

By: Kolkhorst, et al.  
(Oliverson)

S.B. No. 1137

Substitute the following for S.B. No. 1137:

By: Klick

C.S.S.B. No. 1137

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the required disclosure of prices for certain items and  
3 services provided by certain medical facilities; providing  
4 administrative penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Subtitle G, Title 4, Health and Safety Code, is  
7 amended by adding Chapter 327 to read as follows:

8 CHAPTER 327. DISCLOSURE OF PRICES

9 Sec. 327.001. DEFINITIONS. In this chapter:

10 (1) "Ancillary service" means a facility item or  
11 service that a facility customarily provides as part of a shoppable  
12 service.

13 (2) "Chargemaster" means the list of all facility  
14 items or services maintained by a facility for which the facility  
15 has established a charge.

16 (3) "Commission" means the Health and Human Services  
17 Commission.

18 (4) "De-identified maximum negotiated charge" means  
19 the highest charge that a facility has negotiated with all third  
20 party payors for a facility item or service.

21 (5) "De-identified minimum negotiated charge" means  
22 the lowest charge that a facility has negotiated with all third  
23 party payors for a facility item or service.

24 (6) "Discounted cash price" means the charge that

1 applies to an individual who pays cash, or a cash equivalent, for a  
2 facility item or service.

3 (7) "Facility" means a hospital licensed under Chapter  
4 241.

5 (8) "Facility items or services" means all items and  
6 services, including individual items and services and service  
7 packages, that may be provided by a facility to a patient in  
8 connection with an inpatient admission or an outpatient department  
9 visit, as applicable, for which the facility has established a  
10 standard charge, including:

11 (A) supplies and procedures;

12 (B) room and board;

13 (C) use of the facility and other areas, the  
14 charges for which are generally referred to as facility fees;

15 (D) services of physicians and non-physician  
16 practitioners, employed by the facility, the charges for which are  
17 generally referred to as professional charges; and

18 (E) any other item or service for which a  
19 facility has established a standard charge.

20 (9) "Gross charge" means the charge for a facility  
21 item or service that is reflected on a facility's chargemaster,  
22 absent any discounts.

23 (10) "Machine-readable format" means a digital  
24 representation of information in a file that can be imported or read  
25 into a computer system for further processing. The term includes  
26 .XML, .JSON, and .CSV formats.

27 (11) "Payor-specific negotiated charge" means the

1 charge that a facility has negotiated with a third party payor for a  
2 facility item or service.

3 (12) "Service package" means an aggregation of  
4 individual facility items or services into a single service with a  
5 single charge.

6 (13) "Shoppable service" means a service that may be  
7 scheduled by a health care consumer in advance.

8 (14) "Standard charge" means the regular rate  
9 established by the facility for a facility item or service provided  
10 to a specific group of paying patients. The term includes all of  
11 the following, as defined under this section:

12 (A) the gross charge;

13 (B) the payor-specific negotiated charge;

14 (C) the de-identified minimum negotiated charge;

15 (D) the de-identified maximum negotiated charge;

16 and

17 (E) the discounted cash price.

18 (15) "Third party payor" means an entity that is, by  
19 statute, contract, or agreement, legally responsible for payment of  
20 a claim for a facility item or service.

21 Sec. 327.002. PUBLIC AVAILABILITY OF PRICE INFORMATION  
22 REQUIRED. Notwithstanding any other law, a facility must make  
23 public:

24 (1) a digital file in a machine-readable format that  
25 contains a list of all standard charges for all facility items or  
26 services as described by Section 327.003; and

27 (2) a consumer-friendly list of standard charges for a

1 limited set of shoppable services as provided in Section 327.004.

2 Sec. 327.003. LIST OF STANDARD CHARGES REQUIRED. (a) A  
3 facility shall:

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

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

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

14 (c) The list required under Subsection (a) must include the  
15 following items, as applicable:

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

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

21 (A) the gross charge;

22 (B) the de-identified minimum negotiated charge;

23 (C) the de-identified maximum negotiated charge;

24 (D) the discounted cash price; and

25 (E) the payor-specific negotiated charge, listed

26 by the name of the third party payor and plan associated with the

27 charge and displayed in a manner that clearly associates the charge

1 with each third party payor and plan; and

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

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

11 (e) The list required under Subsection (a) must be displayed  
12 in a prominent location on the home page of the facility's publicly  
13 accessible Internet website or accessible by selecting a dedicated  
14 link that is prominently displayed on the home page of the  
15 facility's publicly accessible Internet website. If the facility  
16 operates multiple locations and maintains a single Internet  
17 website, the list required under Subsection (a) must be posted for  
18 each location the facility operates in a manner that clearly  
19 associates the list with the applicable location of the facility.

