their right to request the itemized statement upon discharge.<sup>2</sup>

11. **If a patient's insurance pays for the entirety of the service and no amount is owed to the hospital from the patient, does the hospital still have to provide an itemized bill?**

Not under SB 490, but as previously mentioned, hospitals are required, under a separate law, to provide an itemized statement to patients upon request. Please see question 16 for further explanation.

12. **Does a hospital have to provide an itemized bill when it collects a copay or cost-sharing amount prior to or on the date of service?**

No. SB 490 clearly states that the itemized bill is only required for any future attempts to collect payment directly from patients after services have been provided.

13. **Are an "itemized bill" and an "itemized statement" the same document?**

No. Because the laws governing each document have different requirements for what must be included and have different deadlines for receipt by patients, an "itemized bill" and an "itemized statement" are not the same. However, THA recommends that hospitals combine the requirements of both laws into one document, if possible, for efficiency and compliance.

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<sup>1</sup> Tex. Health & Safety Code §311.002.

<sup>2</sup> Tex. Health & Safety Code Code §311.002(c).

14. **What must be included in the itemized bill?**

An itemized bill must include:

- A plain-language description of each distinct health care service or supply the hospital provided to the patient;
- The billing codes the hospital submitted to a third-party payer for any payment, if applicable;
- The amounts billed to and paid by a third-party payer, if applicable; and
- The amount the hospital is seeking from the patient for each service and supply provided.

15. **Can hospitals include other information on the itemized bill?**

Yes. However, THA recommends that any additional information should serve the primary purpose of providing transparency, guidance and assistance to patients to help understand their bills. Hospitals should make strong efforts to ensure all information is complete and accurate.

Hospitals can include the elements required for an itemized statement that are not included in SB 490 as outlined in the answer to question 16.

16. **What must be included in the “itemized statement” (as already required by law)<sup>3</sup>?**

The requirements to provide itemized statements upon request were not modified by SB 490.

Under current law, an itemized statement must be written in a conspicuous manner and must include:

- The date services and supplies were provided;
- Whether a claim has been submitted to a third-party payer and whether the third-party payer has paid the claim;
- If payment is not required, state that payment is not required in a typeface that is bold-faced, capitalized, underlined or otherwise set out from surrounding written material or by other reasonable means so as to be conspicuous that payment is not required; and
- The telephone number of the facility to call for explanation of acronyms, abbreviations and numbers used to describe the services provided or supplies used, or any other questions regarding the bill.<sup>4</sup>

17. **When is an itemized statement required to be provided?**

Current law requires the itemized statement described in the answer to question 16 be provided not later than the 30<sup>th</sup> *business* date from the discharge date, if requested by the patient upon discharge. Patients then are entitled to receive a statement not later than one year from the date of discharge and hospitals must provide the statement within 10 *calendar* days from the date of the patient’s request.<sup>5</sup>

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<sup>3</sup> Tex. Health & Safety Code §311.002.

<sup>4</sup> Tex. Health & Safety Code §311.002(b).

<sup>5</sup> Tex. Health & Safety Code §324.101(e) *but see* Texas Health & Safety Code §311.002(d) which requires the statement be provided within 30 days. Texas law states that when there is an irreconcilable conflict, the statute latest in date of enactment prevails. (Tex. Gov’t Code §311.025(a)). The 10-calendar day requirement was added

18. **Could a hospital be required to provide an itemized statement before it is required to provide an itemized bill under SB 490?**

Yes, but this is case-specific. For example, for a patient with insurance, SB 490 requires the itemized bill be provided no later than 30 days from the date the hospital receives final payment from insurance. A patient could request an itemized statement on their discharge date and a hospital would have to provide that document within 30 business days from the discharge date. The requirements to provide itemized statements upon request were not modified by SB 490.

19. **If a hospital complies with SB 490, does that mean the hospital is also in compliance with the current law for itemized statements?**

Not automatically, but there is nothing that prevents a hospital from creating and providing to the patient a single document that complies with both laws.

20. **Is “plain language” defined in SB 490?**

No. THA recommends that hospitals use descriptions aligning with patient-friendly billing guidelines. The [Healthcare Financial Management Association](#) provides guidance on patient-friendly billing. When terms are undefined, Texas law states that words and terms should be interpreted according to their common usage. If a word or phrase has, over time, acquired a particular or technical meaning, the word or phrase shall be construed according to that meaning.<sup>6</sup>

21. **Can the itemized bill be provided electronically?**

Yes. SB 490 allows hospitals to provide the itemized bill electronically including through a patient portal or through the provider’s website. The law is broad and could arguably encompass many innovative and efficient ways for hospitals to get this information to their patients. Hospitals should note that information contained in the itemized bill is considered protected health information (PHI) and any PHI provided electronically must comply with any applicable HIPAA requirements.

