By: Kolkhorst S.B. No. 1137

(In the Senate - Filed March 8, 2021; March 18, 2021, read first time and referred to Committee on Health & Human Services; March 29, 2021, reported adversely, with favorable Committee Substitute by the following vote: Yeas 8, Nays 0; March 29, 2021, sent to printer.)

COMMITTEE VOTE

	Yea	Nay	Absent	PNV
Kolkhorst	X			
Perry	X			
Blanco	X			
Buckingham	X			
Campbell	X			
Hall	X			
Miles			X	
Powell	X			
Seliger	X			

COMMITTEE SUBSTITUTE FOR S.B. No. 1137 By: Hall

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 payors 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 payors 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 hospital item or service.

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

(8) "Hospital" means a hospital:

(A) licensed under Chapter 241; or

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

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

(A) supplies and procedures;

(B) room and board;

(C) use of the facility and other areas,

generally referred to as facility fees;

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

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

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

(11) "Payor-specific negotiated charge" means the charge that a hospital has negotiated with a third party payor for a hospital item or service.

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

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

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

(A) the gross charge;

(B) the payor-specific negotiated charge;

(C) the de-identified minimum negotiated charge;

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

(E) the discounted cash price.

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

Sec. 311.012. PUBLIC AVAILABILITY OF PRICE INFORMATION REQUIRED. Notwithstanding any other law, a hospital must make public:

(1) 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

(2) 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) A hospital shall:

(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) The standard charges contained in the list required to be maintained by a hospital under Subsection (a) must 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) The list required under Subsection (a) must 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 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 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) The information contained in the list required under Subsection (a) must be published in a single digital file that is in a machine-readable format.

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

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

(1) be available:

(A) free of charge;

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

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

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

(2) be digitally searchable; and

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

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

(g) The hospital must update the list required under Subsection (a) at least once each year. The hospital must 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) Except as provided by Subsection (c), a hospital shall 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. The hospital may select the shoppable services to be included in the list, except that the list must 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) In selecting a shoppable service for purposes of inclusion in the list required under Subsection (a), a hospital must consider how frequently the hospital provides the service and the hospital's billing rate for that service.

(c) If a hospital does not provide 300 shoppable services, the hospital must 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) The list required under Subsection (a) or (c), as applicable, must:

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

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

(2) available:

(A) free of charge;

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

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

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

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

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

(f) 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 commission, 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:

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

(B) accessible to the public:

(i) without charge; and

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

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

(1) evaluating complaints made by persons to the commission 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) If the commission determines that a hospital is not in compliance with a provision of this subchapter, the commission may 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 the commission's Internet website if the hospital fails to:

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

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

Sec. 311.016. MATERIAL VIOLATION; CORRECTIVE ACTION PLAN. (a) A hospital materially violates this subchapter if the hospital:

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

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

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

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

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

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

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

(1) describe in detail the corrective action the hospital will take to address any violation identified by the commission 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) A corrective action plan is subject to review and approval by the commission. After the commission reviews and approves a hospital's corrective action plan, the commission may monitor and evaluate the hospital's compliance with the plan.

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

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

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

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

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

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

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

(b) The commission may 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.

Sec. 311.018. LEGISLATIVE RECOMMENDATIONS. The commission may propose to the legislature recommendations for amending this subchapter, including recommendations in response to amendments by

the Centers for Medicare and Medicaid Services to 45 C.F.R. Part 180.

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

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