20 (f) The list required under Subsection (a) must:

21 (1) be available:

22 (A) free of charge;

23 (B) without having to establish a user account or  
24 password;

25 (C) without having to submit personal  
26 identifying information; and

27 (D) without having to overcome any other

1 impediment, including entering a code to access the list;

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

6 (3) be formatted in a manner prescribed by the  
7 commission;

8 (4) be digitally searchable; and

9 (5) use the following naming convention specified by  
10 the Centers for Medicare and Medicaid Services, specifically:

11 <ein>\_<facility-name>\_standardcharges.[json|xml|csv]

12 (g) In prescribing the format of the list under Subsection  
13 (f)(3), the commission shall:

14 (1) develop a template that each facility must use in  
15 formatting the list; and

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

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

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

1 design.

2 (h) The facility must update the list required under  
3 Subsection (a) at least once each year. The facility must clearly  
4 indicate the date on which the list was most recently updated,  
5 either on the list or in a manner that is clearly associated with  
6 the list.

7 Sec. 327.004. CONSUMER-FRIENDLY LIST OF SHOPPABLE  
8 SERVICES. (a) Except as provided by Subsection (c), a facility  
9 shall maintain and make publicly available a list of the standard  
10 charges described by Sections 327.003(c)(2)(B), (C), (D), and (E)  
11 for each of at least 300 shoppable services provided by the  
12 facility. The facility may select the shoppable services to be  
13 included in the list, except that the list must include:

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

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

19 (b) In selecting a shoppable service for purposes of  
20 inclusion in the list required under Subsection (a), a facility  
21 must:

22 (1) consider how frequently the facility provides the  
23 service and the facility's billing rate for that service; and

24 (2) prioritize the selection of services that are  
25 among the services most frequently provided by the facility.

26 (c) If a facility does not provide 300 shoppable services,  
27 the facility must maintain a list of the total number of shoppable

1 services that the facility provides in a manner that otherwise  
2 complies with the requirements of Subsection (a).

3 (d) The list required under Subsection (a) or (c), as  
4 applicable, must:

5 (1) include:

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

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

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

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

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

25 (F) any code used by the facility for purposes of  
26 accounting or billing for each shoppable service included on the  
27 list and any ancillary service, including the Current Procedural



1 Terminology (CPT) code, the Healthcare Common Procedure Coding  
2 System (HCPCS) code, the Diagnosis Related Group (DRG) code, the  
3 National Drug Code (NDC), or other common identifier; and

4 (2) if applicable:

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

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

13 (e) The list required under Subsection (a) or (c), as  
14 applicable, must be:

15 (1) displayed in the manner prescribed by Section  
16 327.003(e) for the list required under that section;

17 (2) available:

18 (A) free of charge;

19 (B) without having to register or establish a  
20 user account or password;

21 (C) without having to submit personal  
22 identifying information; and

23 (D) without having to overcome any other  
24 impediment, including entering a code to access the list;

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

27 (4) updated in the manner prescribed by Section

1 327.003(h) for the list required under that section;

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

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

8 (f) Notwithstanding any other provision of this section, a  
9 facility is considered to meet the requirements of this section if  
10 the facility maintains, as determined by the commission, an  
11 Internet-based price estimator tool that:

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

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

18 (3) is:

19 (A) prominently displayed on the facility's  
20 publicly accessible Internet website; and

21 (B) accessible to the public:

22 (i) without charge; and

23 (ii) without having to register or  
24 establish a user account or password.

25 Sec. 327.005. REPORTING REQUIREMENT. Each time a facility  
26 updates a list as required under Sections 327.003(h) and  
27 327.004(e)(4), the facility shall submit the updated list to the

1 commission. The commission may prescribe the form in which the  
2 updated list must be submitted to the commission.

