

## **BILL ANALYSIS**

C.S.H.B. 2700  
By: Bonnen, Greg  
Insurance  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties report that rising health care costs are a burden on families, businesses, and the economy overall, and that health care pricing is opaque, with significant price swings being commonplace. The parties contend that providing consumers with a good faith estimate of pricing before the delivery of health care goods or services gives consumers an opportunity to make informed decisions and could provide a means within the health care marketplace to correct artificially inflated valuations and wide discrepancies in pricing. C.S.H.B. 2700 seeks to address the high cost of health care services and goods by instilling free market principles in this critical sector of our economy.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 2700 amends the Health and Safety Code to require a facility, defined by the bill as a licensed ambulatory surgical center, birthing center, or hospital, or an imaging center that is not part of another facility, to provide to a person a good faith estimate of actual charges as provided by the bill's provisions if the person is expected to be admitted to the facility on a nonemergency basis or receive a nonemergency procedure or service at the facility or if the person may be admitted to the facility on such a basis and the person requests a good faith estimate from the facility. The bill requires the facility to provide the good faith estimate before the person is scheduled for such an admission, procedure, or service and specifies that the good faith estimate is an estimate of the actual charges for facility fees and all procedures and services, including diagnostic imaging, expected to be performed by the facility and by facility-based physicians with whom the facility has an agreement based on the person's medical orders. The bill defines, among other terms, "facility-based physician" as a radiologist, an anesthesiologist, a pathologist, or a neonatologist. The bill requires the estimate to be based on Diagnosis-Related Groups codes, and the bill requires the facility to include with the estimate a statement that the actual services performed at the facility may differ from those provided in the estimate based on the person's medical needs. The bill establishes that a facility is not required to include in a good faith estimate procedures or services performed by a physician who is not a facility-based physician.

C.S.H.B. 2700 requires a facility-based physician to provide a good faith estimate to a person expected to be admitted or who may be admitted to the facility on a nonemergency basis as previously described, and the bill authorizes the physician by contract to agree to allow a facility to provide a good faith estimate of procedures and services performed by the physician at the facility. The bill establishes that the facility-based physician is responsible for the estimate provided by the facility according to the terms of the contract. The bill requires a facility-based physician who does not enter into such a contract to provide a good faith estimate to a person before performing a procedure or service at a facility in the same manner as a facility under the bill's provisions.

C.S.H.B. 2700 sets out provisions and requirements relating to good faith estimates for anesthesiology services, pathology services, and medical implants and requires such an estimate for a medical implant to include a list of all available medical implants that meet the person's medical needs, including a good faith estimate of the actual charges for each medical implant.

C.S.H.B. 2700 requires a physician who is not a facility-based physician and who will perform for a person a nonemergency procedure or service at a facility, before scheduling a procedure or service, to provide to the person a good faith estimate of the physician's actual charges for the procedure or service and requires the estimate to be based on Diagnosis-Related Groups codes, Current Procedural Terminology codes, or other applicable medical billing codes. The bill requires the physician to include with the estimate a statement that the actual services performed by the physician may differ from those provided in the estimate based on the person's medical needs. The bill establishes that a physician is not required to include in a good faith estimate facility fees, procedures, or services performed by a facility or by facility-based physicians. The bill requires a physician who is not a facility-based physician and who provides a good faith estimate for a medical implant to a person to provide a list of all available medical implants that meet the person's medical needs, including a good faith estimate of the actual charges for each medical implant.

C.S.H.B. 2700 requires a health care provider to ask a person to disclose the person's anticipated method of payment for purposes of complying with the bill's provisions relating to good faith estimates of actual charges. The bill sets out the specific items that must be covered by a good faith estimate of actual charges based on the person's method of payment. The bill sets out provisions relating to good faith estimates for a person who has an individual, group, or other private or commercial health insurance plan or policy, including coverage through a preferred provider organization or health maintenance organization; a person who receives benefits under a government-sponsored health benefits program, including the Medicaid program, the Medicare program, the Children's Health Insurance Program (CHIP), and the TRICARE military health system; and a person who receives benefits under a workers' compensation claim. The bill requires the good faith estimate provided to each person to include, among other provisions, the amount the health care provider will be paid for the fees, procedures, and services described by provisions of the bill relating to facility and facility-based physicians or relating to physicians who are not facility-based physicians based on the relevant billing codes.