22. **What if the patient does not have the ability to access the itemized bill electronically?**

Hospitals will have to provide a hard copy of the itemized bill to the patient at the mailing address provided. SB 490 is silent on specifics about how hospitals can achieve compliance when providing a paper copy of the itemized bill. As a result, THA recommends hospitals consider developing a process for communicating and working with patients about the patient’s preferred method for receipt of this information.

23. **How does a provider prove that an itemized bill was sent or otherwise received by a patient?**

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by [SB 1731](#) (80<sup>th</sup> Legislature, 2007 Regular Session) and the 30-day requirement was added in 1999 by [SB 830](#), (76<sup>th</sup> Legislature, 1999 Regular Session). Therefore, the 10-calendar day requirement prevails.

<sup>6</sup> Tex. Gov’t Code §311.011.

When hospitals submit electronic copies of itemized bills, there should be a record sufficient to document that these bills were provided. For paper statements, hospitals should utilize return receipts or similar offerings.

24. **Does SB 490 prohibit hospitals from charging for additional copies of an itemized bill requested by a patient?**

No. SB 490 does not prohibit hospitals from charging for additional copies requested by a patient. Current law does allow hospitals to impose a “reasonable charge” for itemized statements when a patient or other person, such as a third-party payer, requests more than two copies of the statement. While “reasonable charge” is not defined, current law does state that the amount cannot exceed the hospital’s cost to copy the bill and process and deliver the copy to the person.<sup>7</sup>

25. **Are hospitals required to provide additional copies of the itemized bill upon request?**

Yes. SB 490 gives patients the right to obtain additional copies on request at any time after the initial bill is issued. Since SB 490 is silent on how long hospitals have to furnish this information in order to comply, hospitals should retain this information in accordance with any applicable record retention laws and/or hospital policies.

26. **What is the penalty if a hospital fails to comply with SB 490?**

If a hospital does not provide the patient their itemized bill, the hospital is prohibited from engaging in debt collection actions for that encounter. Both the Senate and House authors of SB 490 provided legislative intent that “debt collection” is intended to refer to third-party debt collection.<sup>8</sup>

Therefore, if a hospital fails to comply with the SB 490’s requirements and sends a patient’s debt to a third-party debt collector, the patient will likely be able to successfully argue that the debt collection action is illegal and cannot be pursued by the third-party debt collector. However, hospitals must be aware that the definition of “debt collection” used in SB 490 is not limited to third-party debt collection, resulting in conflict between the stated intent of the authors and the language in the bill.

27. **How does SB 490 define debt collection?**

SB 490 uses the same definition for “debt collection” that is used in the Texas Debt Collection Practices Act (TDCP) found in Chapter 392 of the Texas Finance Code.

Chapter 392 defines “debt collection” as “an action, conduct, or practice in collecting, or in soliciting for collection, consumer debts that are due or alleged to be due to a creditor.”

28. **Does this definition of debt collection include actions taken directly by the hospitals, affiliated companies, or its vendors/contractors?**

The TDCP is broader than federal laws governing debt collection in that it is specifically intended to encompass actions taken by creditors on their own behalf. As a result, it could be argued that any attempt

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<sup>7</sup> Tex. Health & Safety Code §311.002(f).

<sup>8</sup> [Page 3542 of the House Journal \(May 10, 2023\)](#); [Page 1942 of the Senate Journal \(May 16, 2023\)](#);

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by a hospital to collect payment either directly or through the use of an affiliated company, hospital vendor or contractor could be considered “debt collection” and thus be prohibited by SB 490 if an itemized bill is not provided in accordance with its requirements. That said, Texas law specifically allows courts to consider the “circumstances under which the statute was enacted” and “legislative history” when construing statutes.<sup>9</sup>

The legislative intent expressed by the authors of SB 490 can and should be utilized in defense of any claims that a hospital failed to comply with the law and any collection that is not third-party debt collection is prohibited. For example, if a hospital fails to submit an itemized bill with an initial request for payment, but provides a copy of the itemized bill before the patient makes any payment and before sending the debt to a third-party debt collector, the legislative intent suggests that hospitals would not be prohibited from attempting to collect payment directly, or from sending the payment to a third-party debt collector.

However, given that SB 490 does require that the itemized bill accompany the initial request for payment for uninsured/self-pay patients and within 30 days from the date of final payment by insurance, failure to comply with these requirements could be enough to prevent any collection, third-party or otherwise, regardless of the legislative intent provided. Thus, THA recommends that hospitals begin compliance with the requirements of SB 490 by Sept. 1, 2023.

**29. If it will take longer for a hospital to comply with SB 490 beyond Sept. 1, 2023, is there any process or procedure that will be put in place to allow hospitals to request an extension for compliance?**

No.

However, if HHSC does proceed with any rulemaking related to SB 490, THA will request that HHSC allow hospitals more time to achieve compliance before issuing any state enforcement actions.

**Contact a member of THA’s advocacy & legal teams for additional information:**

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<sup>9</sup> Tex. Gov’t Code §311.023 (2-3).