3 Sec. 327.006. MONITORING AND ENFORCEMENT. (a) The  
4 commission shall monitor each facility's compliance with the  
5 requirements of this chapter using any of the following methods:

6 (1) evaluating complaints made by persons to the  
7 commission regarding noncompliance with this chapter;

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

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

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

14 (b) If the commission determines that a facility is not in  
15 compliance with a provision of this chapter, the commission may  
16 take any of the following actions, without regard to the order of  
17 the actions:

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

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

24 (3) impose an administrative penalty on the facility  
25 and publicize the penalty on the commission's Internet website if  
26 the facility fails to:

27 (A) respond to the commission's request to submit

1 a corrective action plan; or

2 (B) comply with the requirements of a corrective  
3 action plan submitted to the commission.

4 Sec. 327.007. MATERIAL VIOLATION; CORRECTIVE ACTION PLAN.

5 (a) A facility materially violates this chapter if the facility  
6 fails to:

7 (1) comply with the requirements of Section 327.002;

8 or

9 (2) publicize the facility's standard charges in the  
10 form and manner required by Sections 327.003 and 327.004.

11 (b) If the commission determines that a facility has  
12 materially violated this chapter, the commission may issue a notice  
13 of material violation to the facility and request that the facility  
14 submit a corrective action plan. The notice must indicate the form  
15 and manner in which the corrective action plan must be submitted to  
16 the commission, and clearly state the date by which the facility  
17 must submit the plan.

18 (c) A facility that receives a notice under Subsection (b)  
19 must:

20 (1) submit a corrective action plan in the form and  
21 manner, and by the specified date, prescribed by the notice of  
22 violation; and

23 (2) as soon as practicable after submission of a  
24 corrective action plan to the commission, act to comply with the  
25 plan.

26 (d) A corrective action plan submitted to the commission  
27 must:

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

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

6           (e) A corrective action plan is subject to review and  
7 approval by the commission. After the commission reviews and  
8 approves a facility's corrective action plan, the commission may  
9 monitor and evaluate the facility's compliance with the plan.

10          (f) A facility is considered to have failed to respond to  
11 the commission's request to submit a corrective action plan if the  
12 facility fails to submit a corrective action plan:

13           (1) in the form and manner specified in the notice  
14 provided under Subsection (b); or

15           (2) by the date specified in the notice provided under  
16 Subsection (b).

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

20          Sec. 327.008. ADMINISTRATIVE PENALTY. (a) The commission  
21 may impose an administrative penalty on a facility in accordance  
22 with Chapter 241 if the facility fails to:

23           (1) respond to the commission's request to submit a  
24 corrective action plan; or

25           (2) comply with the requirements of a corrective  
26 action plan submitted to the commission.

27          (b) The commission may impose an administrative penalty on a

1 facility for a violation of each requirement of this chapter. The  
2 commission shall set the penalty in an amount sufficient to ensure  
3 compliance by facilities with the provisions of this chapter  
4 subject to the limitations prescribed by Subsection (c).

5 (c) For a facility with one of the following total gross  
6 revenues as reported to the Centers for Medicare and Medicaid  
7 Services or to another entity designated by commission rule in the  
8 year preceding the year in which a penalty is imposed, the penalty  
9 imposed by the commission may not exceed:

10 (1) \$10 for each day the facility violated this  
11 chapter, if the facility's total gross revenue is less than  
12 \$10,000,000;

13 (2) \$100 for each day the facility violated this  
14 chapter, if the facility's total gross revenue is \$10,000,000 or  
15 more and less than \$100,000,000; and

16 (3) \$1,000 for each day the facility violated this  
17 chapter, if the facility's total gross revenue is \$100,000,000 or  
18 more.

19 (d) Each day a violation continues is considered a separate  
20 violation.

21 (e) In determining the amount of the penalty, the commission  
22 shall consider:

23 (1) previous violations by the facility's operator;

24 (2) the seriousness of the violation;

25 (3) the demonstrated good faith of the facility's  
26 operator; and

27 (4) any other matters as justice may require.

1       (f) An administrative penalty collected under this chapter  
2 shall be deposited to the credit of an account in the general  
3 revenue fund administered by the commission. Money in the account  
4 may be appropriated only to the commission.

5       Sec. 327.009. LEGISLATIVE RECOMMENDATIONS. The commission  
6 may propose to the legislature recommendations for amending this  
7 chapter, including recommendations in response to amendments by the  
8 Centers for Medicare and Medicaid Services to 45 C.F.R. Part 180.

9       SECTION 2. This Act takes effect September 1, 2021.