C.S.H.B. 2700 requires a health care provider to provide a person who will pay cash or will receive charity care or a person who is indigent a statement of the average amount the health care provider was actually paid for applicable fees, procedures, and services by the five insurance carriers or government-sponsored programs that paid the provider for the greatest number of the applicable fees, procedures, and services in the preceding calendar year or, if the provider did not practice in the preceding year, in the current calendar year and of the average amount the health care provider was actually paid by patients paying cash, patients receiving charity care, and patients who are indigent persons for the applicable fees, procedures, and services in that year.

C.S.H.B. 2700 authorizes the commissioner of insurance to impose an administrative penalty on a facility or physician that violates the bill's provisions. The bill caps the amount of the penalty at \$1,000 for each violation, and establishes that statutory provisions relating to Texas Department of Insurance administrative penalties govern the imposition, enforcement, and collection of the administrative penalty.

#### **EFFECTIVE DATE**

January 1, 2014.

## COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2700 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

### INTRODUCED

SECTION 1. Subtitle A, Title 3, Occupations Code, is amended by adding Chapter 117 to read as follows:

**CHAPTER 117. GOOD FAITH ESTIMATE OF HEALTH CARE PAYMENT**

#### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 117.001. DEFINITIONS. In this chapter:

(1) "Department" means the Department of State Health Services.

(2) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(3) "Health care provider" means:

(A) a health care professional who performs a health care service or provides a health care good in this state under a license, certificate, registration, or other authority issued by this state to diagnose, prevent, alleviate, or cure a human illness or injury, including a physician, dentist, pharmacy, or pharmacist;

(B) a health care facility that provides a health care service or good in this state under a license, certificate, registration, or other authority issued by this state to diagnose, prevent, alleviate, or cure a human illness or injury, including an institutional health care provider or other hospital; or

(C) a person that provides to patients in this state ancillary health care-related services and goods under a license, certificate, or registration issued by this state, or that is otherwise authorized to provide to patients in this state ancillary health care-related services and goods ordered or authorized by a licensed health care professional, to diagnose, prevent, alleviate, or cure a human illness or injury, including

### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subtitle G, Title 4, Health and Safety Code, is amended by adding Chapter 326 to read as follows:

**CHAPTER 326. GOOD FAITH ESTIMATE OF ACTUAL CHARGES FOR FACILITY-BASED SERVICES**

*(See Subchaps. A, B, and C below, following Subchap. E.)*

No equivalent provision.

No equivalent provision.

laboratory services, radiological services, and durable medical equipment.

SUBCHAPTER B. ADMINISTRATION OF CHAPTER

No equivalent provision.

Sec. 117.051. ADMINISTRATION BY LICENSING ENTITIES. (a) The governing body of the entity that issues a license, certificate, registration, or other authorization to practice to a health care provider shall administer and enforce this chapter as it applies to the provider.

No equivalent provision.

(b) A governing body described by Subsection (a) may adopt rules governing the application of this chapter to health care providers regulated by the entity.

Sec. 117.052. ADMINISTRATION BY DEPARTMENT. (a) The department shall administer and enforce this chapter as it applies to any health care provider not issued a license, certificate, registration, or other authorization to practice described by Section 117.051.

No equivalent provision.

(b) The executive commissioner shall adopt rules governing the application of this chapter to a health care provider described by Subsection (a).

SUBCHAPTER C. GOOD FAITH ESTIMATE

SUBCHAPTER D. GOOD FAITH ESTIMATE OF ACTUAL CHARGES

Sec. 117.101. GOOD FAITH ESTIMATE REQUIRED. (a) Except as provided by Subsection (b), before a health care provider provides to a person a health care service or a health care good, including a drug or medical device, the health care provider must provide the person a good faith estimate of the actual expected payments for the service or good, as provided by this subchapter.

No equivalent provision.

The health care provider shall ask the person to disclose the person's anticipated method of payment for purposes of complying with this subchapter.

Sec. 326.151. DISCLOSURE OF EXPECTED PAYMENT METHOD.

A health care provider shall ask a person to disclose the person's anticipated method of payment for purposes of complying with this subchapter.

(b) A health care provider shall:  
(1) in an emergency or urgent medical situation, provide to a person any health care service or health care good necessary to stabilize the person's medical condition

if delay required to provide a good faith estimate of the actual payment for the service or good under Subsection (a) could result in an adverse medical consequence to the person; or

(2) provide to a person a health care service or health care good ordered by the person's physician or other person primarily responsible for the person's care if the person is unable to make medical decisions and does not have a legal representative to make medical decisions on the person's behalf.

