

# Guardrails for Nonsufficient Funds and Credit Card on File Fees

**Urgent Message:** Urgent care operators must navigate emerging federal, state, and payer regulations when developing financial policies that require payment by credit card and when setting fees for bounced checks and denied credit card charges.

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Urgent care centers frequently charge a nonsufficient funds (NSF) fee when a patient's check for copays or balances due has "bounced" (ie, has insufficient funds in their checking account to cover the check).

NSF fees are also frequently charged when a credit or debit card payment can't be processed because the account holder has insufficient credit or funds available. If their bill can't be paid, or their check won't clear, the transaction will not be approved. As a result, they are charged the fee due to insufficient funds.<sup>1</sup>

## Regulators Increase Scrutiny on NSF Fees

Pursuant to federal law, banks must disclose any fees they charge in connection with a deposit account.<sup>2</sup> For everyone else, whether a retail merchant or medical business, specific NSF fees are regulated by states. For example, in California<sup>3</sup>, New Jersey, and many other states, the maximum charge is \$25. Virginia's maximum fee is \$50.<sup>4</sup> The maximum charge is typically governed by a statute tied to a calculation of an annual percentage rate.<sup>5</sup> **Table 1** lists NSF fees by state.

NSF fees are coming under greater scrutiny, especially in light of a proposed rule by the Consumer Fraud Protection Bureau that would prohibit NSF fees on transactions that are declined instantaneously or near-instantaneously (those declined with no significant perceptible delay after the consumer initiates the transaction).<sup>6</sup> This prohibition would cover transactions in-



volving the use of debit cards, ATMs, or certain person-to-person apps. The proposed rule provides that charging these fees constitutes an abusive practice under the Consumer Financial Protection Act.<sup>6</sup>

A Minnesota federal district court dismissed the Minnesota Bankers Association's and Lake Central Bank's lawsuit challenging the FDIC's supervisory guidance on NSF fees.<sup>7</sup> On February 22, 2024, California Attorney General Rob Bonta issued letters to California's 197 state-chartered banks and credit unions cautioning that overdraft and returned deposited item fees may violate that state's Unfair Competition Law and the federal Consumer Financial Protection Act.<sup>8</sup>

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Table 1. Maximum Nonsufficient Funds Fees Allowed by State			
Arizona	\$25	Nevada	\$25
Arkansas	\$30	New Hampshire	\$25
California	\$25	New Jersey	\$25
Colorado	\$20	New Mexico	\$30
Connecticut	\$20	New York	\$20
Delaware	\$40	North Carolina	\$25
District Of Columbia	\$25	North Dakota	\$40
Florida	\$25 if amount is < or = \$50 \$30 if amount is < or = \$300 \$40 if amount is < or = \$800 -or- 5% of check amount if > \$800	Ohio	\$30 or 10% of check amount, whichever is greater
Georgia	\$30 if amount is < or = \$600 5% of check amount if > \$600	Oklahoma	\$25
Hawaii	\$30	Oregon	\$25
Idaho	\$20 or amount of check, whichever is less	Pennsylvania	\$25
Illinois	\$25	Puerto Rico	\$10
Indiana	\$25	Rhode Island	\$25
Iowa	\$30	South Carolina	\$30
Kansas	\$30	South Dakota	\$40
Kentucky	\$25	Tennessee	\$30
Louisiana	\$25 or 5% of check amount, whichever is greater	Texas	\$30
Maine	\$25	Utah	\$20
Maryland	\$35	Vermont	\$25
Massachusetts	\$25	Virginia	\$50
Michigan	\$25	Washington	Lesser of \$40 or face amount of check
Minnesota	\$30	West Virginia	\$25
Mississippi	\$40	Wisconsin	\$25
Missouri	\$25	Wyoming	\$30
Note this information should be independently verified by any entity which intends to charge a fee, in order to ensure alignment with the laws and statutes governing each respective state. Source: <a href="https://www.verichex.com/state-allowed-nsf-fees/">https://www.verichex.com/state-allowed-nsf-fees/</a>			

**NSF Fees on Credit Cards**

Most healthcare providers will accept credit cards as payment for medical services. Increasingly, urgent care centers will also ask a patient to provide a credit card at the time of service to cover any residual balance after the claim adjudicates, similar to how a hotel requires a credit card at registration to cover any incidentals like damage and theft.

But what if the credit card on file declines due to insufficient available credit or because the account was closed? Such can result in the same amount of labor for an urgent care as a bounced check because what should have been a passive process of charging a card now requires the urgent care to pursue payment from the patient—whether by mailed statement or referral to a collections agency.

To cover this added cost, urgent cares may charge a fee

if the credit card on file is declined when the insurance claim adjudicates. Federal regulations only restrict the amount that a credit card company can impose as a fee.<sup>9</sup>

But it is significant to note that medical debt is treated differently than credit card debt. If a patient misses a credit card payment, the card issuer can report the delinquent payment to the credit bureaus as soon as the debt is 30 days past due. However, medical debt won't affect a patient's credit score unless it's sent to collections, is over \$500, and remains unpaid for a year after the original delinquency date (the date the bill first became past due). When a patient puts his or her medical debt on a credit card, it becomes routine credit card debt. As such, the patient forfeits the yearlong grace period that medical debt has.<sup>10</sup> Plus, they lose the ability to negotiate a payment plan or reduced bill with the medical provider.<sup>11</sup>

