

By: Kolkhorst

S.B. No. 1137

A BILL TO BE ENTITLED

AN ACT

relating to the required disclosure by hospitals of prices for hospital services and items; providing administrative penalties.

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

SECTION 1. Chapter 311, Health and Safety Code, is amended by adding Subchapter A-1 to read as follows:

SUBCHAPTER A-1. DISCLOSURE OF PRICES

Sec. 311.011. DEFINITIONS. In this subchapter:

(1) "Ancillary service" means a hospital item or service that a hospital customarily provides as part of a shoppable service.

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

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

(4) "De-identified maximum negotiated charge" means the highest charge that a hospital has negotiated with all third party payers for a hospital item or service.

(5) "De-identified minimum negotiated charge" means the lowest charge that a hospital has negotiated with all third party payers for a hospital item or service.

(6) "Discounted cash price" means the charge that applies to an individual who pays cash, or a cash equivalent, for a

1 hospital item or service.

2 (7) "Gross charge" means the charge for a hospital
3 item or service that is reflected on a hospital's chargemaster,
4 absent any discounts.

5 (8) "Hospital" means a hospital:

6 (A) licensed under Chapter 241; or

7 (B) owned or operated by this state or an agency
8 of this state.

9 (9) "Hospital items or services" means all items and
10 services, including individual items and services and service
11 packages, that may be provided by a hospital to a patient in
12 connection with an inpatient admission or an outpatient department
13 visit for which the hospital has established a standard charge,
14 including:

15 (A) supplies and procedures;

16 (B) room and board;

17 (C) use of the facility and other areas,
18 generally referred to as facility fees;

19 (D) services of physicians and non-physician
20 practitioners, generally referred to as professional charges; and

21 (E) any other item or service for which a
22 hospital has established a standard charge.

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) "Payer-specific negotiated charge" means the

1 charge that a hospital has negotiated with a third party payer for a
2 hospital item or service.

3 (12) "Service package" means an aggregation of
4 individual hospital 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 hospital for a hospital 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 payer-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 payer" means an entity that is, by
19 statute, contract, or agreement, legally responsible for payment of
20 a claim for a hospital item or service.

21 Sec. 311.012. PUBLIC AVAILABILITY OF PRICE INFORMATION
22 REQUIRED. Notwithstanding any other law, a hospital 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 hospital items or
26 services as described by Section 311.013; and

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

1 limited set of shoppable services as provided in Section 311.014.

2 Sec. 311.013. LIST OF STANDARD CHARGES REQUIRED. (a) A
3 hospital shall:

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

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

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

18 (2) the following charges for each individual hospital
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 payer-specific negotiated charge, listed

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

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

1 with each third party payer and plan; and

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

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

19 (1) be available:

20 (A) free of charge;

21 (B) without having to establish a user account or
22 password; and

23 (C) without having to submit personal
24 identifying information;

25 (2) be digitally searchable; and

26 (3) use the following naming convention specified by
27 the Centers for Medicare and Medicaid Services, specifically:

1 <ein>_<hospital-name>_standardcharges.[json|xml|csv]

2 (g) The hospital must update the list required under
3 Subsection (a) at least once each year. The hospital 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. 311.014. CONSUMER-FRIENDLY LIST OF SHOPPABLE
8 SERVICES. (a) Except as provided by Subsection (c) of this
9 section, a hospital shall maintain and make publicly available a
10 list of the standard charges described by Sections
11 311.013(c)(2)(B), (C), (D), and (E) for each of at least 300
12 shoppable services provided by the hospital. The hospital may
13 select the shoppable services to be included in the list, except
14 that the list must include:

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

17 (2) if the hospital does not provide all of the
18 shoppable services described by Subdivision (1), as many of the
19 shoppable services described by that subdivision that the hospital
20 does provide.

21 (b) In selecting a shoppable service for purposes of
22 inclusion in the list required under Subsection (a), a hospital
23 must consider how frequently the hospital provides the service and
24 the hospital's billing rate for that service.