Sec. 117.102. GOOD FAITH ESTIMATE FOR INSURED PERSONS.

If a person has an individual, group, or other private or commercial health insurance plan or policy, including coverage through a preferred provider organization or health maintenance organization, a health care provider shall provide the person a good faith estimate of:  
(1) the amount the insurance plan or policy will actually pay the health care provider for the health care service or health care good based on the

negotiated rate between the health care provider and the insurance plan or policy; and

(2) the amount of any copayment, coinsurance, or other amount the person will actually pay the health care provider for the health care service or health care good based on the terms of the person's insurance plan or policy

and the negotiated rate between the health care provider and the person's insurance plan or policy.

Sec. 117.103. GOOD FAITH ESTIMATE FOR RECIPIENTS OF GOVERNMENT-SPONSORED PROGRAM. If a person receives benefits under a government-sponsored health benefits program, including the Medicaid program, the Medicare program, the Children's Health Insurance Program (CHIP), and the TRICARE military health system, a health care provider shall provide the person a good faith estimate of:

(1) the amount the government-sponsored

Sec. 326.152. GOOD FAITH ESTIMATE FOR INSURED PERSONS.

If a person has an individual, group, or other private or commercial health insurance plan or policy, including coverage through a preferred provider organization or health maintenance organization, a health care provider shall provide the person a good faith estimate of:

(1) the amount the insurance plan or policy will actually pay the health care provider for the fees, procedures, and services described by Subchapter B or C based on the relevant billing codes, the terms of the person's insurance plan or policy, and the

negotiated rate between the health care provider and the insurance plan or policy, if applicable; and

(2) the amount of any copayment, coinsurance, or other amount the person is expected to pay the health care provider for the fees, procedures, and services described by Subchapter B or C based on the relevant billing codes, the terms of the person's insurance plan or policy,

and the negotiated rate between the health care provider and the person's insurance plan or policy, if applicable.

Sec. 326.153. GOOD FAITH ESTIMATE FOR RECIPIENTS OF GOVERNMENT-SPONSORED PROGRAM. If a person receives benefits under a government-sponsored health benefits program, including the Medicaid program, the Medicare program, the Children's Health Insurance Program (CHIP), and the TRICARE military health system, a health care provider shall provide the person a good faith estimate of:

(1) the amount the government-sponsored

health benefits program will actually pay the health care provider for the health care service or health care good; and

(2) any amount the person will actually pay the health care provider for the health care service or health care good

under the terms of the government-sponsored health benefits program.

Sec. 117.104. GOOD FAITH ESTIMATE FOR RECIPIENTS OF WORKERS' COMPENSATION BENEFITS. If a person receives benefits under a workers' compensation claim, a health care provider shall provide the person a good faith estimate of the amount the workers' compensation insurance carrier

will actually pay the health care provider for the health care service or health care good.

Sec. 117.105. STATEMENT FOR PERSONS PAYING CASH, PERSONS RECEIVING CHARITY CARE, AND INDIGENT PERSONS. If a person will pay cash or will receive charity care for a health care service or health care good or if a person is indigent, a health care provider shall provide the person with a statement of the average amount the health care provider was actually paid for the health care service or health care good

by the five insurance carriers or government-sponsored programs described by Sections 117.102, 117.103, and 117.104 that paid the health care provider for the greatest number of that health care service or health care good in the preceding calendar year, or in the current calendar year if the health care provider did not practice in the preceding calendar year.

health benefits program will actually pay the health care provider for the fees, procedures, and services described by Subchapter B or C based on the relevant billing codes; and

(2) any amount the person is expected to pay the health care provider for fees, procedures, and services described by Subchapter B or C based on the relevant billing codes

under the terms of the government-sponsored health benefits program.

Sec. 326.154. GOOD FAITH ESTIMATE FOR RECIPIENTS OF WORKERS' COMPENSATION BENEFITS. If a person receives benefits under a workers' compensation claim, a health care provider shall provide the person a good faith estimate of:

(1) the amount the workers' compensation insurance carrier, workers' compensation claims processor, employer, or other payor will actually pay the health care provider for the fees, procedures, and services described by Subchapter B or C based on the relevant billing codes; and

(2) the amount the person is expected to pay the health care provider for the fees, procedures, and services described by Subchapter B or C based on the relevant billing codes, if any.

