



Updated FAQ 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. On Aug. 28, 2023, the Texas Health and Human Services Commission (HHSC) released a Health Facility Compliance Guidance Letter ([GL 23-2002](#)) to provide guidance and outline health care provider responsibilities and expectations with respect to compliance with SB 490. This updated 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 is in a new Chapter 185, Subtitle J, of Title 2, Health and 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. HHSC's guidance letter confirms that hospitals are expected to comply on this date and notably clarifies that HHSC will enforce the law for health care services and supplies provided on or after Sept. 1.

4. **Will HHSC be promulgating any rules for this new law?**

Yes. HHSC's guidance letter indicates that the agency intends to propose rules in the coming months. HHSC encourages stakeholders interested in commenting on the proposed rules to sign up for [GovDelivery](#) to receive notice of the proposed rules publication in the *Texas Register*.

5. **To whom does SB 490 apply?**

The HHSC guidance letter lists hospitals (general, special, limited services rural and private psychiatric), ambulatory surgical centers, birthing centers, dependency treatment facilities, crisis stabilization units, end stage renal disease facilities, freestanding emergency centers, narcotic treatment programs, special care facilities and any other facility that is required to be licensed by this state to provide health care services.

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6. **Does SB 490 apply to individual physicians, off-campus hospital outpatient departments (off-campus HOPDs), and rural health clinics (RHCs)?**

SB 490 does not apply to individual physicians who have their own practice. Individual physicians were exempted from the legislation through a House 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. As a result of this exclusion, physician groups that contract with hospitals to provide physician services are not subject to this legislation. Patients will generally not receive an itemized bill from the physician group when the physician group requests payment for physician services provided in the hospital. THA recommends that hospitals educate their customer service staff tasked with answering itemized billing questions to recognize this distinction and to be able to educate and assist patients appropriately.

HHSC's guidance letter did not include off-campus HOPDs or RHCs in the list of provider types to which the letter applies. Presumably this is because off-campus outpatient departments do not fall under the hospital's license, and therefore HHSC does not have regulatory authority over them. We are not aware of any other state agency that intends to enforce SB 490 on off-campus HOPDs or RHCs.

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 30th day from the date the hospital receives final payment from a third party (i.e., insurance or other payer). HHSC defined "final payment" as the last payment received by the provider, when the provider does not expect any future payment from a third party.¹ 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. For more information on how to provide the itemized bill, see question 21.

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,² to provide patients with an itemized statement upon patient request and to notify patients of their right to request the itemized statement upon discharge.³ HHSC's guidance letter confirmed this requirement. For information on patients who choose not to receive an itemized bill, see question 22.

¹ GL-23-2002 (page 2).

² Tex. Health and Safety Code §311.002.

³ Tex. Health and Safety Code Code §311.002(c).

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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, coinsurance, or cost-sharing amount prior to the date of service?

No. An itemized bill is not required as long as the hospital is collecting the copay, cost-sharing, or co-insurance amount *prior* to services being provided.⁴ 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” (governed by new Chapter 185, Health and Safety Code) and an “itemized statement” (governed by Chapter 311, Health and Safety Code) are not the same. However, THA recommends that hospitals combine the requirements of both laws into one document, if possible, for efficiency and compliance.

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 (see question 20);
- 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.

According to HHSC, if the billing codes a provider submits to a third party for reimbursement are codes for bundled services, then a provider must include all bundled codes and the amounts billed for each bundled code in the itemized bill.⁵

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.

⁴ GL 23-2002 (page 3).

⁵ GL -23-2002 (page 3).

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16. **What must be included in the “itemized statement” (as already required by law)?**⁶

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.⁷

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 30th *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.⁸

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.

⁶ Tex. Health and Safety Code §311.002.

⁷ Tex. Health and Safety Code §311.002(b).

⁸ Tex. Health and Safety Code §324.101(e) *but see* Texas Health and 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 by [SB 1731](#) (80th Legislature, 2007 Regular Session) and the 30-day requirement was added in 1999 by [SB 830](#), (76th Legislature, 1999 Regular Session). Therefore, the 10-calendar day requirement prevails.

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

No. However, HHSC’s guidance letter cites [Plain English: At a Glance](#) which defines “plain language” as clear communication that the public can understand and easily use. HHSC also states that the information must be logically organized and understandable on the first reading. THA recommends that hospitals use descriptions aligning with patient-friendly billing guidelines as well as using [plainlanguage.gov](#) as a reference. 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.⁹ HHSC cites to this section of the Code Construction Act in providing its definition of “plain language.”¹⁰

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. In its guidance letter, HHSC reiterated that providers must take measures to protect a patient’s personal health information in accordance with state and federal law.