25 (c) If a hospital does not provide 300 shoppable services,
26 the hospital must maintain a list of the total number of shoppable
27 services that the hospital provides in a manner that otherwise

1 complies with the requirements of Subsection (a).

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

4 (1) include:

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

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

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

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

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

24 (F) any code used by the hospital for purposes of
25 accounting or billing for each shoppable service included on the
26 list and any ancillary service, including the Current Procedural
27 Terminology (CPT) code, the Healthcare Common Procedure Coding

1 System (HCPCS) code, the Diagnosis Related Group (DRG) code, the
2 National Drug Code (NDC), or other common identifier; and

3 (2) if applicable:

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

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

12 (e) The list required under Subsection (a) or (c) of this
13 section, as applicable, must be:

14 (1) displayed in the manner prescribed by Section
15 311.013(e) for the list required under that section;

16 (2) available:

17 (A) free of charge;

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

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

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

24 (4) updated in the manner prescribed by Section
25 311.013(g) for the list required under that section.

26 (f) Notwithstanding any other provision of this section, a
27 hospital is considered to meet the requirements of this section if

1 the hospital maintains, as determined by the commission, an
2 Internet-based price estimator tool that:

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

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

9 (3) is:

10 (A) prominently displayed on the hospital's
11 publicly accessible Internet website; and

12 (B) accessible to the public:

13 (i) without charge; and

14 (ii) without having to register or
15 establish a user account or password.

16 Sec. 311.015. MONITORING AND ENFORCEMENT. (a) The
17 commission may monitor hospital compliance with the requirements of
18 this subchapter using any of the following methods:

19 (1) evaluating complaints made by persons to the
20 commission regarding noncompliance with this subchapter;

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

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

25 (b) If the commission determines that a hospital is not in
26 compliance with a provision of this subchapter, the commission may
27 take any of the following actions, without regard to the order of

1 the actions:

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

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

8 (3) impose an administrative penalty on the hospital
9 and publicize the penalty on the commission's Internet website if
10 the hospital fails to:

11 (A) respond to the commission's request to submit
12 a corrective action plan; or

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

15 Sec. 311.016. MATERIAL VIOLATION; CORRECTIVE ACTION PLAN.

16 (a) A hospital materially violates this subchapter if the
17 hospital:

18 (1) fails to comply with the requirements of Section
19 311.012; or

20 (2) fails to publicize the hospital's standard charges
21 in the form and manner required by Sections 311.013 and 311.014.

22 (b) If the commission determines that a hospital has
23 materially violated this subchapter, the commission may issue a
24 notice of material violation to the hospital and request that the
25 hospital submit a corrective action plan. The notice must indicate
26 the form and manner in which the corrective action plan must be
27 submitted to the commission, and clearly state the date by which the

1 hospital must submit the plan.

2 (c) A hospital that receives a notice under Subsection (b)
3 must:

4 (1) submit a corrective action plan in the form and
5 manner, and by the specified date, prescribed by the notice of
6 violation; and

7 (2) as soon as practicable after submission of a
8 corrective action plan to the commission, act to comply with the
9 plan.

10 (d) A corrective action plan submitted to the commission
11 must:

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

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

17 (e) A corrective action plan is subject to review and
18 approval by the commission. After the commission reviews and
19 approves a hospital's corrective action plan, the commission may
20 monitor and evaluate the hospital's compliance with the plan.

21 (f) A hospital is considered to have failed to respond to
22 the commission's request to submit a corrective action plan if the
23 hospital fails to submit a corrective action plan:

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

26 (2) by the date specified in the notice provided under
27 Subsection (b).

1 (g) A hospital is considered to have failed to comply with a
2 corrective action plan if the hospital fails to address a violation
3 within a specified period of time contained in the plan.

4 Sec. 311.017. ADMINISTRATIVE PENALTY. (a) The commission
5 may impose an administrative penalty on a hospital in accordance
6 with Section 241.059 if the hospital fails to:

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

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

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

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