



On The Path Toward Health for All:

Opportunities to Expand Access to Hospital Financial
Assistance through State Law ▶



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By Gabrielle Lessard | December 2023



This is part **five** of a series of policy briefs explaining different tools available to states to achieve Health for All – access to quality, affordable health coverage for all state residents, regardless of immigration status.

Overview

Despite the progress in providing health insurance options, many people remain excluded from comprehensive coverage because of their immigration status. But everyone needs health care services. People who are unable to obtain comprehensive health insurance due to their immigration status can access care through community health centers and hospitals that provide financial assistance or charitable care. However, this safety net care is limited and fragmented. States have significant opportunities to adopt policies that expand access to assistance through the safety net and improve health outcomes.



Community health centers, which provide care regardless of ability to pay, operate in every state and U.S. territory.¹ All community health centers provide primary care, but generally must refer patients to other providers for many specialty services such as cancer treatment and inpatient care. Hospitals can provide more complex and specialized services, but there is no uniform requirement for them to provide services to people who cannot afford to pay for them.

Federal policy requires tax-exempt nonprofit hospitals to provide a community benefit, but the law and regulations are not prescriptive. While the law and regulations require tax-exempt hospitals to have written and well-publicized financial assistance plans (FAPs), they do not require hospitals to provide any minimum amount of discounted or charity care. In addition, federal policies don't explicitly prohibit hospitals from excluding immigrants from their FAPs.

There are opportunities for states to improve immigrants' access to hospital care, at limited cost to state budgets. To do so, a growing number of states have created standards for financial assistance or charity care for their hospitals. This paper looks at best practices in several of those state programs.

By the Numbers: Low-income Immigrants' Need for Care

Hospital charity care and financial assistance policies play an important role in protecting immigrants from high medical costs. Immigrants are more likely than citizens to have low incomes and lack health insurance. In 2020, about four in ten undocumented and lawfully present nonelderly immigrants (44% and 39%, respectively) had incomes below 200 percent of the federal poverty level (FPL) compared to about a quarter (26%) of nonelderly citizens. About four in ten (42%) nonelderly undocumented immigrants and a quarter (26%) of nonelderly lawfully present immigrants were uninsured compared to less than one in ten (8%) nonelderly citizens.²

The Problem: Federal Law Fails to Set Minimum Standards

A majority of community-serving hospitals have tax-exempt status, which is granted and administered by the Internal Revenue Service (IRS).³ To be eligible for federal tax-exempt status, hospitals must be organized and operated exclusively for the purpose of promoting health and must meet other specific requirements that include conducting community health needs assessments and having written financial assistance plans for their patients.⁴ However, the IRS regulations and underlying law require hospitals to provide community benefits but do not explicitly mandate hospitals to offer or provide any minimum amount of charity care or financial assistance to patients.⁵ There is widespread variation in the amount of charitable care hospitals provide, with half of hospitals reporting that their total charity care expenditures represented 1.4% or less of their total expenditures in 2020.⁶ In addition, the community benefits that tax-exempt hospitals report on their annual IRS filings include multiple factors that don't directly benefit patients, including shortfalls in payments the hospital receives from government programs, bad debt, health professional training, and research (even if fully funded).⁷ Moreover, the IRS requirements don't extend to for-profit and many public hospitals.

Nonprofit hospitals receive substantial benefits in the form of an exemption from federal income taxes and valuable income, property, and sales tax exemptions at the state and local levels. The cumulative value of these exemptions was estimated at slightly over 28 billion dollars in 2020.⁸ Policymakers and advocates have questioned whether the amount of charity care that tax-exempt hospitals provide is equivalent to the value of their tax exemptions.⁹ Some studies have found that the amount of charitable care provided by for-profit hospitals is substantially equivalent to or exceeds the amount that tax-exempt hospitals provide.¹⁰



The Internal Revenue Service (IRS) defines "charity care," also known as "financial assistance," as "free or discounted health services provided to persons who meet the organization's eligibility criteria for financial assistance and are unable to pay for all or a portion of the services."¹¹

The Solution: State Financial Assistance Laws

Hospitals are licensed and regulated by the states where they reside. While federal law provides the most widely applicable framework for governing hospital financial assistance policies, states are free to impose additional requirements. Advocates should work with state hospital associations and other health care stakeholders, including primary care and medical associations, to enact laws aimed at increasing the amount of charitable or discounted care that hospitals provide, as multiple states have done.

