

BILL ANALYSIS

Senate Research Center

S.B. 1137
By: Kolkhorst
Health & Human Services
6/9/2021
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 1137 codifies into state law the Centers for Medicare and Medicaid Services (CMS) rule titled Price Transparency Requirements for Hospitals To Make Standard Charges Public adopted in November 2019. The rule became effective January 1, 2021.

The CMS rule is designed to increase market competition and lower healthcare costs by providing standard hospital pricing information to the public. State codification of the rule will ensure that price transparency and consumer empowerment will continue in Texas even if the rule is repealed or changed at the federal level.

(Original Author's / Sponsor's Statement of Intent)

S.B. 1137 amends current law relating to the required disclosure of prices for certain items and services provided by certain medical facilities and provides administrative penalties.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle G, Title 4, Health and Safety Code, by adding Chapter 327, as follows:

CHAPTER 327. DISCLOSURE OF PRICES

Sec. 327.001. DEFINITIONS. Defines "ancillary service," "chargemaster," "commission," "de-identified maximum negotiated charge," "de-identified minimum negotiated charge," "discounted cash price," "facility items or services," "gross charge," "machine-readable format," "payor-specific negotiated charge," "service package," "shoppable service," "standard charge," and "third party payor." Defines "facility" as a hospital licensed under Chapter 241 (Hospitals).

Sec. 327.002. PUBLIC AVAILABILITY OF PRICE INFORMATION REQUIRED. Requires a facility, notwithstanding any other law, to make public a digital file in a machine-readable format that contains a list of all standard charges for all facility items or services as described by Section 327.003 and a consumer-friendly list of standard charges for a limited set of shoppable services as provided in Section 327.004.

Sec. 327.003. LIST OF STANDARD CHARGES REQUIRED. (a) Requires a facility to:

(1) maintain a list of all standard charges for all facility items or services in accordance with this section; and

(2) ensure the list required under Subdivision (1) is available at all times to the public, including by posting the list electronically in the manner provided by this section.

(b) Requires that the standard charges contained in the list required to be maintained by a facility under Subsection (a) reflect the standard charges applicable to that location of the facility, regardless of whether the facility operates in more than one location or operates under the same license as another facility.

(c) Requires that the list required under Subsection (a) include the following items, as applicable:

(1) a description of each facility item or service provided by the facility;

(2) the following charges for each individual facility item or service when provided in either an inpatient setting or an outpatient department setting, as applicable:

(A) the gross charge;

(B) the de-identified minimum negotiated charge;

(C) the de-identified maximum negotiated charge;

(D) the discounted cash price; and

(E) the payor-specific negotiated charge, listed by the name of the third party payor and plan associated with the charge and displayed in a manner that clearly associates the charge with each third party payor and plan; and

(3) any code used by the facility for purposes of accounting or billing for the facility item or service, including the Current Procedural Terminology (CPT) code, the Healthcare Common Procedure Coding System (HCPCS) code, the Diagnosis Related Group (DRG) code, the National Drug Code (NDC), or other common identifier.

(d) Requires that the information contained in the list required under Subsection (a) be published in a single digital file that is in a machine-readable format.

(e) Requires that the list required under Subsection (a) be displayed in a prominent location on the home page of the facility's publicly accessible Internet website or accessible by selecting a dedicated link that is prominently displayed on the home page of the facility's publicly accessible Internet website. Requires that the list required under Subsection (a), if the facility operates multiple locations and maintains a single Internet website, be posted for each location the facility operates in a manner that clearly associates the list with the applicable location of the facility.

(f) Requires that the list required under Subsection (a):

(1) be available free of charge, without having to establish a user account or password, without having to submit personal identifying information, and without having to overcome any other impediment, including entering a code to access the list;

(2) be accessible to a common commercial operator of an Internet search engine to the extent necessary for the search engine to index the list and display the list as a result in response to a search query of a user of the search engine;

(3) be formatted in a manner prescribed by the Health and Human Services Commission (HHSC);

(4) be digitally searchable; and

(5) use a certain naming convention specified by the Centers for Medicare and Medicaid Services.

(g) Requires HHSC, in prescribing the format of the list under Subsection (f)(3), to:

(1) develop a template that each facility is required to use in formatting the list; and

(2) in developing the template under Subdivision (1):

(A) consider any applicable federal guidelines for formatting similar lists required by federal law or rule and ensure that the design of the template enables health care researchers to compare the charges contained in the lists maintained by each facility; and

(B) design the template to be substantially similar to the template used by the Centers for Medicare and Medicaid Services for purposes similar to those of this chapter, if HHSC determines that designing the template in that manner serves the purposes of Paragraph (A) and that HHSC benefits from developing and requiring that substantially similar design.

