

## **BILL ANALYSIS**

Senate Research Center  
87R5120 JCG-D

S.B. 1137  
By: Kolkhorst  
Health & Human Services  
3/19/2021  
As Filed

### **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of the rule will ensure that price transparency and consumer empowerment will continue in Texas even if the rule is repealed or changed at the federal level.

As proposed, S.B. 1137 amends current law relating to the required disclosure by hospitals of prices for hospital services and items, 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 Chapter 311, Health and Safety Code, by adding Subchapter A-1, as follows:

#### **SUBCHAPTER A-1. DISCLOSURE OF PRICES**

Sec. 311.011. DEFINITIONS. Defines "ancillary service," "chargemaster," "commission," "de-identified maximum negotiated charge," "de-identified minimum negotiated charge," "discounted cash price," "gross charge," "hospital," "hospital items or services," "machine-readable format," "payer-specific negotiated charge," "service package," "shoppable service," "standard charge," and "third party payer."

Sec. 311.012. PUBLIC AVAILABILITY OF PRICE INFORMATION REQUIRED. Requires a hospital, 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 hospital items or services as described by Section 311.013, and a consumer-friendly list of standard charges for a limited set of shoppable services as provided in Section 311.014.

Sec. 311.013. LIST OF STANDARD CHARGES REQUIRED. (a) Requires a hospital to:

- (1) maintain a list of all standard charges for all hospital 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 hospital under Subsection (a) reflect the standard charges applicable to that location of the hospital, regardless of whether the hospital operates in more than one location or operates under the same license as another hospital.

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

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

(2) the following charges for each individual hospital 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 payer-specific negotiated charge, listed by the name of the third party payer and plan associated with the charge and displayed in a manner that clearly associates the charge with each third party payer and plan; and

(3) any code used by the hospital for purposes of accounting or billing for the hospital 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 hospital's publicly accessible Internet website. Requires that the list required under Subsection (a) be posted for each location the hospital operates in a manner that clearly associates the list with the applicable location of the hospital if the hospital operates multiple locations and maintains a single Internet website.

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

(1) be available free of charge, without having to establish a user account or password, and without having to submit personal identifying information;

(2) be digitally searchable; and

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

(g) Requires the hospital to update the list required under Subsection (a) at least once each year. Requires the hospital 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. 311.014. CONSUMER-FRIENDLY LIST OF SHOPPABLE SERVICES. (a) Requires a hospital, except as provided by Subsection (c) of this section, to maintain and make publicly available a list of the standard charges described by Sections 311.013(c)(2)(B), (C), (D), and (E) for each of at least 300 shoppable services provided by the hospital. Authorizes the hospital 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 hospital does not provide all of the shoppable services described by Subdivision (1), as many of the shoppable services described by that subdivision that the hospital does provide.

(b) Requires a hospital, in selecting a shoppable service for purposes of inclusion in the list required under Subsection (a), to consider how frequently the hospital provides the service and the hospital's billing rate for that service.

(c) Requires the hospital, if it does not provide 300 shoppable services, to maintain a list of the total number of shoppable services that the hospital 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 payer-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 payer and plan associated with the charge and displayed in a manner that clearly associates the charge with the third party payer and plan;

(C) the discounted cash price that applies to each shoppable service included on the list and any ancillary service or, if the hospital 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 hospital 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 hospital 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; and

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

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

(1) displayed in the manner prescribed by Section 311.013(e) for the list required under that section;

(2) available free of charge, without having to register or establish a user account or password, and without having to submit personal identifying information;

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

(4) updated in the manner prescribed by Section 311.013(g) for the list required under that section.

(f) Provides that, notwithstanding any other provision of this section, a hospital is considered to meet the requirements of this section if the hospital maintains, as determined by the Health and Human Services Commission (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 hospital under Subsection (a);

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

(3) is prominently displayed on the hospital'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. 311.015. MONITORING AND ENFORCEMENT. (a) Authorizes HHSC to monitor hospital compliance with the requirements of this subchapter using any of the following methods:

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

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

(3) auditing the Internet websites of hospitals for compliance with this subchapter.

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

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

(2) request a corrective action plan from the hospital if the hospital has materially violated a provision of this subchapter, as determined under Section 311.016; and

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

Sec. 311.016. MATERIAL VIOLATION; CORRECTIVE ACTION PLAN. (a) Provides that a hospital materially violates this subchapter if the hospital fails to comply with the requirements of Section 311.012, or fails to publicize the hospital's standard charges in the form and manner required by Sections 311.013 and 311.014.

(b) Authorizes HHSC, if HHSC determines that a hospital has materially violated this subchapter, to issue a notice of material violation to the hospital and request that the hospital 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 hospital is required to submit the plan.

(c) Requires a hospital 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, to act to comply with the plan.

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

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

(2) provide a date by which the hospital 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 it reviews and approves a hospital's corrective action plan, to monitor and evaluate the hospital's compliance with the plan.

(f) Provides that a hospital is considered to have failed to respond to HHSC's request to submit a corrective action plan if the hospital 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 hospital is considered to have failed to comply with a corrective action plan if the hospital fails to address a violation within a specified period of time contained in the plan.

Sec. 311.017. ADMINISTRATIVE PENALTY. (a) Authorizes HHSC to impose an administrative penalty on a hospital in accordance with Section 241.059 (Administrative Penalty) if the hospital fails to respond to HHSC's request to submit a corrective action plan, or fails to comply with the requirements of a corrective action plan submitted to HHSC.

(b) Authorizes HHSC to impose an administrative penalty on a hospital for a violation of each requirement of this subchapter in an amount not to exceed \$300 for each day in which one or more violations occurred, regardless of whether the hospital violated multiple requirements of this subchapter in the same day.

SECTION 2. Effective date: September 1, 2021.