Recommendations and Best Practices

Crafting a hospital financial assistance law is a complex undertaking because of the varied nature of the institutions to which it will apply. Factors to consider include the following:

Extending the Policy's Reach

The provisions of the tax code that require hospital financial assistance policies apply only to tax-exempt nonprofit hospitals. States can adopt policies that apply to tax-exempt, for-profit, and public hospitals by making their compliance with the policies a condition of licensure. This is the approach taken by the California Hospital Fair Pricing Act and the Illinois Uninsured Patient Discount Act, which generally require that all hospitals licensed by their states comply with the terms.¹¹

Some states limit their policies to tax-exempt hospitals, using the value of hospitals' tax exemptions as the lever for requiring them to provide a threshold amount of charity care. For example, Oregon requires all hospitals to have a financial assistance plan but imposes specific requirements only on nonprofit hospitals, including a requirement that uninsured patients with incomes below 400% FPL receive discounts on medically necessary care.¹²

Maximizing Available Resources

Many hospitals are financially vulnerable, particularly those in rural communities and certain urban areas. It would be counterproductive to impose a policy that destabilizes the hospitals that provide a disproportionate amount of charity care.

New York has addressed this resource issue by establishing the General Hospital Indigent Care Pool (Pool), which reimburses hospitals for a share of their uncompensated care costs. The Pool is funded in part by assessments (taxes) on hospital gross revenues.¹³ As a condition of participation in the Pool, hospitals must comply with a Hospital Financial Assistance Law that limits the amounts hospitals can charge to patients with incomes under 300% of the federal poverty level.¹⁴

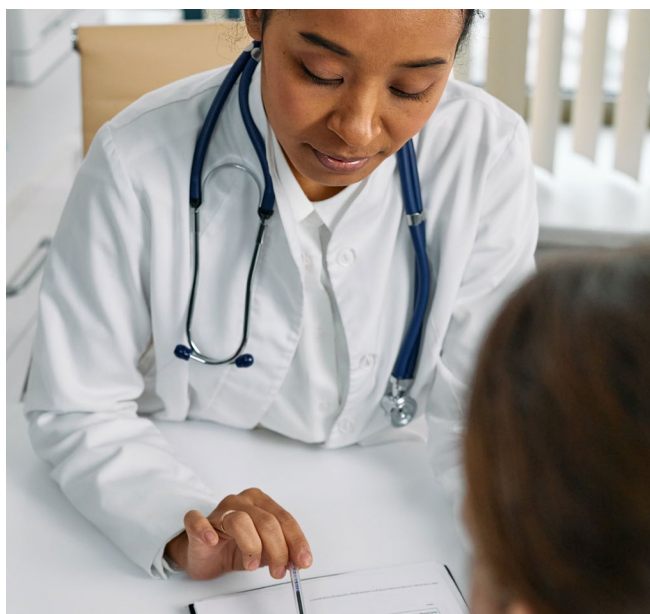


Maryland's financial assistance law incorporates flexibility for hospitals that may be less financially stable. The law generally requires hospitals to provide medically necessary services at no cost to patients with household incomes under 200% FPL but establishes a process for hospitals to obtain a different income threshold determined by a state commission. In this process, the commission is directed to consider factors that include the financial condition of the hospital and the amount of charity care it provides.¹⁵ Other states, including Illinois and California, relax their policies' requirements for financially vulnerable rural hospitals.

Widely Distributing Consumer Information

Consumers must be made aware of the availability of financial assistance and how to apply. Information provided to consumers should be in plain language, widely distributed, and translated into community languages. It should be available outside the hospital setting, such as on hospitals' websites, to reach people who might avoid or delay seeking hospital care because of their fear about the costs. It is a good practice to incorporate minimum community information standards into law to ensure that hospitals understand and comply with these obligations.

For example, the Oregon healthcare financial assistance law requires that policies be translated into each language spoken by 1,000 people or five percent of the population residing in a hospital's service area, whichever is smaller. Information about the policy, including contact information, must be included in each billing statement and posted in the emergency department, the area where admissions are processed, and other locations accessible to the public.¹⁶ Washington's charity care law requires that information about the availability of financial assistance be displayed on the first page of any billing communication, in English and in the next-most common language in the hospital's service area.¹⁷ The California Hospital Fair Pricing Act requires hospitals to have understandable written charity and discount care policies and to take multiple actions to inform patients of their availability. These include conspicuously posting the policy in specific areas within the facility, including in the emergency department, and posting policy information on the hospital's website. The law also requires hospitals to give patients written notice of the policy, in multiple languages, that includes contact information for a statewide nonprofit network of healthcare navigators called the [Health Consumer Alliance](#).¹⁸



Minimizing Eligibility Limitations and Burdensome Application Processes

Hospitals sometimes impose immigration status requirements on eligibility for financial assistance or charity care. Advocates should ensure that their state's laws prohibit this practice. Maryland's law, for example, explicitly prohibits hospitals from using a patient's citizenship or immigration status as an eligibility requirement for financial assistance.¹⁹

The laws reviewed for this report all condition eligibility on income thresholds that were based on FPL as well as high healthcare spending needs. Several of the laws also allow hospitals to consider assets. Illinois allows providers to require proof of state residence and lists in the statute documents that may be used for verification. In addition to ensuring that such requirements are reasonable, advocates should aim to prohibit documentation requirements that are difficult for immigrants to obtain.