(h) Requires the facility to update the list required under Subsection (a) at least once each year. Requires the facility to clearly indicate the date on which the list was most recently updated, either on the list or in a manner that is clearly associated with the list.

Sec. 327.004. CONSUMER-FRIENDLY LIST OF SHOPPABLE SERVICES. (a) Requires a facility, except as provided by Subsection (c), to maintain and make publicly available a list of the standard charges described by Sections 327.003(c)(2)(B), (C), (D), and (E) for each of at least 300 shoppable services provided by the facility. Authorizes the facility to select the shoppable services to be included in the list, except that the list is required to include:

(1) the 70 services specified as shoppable services by the Centers for Medicare and Medicaid Services; or

(2) if the facility does not provide all of the shoppable services described by Subdivision (1), as many of those shoppable services the facility does provide.

(b) Requires a facility, in selecting a shoppable service for purposes of inclusion in the list required under Subsection (a), to consider how frequently the facility provides the service and the facility's billing rate for that service and to prioritize the selection of services that are among the services most frequently provided by the facility.

(c) Requires a facility, if the facility does not provide 300 shoppable services, to maintain a list of the total number of shoppable services that the facility provides in a manner that otherwise complies with the requirements of Subsection (a).

(d) Requires that the list required under Subsection (a) or (c), as applicable:

(1) include:

(A) a plain-language description of each shoppable service included on the list;

(B) the payor-specific negotiated charge that applies to each shoppable service included on the list and any ancillary service, listed by the name of the third party payor and plan associated with the charge and displayed in a manner that clearly associates the charge with the third party payor and plan;

(C) the discounted cash price that applies to each shoppable service included on the list and any ancillary service or, if the facility does not offer a discounted cash price for one or more of the shoppable or ancillary services on the list, the gross charge for the shoppable service or ancillary service, as applicable;

(D) the de-identified minimum negotiated charge that applies to each shoppable service included on the list and any ancillary service;

(E) the de-identified maximum negotiated charge that applies to each shoppable service included on the list and any ancillary service; and

(F) any code used by the facility for purposes of accounting or billing for each shoppable service included on the list and any ancillary service, including the Current Procedural Terminology (CPT) code, the Healthcare Common Procedure Coding System (HCPCS) code, the Diagnosis Related Group (DRG) code, the National Drug Code (NDC), or other common identifier; and

(2) if applicable:

(A) state each location at which the facility provides the shoppable service and whether the standard charges included in the list apply at that location to the provision of that shoppable service in an inpatient setting, an outpatient department setting, or in both of those settings, as applicable; and

(B) indicate if one or more of the shoppable services specified by the Centers for Medicare and Medicaid Services is not provided by the facility.

(e) Requires that the list required under Subsection (a) or (c), as applicable, be:

(1) displayed in the manner prescribed by Section 327.003(e) for the list required under that section;

(2) available free of charge, without having to register or establish a user account or password, without having to submit personal identifying information, and without having to overcome any other impediment, including entering a code to access the list;

(3) searchable by service description, billing code, and payor;

(4) updated in the manner prescribed by Section 327.003(h) for the list required under that section;

(5) accessible to a common commercial operator of an Internet search engine to the extent necessary for the search engine to index the list and

display the list as a result in response to a search query of a user of the search engine; and

(6) formatted in a manner that is consistent with the format prescribed by HHSC under Section 327.003(f)(3).

(f) Provides that, notwithstanding any other provision of this section, a facility is considered to meet the requirements of this section if the facility maintains, as determined by HHSC, an Internet-based price estimator tool that:

(1) provides a cost estimate for each shoppable service and any ancillary service included on the list maintained by the facility under Subsection (a);

(2) allows a person to obtain an estimate of the amount the person will be obligated to pay the facility if the person elects to use the facility to provide the service; and

(3) is prominently displayed on the facility's publicly accessible Internet website and is accessible to the public without charge and without having to register or establish a user account or password.

Sec. 327.005. **REPORTING REQUIREMENT.** Requires a facility, each time the facility updates a list as required under Sections 327.003(h) and 327.004(e)(4), to submit the updated list to HHSC. Authorizes HHSC to prescribe the form in which the updated list is required to be submitted to HHSC.