Sec. 326.155. STATEMENT FOR PERSONS PAYING CASH, PERSONS RECEIVING CHARITY CARE, AND INDIGENT PERSONS. If a person will pay cash or will receive charity care for an admission, procedure, or service or if a person is indigent, a health care provider shall provide the person with a statement of:

(1) the average amount the health care provider was actually paid for the fees, procedures, and services described by Subchapter B or C based on the relevant billing codes

by the five insurance carriers or government-sponsored programs described by Sections 326.152, 326.153, and 326.154 that paid the health care provider for the greatest number of the applicable fees, procedures, and services in the preceding calendar year, or in the current calendar year if the health care provider did not practice in the preceding calendar year; and

(2) the average amount the health care provider was actually paid by patients

described by this section for the applicable fees, procedures, and services in that year.

SUBCHAPTER D. AGREEMENT TO PROVIDE GOOD FAITH ESTIMATE ON BEHALF OF ANOTHER HEALTH CARE PROVIDER

No equivalent provision.

Sec. 117.151. CONTRACT TO ALLOW ANOTHER HEALTH CARE PROVIDER TO PROVIDE GOOD FAITH ESTIMATE. (a) A health care provider may by contract agree to allow another health care provider to provide a good faith estimate under Subchapter C for that health care provider's health care services and health care goods.

No equivalent provision.

(b) A health care provider who enters into a contract described by Subsection (a) is responsible for the content of the good faith estimate provided by the other health care provider on that provider's behalf.

Sec. 117.152. RULES GOVERNING CONTRACTING. (a) The executive commissioner may adopt rules governing contracts under Section 117.151.

No equivalent provision.

(b) The department shall administer rules described by Subsection (a).

SUBCHAPTER E. PENALTIES AND ENFORCEMENT

No equivalent provision.

Sec. 117.201. VIOLATION BY LICENSED HEALTH CARE PROVIDERS. A health care provider that violates this chapter is subject to an administrative penalty, a civil penalty, or other disciplinary action, as applicable, in the same manner as if the health care provider violated the law under which the health care provider is licensed, certified, registered, or authorized to practice.

No equivalent provision.

Sec. 117.202. VIOLATION BY OTHER HEALTH CARE PROVIDERS.

(a) The executive commissioner or department may impose an administrative penalty against a health care provider that is not required to hold a license, certificate, registration, or other authorization to practice and that violates this chapter.

SUBCHAPTER E. ADMINISTRATIVE PENALTY

Sec. 326.201. ADMINISTRATIVE PENALTY AUTHORIZED.

(a) The commissioner of insurance may impose an administrative penalty on a facility or physician that violates this chapter.

(b) An administrative penalty imposed under this section shall be imposed in the same manner as other administrative penalties imposed by the executive commissioner.

(c) The amount of the penalty may not exceed \$1,000 for each violation.

(d) The executive commissioner may adopt rules to implement this section.

No equivalent provision.

No equivalent provision.

No equivalent provision.

No equivalent provision.

(b) The amount of the penalty may not exceed \$1,000 for each violation.

(c) Chapter 84, Insurance Code, governs the imposition, enforcement, and collection of the administrative penalty.

#### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 326.001. DEFINITIONS. In this chapter:

(1) "Facility" means:

(A) an ambulatory surgical center licensed under Chapter 243;

(B) a birthing center licensed under Chapter 244;

(C) a hospital licensed under Chapter 241; or

(D) an imaging center that is not part of another facility.

(2) "Facility-based physician" means a radiologist, an anesthesiologist, a pathologist, or a neonatologist.

(3) "Health care provider" means a facility, a facility-based physician, or another physician required to provide a good faith estimate under this chapter.

(4) "Medical implant" means an item, other than a suture, implanted in a patient's body.

#### SUBCHAPTER B. GOOD FAITH ESTIMATE BY FACILITY AND FACILITY-BASED PHYSICIAN

Sec. 326.051. ESTIMATE BY FACILITY. (a) A facility shall provide to a person a good faith estimate as provided by this chapter if the person:

(1) is expected to be admitted to the facility on a nonemergency basis or receive a nonemergency procedure or service at the facility; or

(2) may be admitted to the facility on a nonemergency basis or receive a nonemergency procedure or service at the facility and the person requests a good faith estimate from the facility.

(b) A facility must provide a good faith estimate before scheduling an admission, procedure, or service described by Subsection (a).