Including Enforcement Mechanisms

Laws are generally effective only to the extent they are enforced. The Illinois law provides an example of a meaningful enforcement policy. It requires the state Attorney General to enforce the law, grants that office the authority to investigate possible violations, and directs the office to develop processes for handling individual complaints.²⁰ By contrast, other state laws we reviewed require reporting to state health agencies. For example, California's law requires hospitals to allow anyone who earns less than the income threshold to apply for assistance, but grants enforcement authority to the Department of Health Care Access and Information (DHCAI). DHCAI's Hospital Community Benefits web page notes only that it has the responsibility to collect and post reports of hospital community benefit plans.²¹

Campaign Strategy

"Nothing about us without us" is a common rallying cry, borrowed from the disability rights movement, for members of affected communities advocating for a role in policy development. This expression also could be applied to hospitals and their associations, which typically hold a great deal of influence in state legislative bodies. Advocates will need to work with hospitals, through their statewide associations, to enact policies that regulate their activities.

One lever for engaging nonprofit hospitals is through the results of their community health needs assessments (CHNA). The federal law governing tax-exempt status for hospitals requires hospitals to conduct periodic assessments that include input from persons representing the interests of the broader community served by the hospital facility. Hospitals are required to make their CHNA findings widely available to the public and to have plans for their implementation.²² Advocates can press for opportunities to participate in the development of their local hospitals' CHNA and use the report as a rich source of data about unmet community needs.²³



Learning from State Campaigns: New York

By Isobel Mohyeddin

New York's Hospital Financial Access Law, passed in 2007, was born as a response to issues identified from a project in which the New York Immigration Coalition (NYIC) partnered with legal service providers to train representatives from immigrant-serving community organizations to advocate for their constituents in healthcare settings and engage in systemic advocacy through legislative, regulatory, and civil rights campaigns. When these advocates shared reports of community members' experiences, patterns emerged, and pointed to a concerning breakdown in healthcare delivery. As Adam Gurvitch, the former Director of Health Advocacy at NYIC, explained, community members were going to the hospital for emergency services or to manage chronic conditions, but were faced with obstacles to needed care and follow-up due to financial barriers created by hospitals. "We saw the issue as a medical harm: hospitals' financial barriers and billing practices were directly impacting the health of the people they were mandated to serve."²⁴

The campaign was supported by a diverse coalition of groups and interests, including health advocacy, reproductive health, racial justice, immigrant organizations, groups serving low-income and homeless populations, labor unions, and trade associations. It aimed to standardize policies for hospital financial assistance programs by tying compliance with these policies with access to funds from an existing pool, which lacked accessible and transparent financial assistance policies. The campaign hoped to improve the health and lives of uninsured and underinsured New Yorkers, regardless of immigration status, by making access to affordable hospital care more equitable. The campaign was grounded in the experiences of impacted individuals, whose stories were collected through case profiles and reports, and shared through the press and engagement with elected officials. Just as the advocacy campaign revolved around the experiences of impacted individuals, the drafting of the policy was also deeply infused with concerns raised from immigrant community members.

The campaign adopted pragmatic, universal framing around the importance of continuous, quality care, which was critical to getting broad support: "We tried to expand the circle of empathy so that anyone hearing about this issue would be able to relate to it in their own life, or in the life of someone they know," Adam reflected.²⁵ The purpose was to open up the conversation beyond health law experts and academics. This approach encouraged press coverage and public interest, which in turn put a significant amount of pressure on the Governor to take action and the legislature to pass the New York State Hospital Financial Assistance Law.

Conclusion

Until we achieve Health for All, immigrants are likely to remain disproportionately uninsured and in need of access to charity care and financial assistance. While IRS policies apply to a majority of community hospitals, they don't require hospitals to provide charity care or financial assistance. States play a major role in regulating hospitals and can adopt policies that establish specific requirements for hospital charity care and financial assistance.

Endnotes

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11. CA Health & Safety Code §127401; 210 ILCS 89/.
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