



Surcharges for Credit Card Usage - New York State Imposes Disclosure Requirements

Recently, New York State amended its “Credit Card Surcharge Law”^[1] by expressly permitting any seller of goods or services to charge a “surcharge” for credit card usage **if** the seller provides proper disclosure of the total price of the product or service (inclusive of any surcharge) to the consumer, as described below. This applies to businesses that provide products or services, including healthcare providers. New York’s prior Credit Card Surcharge Law had prohibited sellers from charging a credit card surcharge, deeming it a misdemeanor. As of February 11, 2024, the amended version of the Credit Card Surcharge Law (the “Amended Law”) went into effect, providing for the following three fundamental requirements:

- Sellers must clearly and conspicuously post the **total** price for using a credit card in a transaction, inclusive of any surcharge.
- Sellers are prohibited from charging a final price (including the credit card surcharge) that is greater than the posted price.
- Sellers are prohibited from imposing a surcharge on a consumer who uses a credit card that is greater than the amount charged by the credit card company to the seller for such credit card use.

Sellers are expressly permitted to use a two-tier pricing system which allows for posting two different prices, i.e., the total credit card price (including any surcharge), and the total cash price for the product or service. This is similar to the pricing display commonly used at gas stations where credit card and cash prices are posted side-by-side. The Amended Law applies to any type of surcharge, whether a fixed amount or a percentage.^[2] Sellers are also permitted to raise prices on all goods and services to include the charge incurred by the seller from the credit card company, i.e., the “surcharge,” and the seller may offer a discount if a consumer pays using cash, check or other similar means.

There are significant civil penalties for failing to comply with the requirements under the Amended Law. **Each** transaction that is not compliant with any aspect of this law is considered a separate violation that could result in a civil penalty of up to \$500 for the seller.

To help sellers and consumers understand what is and is not permissible under the Amended Law, a Guidance has been issued by the New York Department of State - Division of Consumer Protection, available [here](#) and [here](#). The Guidance lists the types of practices that are considered compliant and non-compliant under the Amended Law, as summarized below.

[1] This Amended Law can be found in Section 518 of the NY General Business Law.

[2] Sellers must be careful not to violate the Amended Law if the fixed amount or percentage exceeds the actual amount of the fee incurred by the seller from the credit card company in any transaction.

Compliant Practices include the following:

- Clearly listing **both** the total credit card price (inclusive of any credit card surcharge) and the total cash price.
- Listing or posting the higher price (inclusive of any credit card surcharge) for items and services and then advising customers that there is a discount for paying with cash.
- Changing all prices to the 'credit card price'.
- Charging the same price for cash and credit transactions.

Non-compliant Practices include the following:

- Posting a sign or including a notice in forms or documents notifying consumers that there will be an additional fee or surcharge for using a credit card (e.g., "credit card processing fees apply" or "additional service fees for customers paying by credit card").
- Posting a sign that notifies consumers that there will be a surcharge of a certain percentage applied when using a credit card (e.g., "additional 3.9% surcharge for credit cards").
- Maintaining a practice of having a built-in discount for using cash, and posting a sign that any credit/debit card purchases, will not receive the cash discount, and the price adjustment for using a card will be detailed on the receipt.
- Charging a fee to credit card users only, and separately delineating that fee on the receipt, regardless of how the fee is labeled (e.g., surcharge, convenience fee, service fee, administrative fee, processing fee, or non-cash adjustment).
- Posting a pricing sign or having a price tag that shows the amount and percent surcharge, if purchasing with a credit card (e.g., "\$10 + 4% if paying with credit card").
- Posting a sign on the door, at the register, in the reception/payment area or elsewhere, stating that an additional 3% surcharge will apply for credit card purchases.

It appears that the major focus of the Amended Law is to provide for transparency and proper disclosure of the total final price of a transaction to be paid by a consumer, including any surcharge for credit card use, before the consumer receives, or is billed for, the goods or services. New York's legislators do not want consumers to have to figure out the final price of a good or service by merely telling them that 3% will be added to the posted price; they want the consumer to know the full price upfront. In addition, surcharges cannot be used to make a profit for the business, only to cover the actual processing cost incurred by the seller that is imposed by the credit card company. The Amended Law applies globally to any "seller", whether a large business or an individual, including a medical or other healthcare practice or provider, that sells goods or services to the public.

What should a healthcare practice do?

Healthcare providers, indeed all businesses, should first consider whether or not they want to impose a surcharge for credit card use, taking into account such factors as: what competitors are doing; the potential impact of a surcharge, financially and otherwise, on the consumer's experience; the cost of credit cards and other forms of payment; the information that must be disclosed to consumers; and the difficulty for the business in meeting the new disclosure requirements. Sellers can, of course, decide not to impose any credit card surcharge. Unlike other businesses, however, healthcare practices have unique issues that are more challenging than perhaps other businesses face. There are often insurance carriers or other third-party payors that pay for all or a portion of the fees for the healthcare services delivered to consumers, where the patient only pays a co-payment, deductible, or co-insurance amount.

These amounts due from the patient often vary based on the patient's health plan. The actual fee for the service rendered by the healthcare provider may also vary in accordance with a fee schedule for each respective health plan, so that the amount that the patient is responsible for may vary from one patient to another even for the very same service. It therefore may be very difficult for a healthcare provider or practice to post the list of fees, inclusive of surcharges, since the fees may be variable. This is very different from the sale of gasoline by a gas station or the price of a haircut by a barbershop which typically will not vary from one consumer to the next. Therefore, meeting the disclosure requirements may be more challenging for the healthcare provider.

In addition, the healthcare provider or other business, must also check the agreements it has entered into with each credit card company in order to determine what charge is imposed by that company, along with any other requirements found in those agreements. Some credit card companies require that the seller must notify the credit card company in writing of its intent to charge a surcharge to consumers. Some credit card companies may not permit surcharging the consumer. Since different credit card companies may charge different fees to the seller, the seller must be careful not to incorporate a higher charge into its pricing, which could result in a surcharge to a consumer that is higher than the amount charged to the seller by that consumer's credit card company. This would violate the Amended Law. A seller always has the option of deciding not to accept a particular credit card for any reason, including that it does not allow surcharging or that it charges a higher fee to the business. Healthcare providers must also determine where notifications must be given to its patients about surcharges for credit card usage. Unlike a gas station which posts its pricing on signage at the pump, healthcare providers may need to provide disclosure of their pricing in different ways or locations, e.g., in the office, reception area, on-line on the provider's website or patient portal or scheduling platform, or in written forms that are presented to patients in the office. All types of pricing disclosure must contain the proper information that is compliant with the requirements in the Amended Law. It should be noted that the Amended Law only applies to credit cards, and not to debit cards. There should also be no surcharge for pre-paid credit cards, or cards issued with respect to flexible spending accounts or health savings accounts, even if processed as a credit card transaction. Sellers should immediately review their current practices with regard to credit card usage and pricing. If they are currently not in compliance with the disclosure requirements under the Amended Law, sellers should cease the non-compliant practice, and charge the same amount for consumers who pay with cash or credit cards, at least until such sellers have made the necessary adjustments to comply with the Amended Law. This would avoid facing a monetary penalty while the business considers its practices and options. The Consumer Protection Division has indicated that it is available at 1 + (800) 697-1220 to answer questions with regard to the requirements of the Amended Law.

For more information, please contact:

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