

§1715. Access requirements applicable to certain health care providers

1. Access requirements. Any person, including, but not limited to an affiliated interest as defined in former section 396-L, that is subject to the requirements of this subsection, shall provide the services listed in paragraph C to individuals who are eligible for charity care in accordance with a charity care policy adopted by the affiliate or provider that is consistent with rules applicable to hospitals under section 1716. A person is subject to this subsection if that person:

A. Is either a direct provider of major ambulatory service, as defined in former section 382, subsection 8-A, or is or has been required to obtain a certificate of need under section 329 or former section 304 or 304-A; [PL 2017, c. 475, Pt. A, §29 (AMD).]

B. Provides outpatient services as defined in former section 382, subsection 9-A; and [PL 2017, c. 475, Pt. A, §29 (AMD).]

C. Provides one or more of the following services:

(1) Imaging services, including, but not limited to, magnetic resonance imaging, computerized tomography, mammography and radiology. For purposes of this section, imaging services do not include:

(a) Screening procedures that are not related to the diagnosis or treatment of a specific condition; or

(b) Services when:

(i) The services are owned by a community health center, a physician or group of physicians;

(ii) The services are offered solely to the patients of that center, physician or group of physicians; and

(iii) Referrals for the purpose of performing those services are not accepted from other physicians;

(2) Laboratory services performed by a hospital or by a medical laboratory licensed in accordance with the Maine Medical Laboratory Commission, or licensed by an equivalent out-of-state licensing authority, excluding those licensed laboratories owned by community health centers, a physician or group of physicians where the laboratory services are offered solely to the patients of that center, physician or group of physicians;

(3) Cardiac diagnostic services, including, but not limited to, cardiac catheterization and angiography but excluding electrocardiograms and electrocardiograph stress testing;

(4) Lithotripsy services;

(5) Services provided by free-standing ambulatory surgery facilities certified to participate in the Medicare program; or

(6) Any other service performed in an out-patient setting requiring the purchase of medical equipment costing in the aggregate \$500,000 or more and for which the charge per unit of service is \$250 or more. [PL 1989, c. 919, §15 (NEW); PL 1989, c. 919, §18 (AFF).]

[PL 2017, c. 475, Pt. A, §29 (AMD).]

2. Enforcement. The requirements of subsection 1 are enforced through the following mechanisms.

A. Any person who knowingly violates any provision of this section or any valid order or rule made or adopted pursuant to section 1716, or who willfully fails, neglects or refuses to perform any of the duties imposed under this section, commits a civil violation for which a forfeiture of not less than \$200 and not more than \$500 per patient may be adjudged with respect to each patient denied

access unless specific penalties are elsewhere provided. Any forfeiture imposed under this section may not exceed \$5,000 in the case of the first judgment under this section against the provider, \$7,500 in the case of a 2nd judgment against the provider or \$10,000 in the case of the 3rd or subsequent judgment against the provider. The Attorney General is authorized to prosecute the civil violations. [PL 1995, c. 653, Pt. B, §6 (AMD); PL 1995, c. 653, Pt. B, §8 (AFF); PL 1995, c. 696, Pt. A, §35 (AMD).]

B. Upon application of the Attorney General or any affected patient, the Superior Court or District Court has full jurisdiction to enforce the performance by providers of health care of all duties imposed upon them by this section and any valid rules adopted pursuant to section 1716. [PL 1995, c. 653, Pt. B, §6 (AMD); PL 1995, c. 653, Pt. B, §8 (AFF); PL 1995, c. 696, Pt. A, §35 (AMD).]

C. In any civil action under this section, the court, in its discretion, may allow the prevailing party, other than the Attorney General, reasonable attorney's fees and costs and the Attorney General is liable for attorney's fees and costs in the same manner as a private person. [PL 1989, c. 919, §15 (NEW); PL 1989, c. 919, §18 (AFF).]

D. It is an affirmative defense to any legal action brought under this section that the person subject to this section denied access to services on the grounds that the economic viability of the facility or practice would be jeopardized by compliance with this section. [PL 1989, c. 919, §15 (NEW); PL 1989, c. 919, §18 (AFF).]

[PL 1995, c. 653, Pt. B, §6 (AMD); PL 1995, c. 653, Pt. B, §8 (AFF); PL 1995, c. 696, Pt. A, §35 (AMD).]

SECTION HISTORY

PL 1989, c. 919, §§15,18 (NEW). PL 1995, c. 653, §§B5,6 (AMD). PL 1995, c. 653, §B8 (AFF). PL 1995, c. 696, §§A34,35 (AMD). RR 2001, c. 2, §A34 (COR). PL 2017, c. 475, Pt. A, §29 (AMD).

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