Sec. 327.006. **MONITORING AND ENFORCEMENT.** (a) Requires HHSC to monitor each facility's compliance with the requirements of this chapter using any of the following methods:

(1) evaluating complaints made by persons to HHSC regarding noncompliance with this chapter;

(2) reviewing any analysis prepared regarding noncompliance with this chapter;

(3) auditing the Internet websites of facilities for compliance with this chapter; and

(4) confirming that each facility submitted the lists required under Section 327.005.

(b) Authorizes HHSC, if HHSC determines that a facility is not in compliance with a provision of this chapter, to take any of the following actions, without regard to the order of the actions:

(1) provide a written notice to the facility that clearly explains the manner in which the facility is not in compliance with this chapter;

(2) request a corrective action plan from the facility if the facility has materially violated a provision of this chapter, as determined under Section 327.007; and

(3) impose an administrative penalty on the facility and publicize the penalty on HHSC's Internet website if the facility fails to respond to HHSC's request to submit a corrective action plan or to comply with the requirements of a corrective action plan submitted to HHSC.

Sec. 327.007. MATERIAL VIOLATION; CORRECTIVE ACTION PLAN. (a) Provides that a facility materially violates this chapter if the facility fails to comply with the requirements of Section 327.002 or to publicize the facility's standard charges in the form and manner required by Sections 327.003 and 327.004.

(b) Authorizes HHSC, if HHSC determines that a facility has materially violated this chapter, to issue a notice of material violation to the facility and request that the facility submit a corrective action plan. Requires that the notice indicate the form and manner in which the corrective action plan is required to be submitted to HHSC, and clearly state the date by which the facility is required to submit the plan.

(c) Requires a facility that receives a notice under Subsection (b) to submit a corrective action plan in the form and manner, and by the specified date, prescribed by the notice of violation and, as soon as practicable after submission of a corrective action plan to HHSC, act to comply with the plan.

(d) Requires that a corrective action plan submitted to HHSC:

(1) describe in detail the corrective action the facility will take to address any violation identified by HHSC in the notice provided under Subsection (b); and

(2) provide a date by which the facility will complete the corrective action described by Subdivision (1).

(e) Provides that a corrective action plan is subject to review and approval by HHSC. Authorizes HHSC, after HHSC reviews and approves a facility's corrective action plan, to monitor and evaluate the facility's compliance with the plan.

(f) Provides that a facility is considered to have failed to respond to HHSC's request to submit a corrective action plan if the facility fails to submit a corrective action plan in the form and manner specified in the notice provided under Subsection (b) or by the date specified in the notice provided under Subsection (b).

(g) Provides that a facility is considered to have failed to comply with a corrective action plan if the facility fails to address a violation within the specified period of time contained in the plan.

Sec. 327.008. ADMINISTRATIVE PENALTY. (a) Authorizes HHSC to impose an administrative penalty on a facility in accordance with Chapter 241 if the facility fails to respond to HHSC's request to submit a corrective action plan or to comply with the requirements of a corrective action plan submitted to HHSC.

(b) Authorizes HHSC to impose an administrative penalty on a facility for a violation of each requirement of this chapter. Requires HHSC to set the penalty in an amount sufficient to ensure compliance by facilities with the provisions of this chapter subject to the limitations prescribed by Subsection (c).

(c) Prohibits the penalty imposed by HHSC, for a facility with one of the following total gross revenues as reported to the Centers for Medicare and Medicaid Services or to another entity designated by HHSC rule in the year preceding the year in which a penalty is imposed, from exceeding:

(1) \$10 for each day the facility violated this chapter, if the facility's total gross revenue is less than \$10,000,000;

(2) \$100 for each day the facility violated this chapter, if the facility's total gross revenue is \$10,000,000 or more and less than \$100,000,000; and

(3) \$1,000 for each day the facility violated this chapter, if the facility's total gross revenue is \$100,000,000 or more.

(d) Provides that each day a violation continues is considered a separate violation.

(e) Requires HHSC, in determining the amount of the penalty, to consider previous violations by the facility's operator, the seriousness of the violation, the demonstrated good faith of the facility's operator, and any other matters as justice may require.

(f) Requires that an administrative penalty collected under this chapter be deposited to the credit of an account in the general revenue fund administered by HHSC. Authorizes money in the account to be appropriated only to HHSC.

Sec. 327.009. LEGISLATIVE RECOMMENDATIONS. Authorizes HHSC to propose to the legislature recommendations for amending this chapter, including recommendations in response to amendments by the Centers for Medicare and Medicaid Services to 45 C.F.R. Part 180.

SECTION 2. Effective date: September 1, 2021.