(c) A facility shall provide to a person described by Subsection (a) a good faith estimate of the actual charges, as provided by Subchapter D, for facility fees and all procedures and services, including diagnostic imaging, expected to be performed by the facility and by facility-based physicians with whom the facility has an agreement under Section 326.052(b) based on the person's medical orders. The estimate must be based on Diagnosis-Related Groups codes. The facility shall include with the estimate a statement that the actual services performed at the facility may differ from those provided in the estimate based on the person's medical needs.

(d) A facility is not required to include in a good faith estimate provided by the facility procedures or services performed by a physician who is not a facility-based physician.

No equivalent provision.

Sec. 326.052. ESTIMATE BY FACILITY-BASED PHYSICIAN. (a) A facility-based physician shall provide a good faith estimate to a person described by Section 326.051(a). (b) A facility-based physician by contract may agree to allow a facility to provide a good faith estimate of procedures and services performed by the physician at the facility. The facility-based physician is responsible for the estimate provided by the facility according to the terms of the contract. (c) A facility-based physician who does not enter into a contract as provided by Subsection (b) must provide a good faith estimate to a person before performing a procedure or service at a facility in the same manner as a facility under Section 326.051.

No equivalent provision.

Sec. 326.053. ESTIMATE OF ANESTHESIOLOGY SERVICES. (a) A good faith estimate for anesthesia services must be in the form of a charge per unit of time and the expected number of units of time required to complete the procedure or service originally ordered. (b) A facility or anesthesiologist that provides a good faith estimate of anesthesia charges shall include with the estimate a statement that the actual number of units of time required to complete the procedure or service may differ from the number provided in the estimate based on the person's medical needs.

No equivalent provision.

Sec. 326.054. ESTIMATE OF PATHOLOGY SERVICES. (a) A good faith estimate for pathology services must be in the form of a charge per specimen and the expected number of specimens required for the procedure or service originally ordered. (b) A facility or pathologist that provides a good faith estimate of pathology charges shall include with the estimate a statement that the actual number of specimens required may differ from the number provided in the estimate based on the person's medical needs.

No equivalent provision.

Sec. 326.055. ESTIMATE FOR MEDICAL IMPLANTS. A facility-based physician who provides to a person a good faith estimate for a medical implant or a facility that provides to a person a good faith estimate that includes a medical implant to be implanted by a facility-based physician shall provide to the person a list of all available medical implants that meet the person's medical needs, including a good faith estimate of the actual charges for each medical implant as provided by Subchapter D.

No equivalent provision.

SUBCHAPTER C. GOOD FAITH ESTIMATE BY PHYSICIAN WHO WILL PERFORM PROCEDURE OR SERVICE AT FACILITY

No equivalent provision.

Sec. 326.101. ESTIMATE BY PHYSICIAN. (a) A physician who is not a facility-based physician and who will perform for a person a nonemergency procedure or service at a facility shall provide to the person a good faith estimate for the procedure or service as provided by this chapter. (b) A physician must provide a good faith estimate before scheduling a procedure or service described by Subsection (a). (c) A physician shall provide to a person described by Subsection (a) a good faith estimate of the physician's actual charges, as provided by Subchapter D, for the procedure or service. The estimate must be based on Diagnosis-Related Groups codes, Current Procedural Terminology codes, or other applicable medical billing codes. The physician shall include with the estimate a statement that the actual services performed by the physician may differ from those provided in the estimate based on the person's medical needs.

No equivalent provision.

SECTION 2. The changes in law made by this Act apply only to a health care service or health care good ordered or provided on or after the effective date of this Act. A health care service or health care good ordered or provided before the effective date of this Act is governed by the law in effect on the date the service or good was ordered or provided, and the former law is continued in effect for that purpose.

SECTION 3. This Act takes effect September 1, 2013.

(d) A physician is not required to include in a good faith estimate provided by the physician facility fees, procedures, or services performed by a facility or by facility-based physicians.

Sec. 326.102. GOOD FAITH ESTIMATE FOR MEDICAL IMPLANTS. A physician who is not a facility-based physician and who provides to a person a good faith estimate for a medical implant shall provide to the person a list of all available medical implants that meet the person's medical needs, including a good faith estimate of the actual charges for each medical implant as provided by Subchapter D.

SECTION 2. The changes in law made by this Act apply only to an admission, procedure, or service ordered or provided on or after the effective date of this Act. An admission, procedure, or service ordered or provided before the effective date of this Act is governed by the law in effect on the date the admission, procedure, or service was ordered or provided, and the former law is continued in effect for that purpose.

SECTION 3. This Act takes effect January 1, 2014.