However, HHSC notes in its guidance letter that hospitals are already required to have and enforce a written billing policy¹¹ and that such policy should include a process for delivering itemized bills to patients who choose not to receive documents electronically. Therefore, THA believes HHSC expects hospitals to apply any current process outlined in written policy for delivering documents to patients who choose not to receive electronic copies to the delivery of itemized bills. If a hospital does not have a written billing policy in place, HHSC expects hospitals to adopt and enforce a written billing policy. THA recommends that hospitals review their current written billing policies to determine whether amendments are required as a result of HHSC’s guidance letter.

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

SB 490 is silent on specifics about how hospitals handle delivering itemized bills to patients who choose not to receive electronic documents. However, HHSC’s guidance letter reiterates that hospitals are required to develop, implement and enforce a written policy for the billing of hospital services and supplies.¹² It is HHSC’s position that this policy already required providers to have a process in place for patients who choose not to receive documents electronically. In its guidance letter, HHSC states that hospitals are expected to now include in this policy how the hospital intends to document requests from patients who opt out of receiving an itemized bill.¹³

⁹ Tex. Gov’t Code §311.011.

¹⁰ GL-23-2002 (page 4).

¹¹ Texas Health and Safety Code §311.002(a).

¹² Tex. Health and Safety Code §311.002(a).

¹³ GL-23-2002.

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

When hospitals submit electronic copies of itemized bills, there should be a record sufficient to document that these bills were provided. For paper bills, hospitals should document when bills are sent and may choose to 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?**

SB 490 allows *a patient* to **request and receive** an itemized bill from the hospital at any time after the provider initially creates and issues the itemized bill (see Question 25). Current law requires hospitals to provide the first two copies of an “itemized statement” for free and then allows providers to impose a “reasonable charge” for itemized statements when a patient or other person, such as a third-party payer, requests additional copies after the first two. SB 490 does not address payment for additional copies requested by the patient, either by prohibiting or permitting charging for these copies. Conditioning provision of an itemized bills on payment therefore poses a risk that a hospital has failed to provide the itemized bill upon request as required by SB 490.

SB 490, however, does not require hospitals to provide additional copies of itemized bills to anyone other than the patient (which would include their personal representative). Therefore, since the law is silent on anyone else except for “patients,” hospitals could choose to follow current law and impose a reasonable charge for providing any additional copies of itemized bills requested by third-party payers after the first two free copies are provided. Although “reasonable charge” is not defined, current law states that the amount cannot exceed the hospital’s cost to copy the bill and process and deliver the copy to the third party.¹⁴

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 are the penalties if a hospital fails to comply with SB 490?**

SB 490 requires HHSC to take disciplinary action against a hospital that violates the new law *on or after* Sept. 1, 2023, as if the provider violated an applicable licensing law. In its guidance letter, HHSC encouraged providers to visit the [HHSC Health Care Facilities Regulation](#) webpage for more information on facility-specific licensing laws and rules. HHSC enforcement will be complaint-based and the agency intends to investigate any complaints made on or after Sept. 1.

Additionally, 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.¹⁵

¹⁴ Tex. Health and Safety Code §311.002(f).

¹⁵ [Page 3542 of the House Journal \(May 10, 2023\)](#); [Page 1942 of the Senate Journal \(May 16, 2023\)](#);

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Therefore, if a hospital fails to comply with SB 490's requirements and sends a patient's bill 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 the plain text of 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.¹⁶

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." HHSC's guidance letter simply refers hospitals to this definition and does not provide any additional guidance on whether such term is limited to third-party debt collection as is intended by SB 490's author.¹⁷

28. Does the definition of debt collection include actions taken directly by the hospitals, affiliated companies or their 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 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.¹⁸

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, as well as claims that 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 requires 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 a third-party payer, 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 for services and supplies provided on or after Sept. 1, 2023.

¹⁶ See also GL-23-2002 (page 4).

¹⁷ GL-23-2002 (page 4).

¹⁸ Tex. Gov't Code §311.023 (2-3).

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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.

While THA requested that HHSC allow hospitals more time to achieve compliance before issuing any state enforcement actions, HHSC's guidance letter confirms that the agency will enforce compliance with SB 490 for services and supplies provider to a patient ***on or after*** Sept. 1, 2023.¹⁹

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¹⁹ GL-23-2002 (page 4).