

BILL ANALYSIS

C.S.S.B. 1137
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Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The lack of price transparency regarding health care costs has long been seen as contributing to increased health care costs. Others propose that the quality and price of services have improved for the consumer in certain health care fields where there is price competition. In November 2019, the Centers for Medicare and Medicaid Services established rules that require certain facilities to disclose and publish their pricing across the wide range of services that they provide. C.S.S.B. 1137 seeks to codify these disclosure requirements into state law by providing for the required disclosure of charges for certain items and services provided by certain facilities.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Health and Human Services Commission in SECTION 1 of this bill.

ANALYSIS

Public Availability of Price Information

C.S.S.B. 1137 amends the Health and Safety Code to require a facility licensed as a hospital under the Texas Hospital Licensing Law to make public the following:

- 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 the bill; and
- a consumer-friendly list of standard charges for a limited set of shoppable services, as provided by the bill.

List of Standard Charges

C.S.S.B. 1137 requires a facility to do the following:

- maintain a list of all standard charges for all applicable facility items or services; and
- ensure the list is available at all times to the public, including by posting the list electronically in the manner prescribed by the bill.

C.S.S.B. 1137 sets out the applicable items, charges, and codes that must be included on the standard charges list as follows:

- a description of each facility item or service provided by the facility;
- the following charges for each individual facility item or service when provided in either an inpatient setting or an outpatient department setting, as applicable:
 - the gross charge;

- the de-identified minimum negotiated charge;
- the de-identified maximum negotiated charge;
- the discounted cash price; and
- 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
- any code used by the facility for the purposes of accounting or billing for the facility item or service.

C.S.S.B. 1137 also provides for the following:

- the standard charges contained in the maintained list must reflect those 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;
- the information contained in the list must be published in a single digital file that is in a machine-readable format;
- the list must be displayed in a prominent location on the home page of the facility's publicly accessible website or accessible by selecting a dedicated link that is prominently displayed on the home page of the facility's publicly accessible website;
- if the facility operates multiple locations and maintains a single website, the list must be posted for each location the facility operates in a manner that clearly associates the list with the applicable location of the facility;
- the list must be available, free of charge, without having to:
 - establish a user account or password;
 - submit personal identifying information; and
 - overcome any other impediment, including entering a code to access the list; and
- the list must be, as follows:
 - 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;
 - formatted in a manner prescribed by Health and Human Services Commission (HHSC); and
 - digitally searchable.

The list must also use the naming convention as set out in the bill and specified by the Centers for Medicare and Medicaid Services (CMS).

C.S.S.B. 1137 requires HHSC, in prescribing the format of the list, to develop a template that each facility must use and sets out additional requirements regarding the development and design of the template. The facility must update the list at least once each year and 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.

Consumer-Friendly List of Shoppable Services

C.S.S.B. 1137 requires a facility to maintain and make publicly available a consumer-friendly list of the standard charges, described as follows, for each of at least 300 shoppable services provided by the facility:

- the de-identified minimum negotiated charge;
- the de-identified maximum negotiated charge;
- the discounted cash price; and
- 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.

The facility may select the shoppable services to be included in the list, except that the list must include the following:

- the 70 services specified as shoppable services by CMS; or

- if the facility does not provide all of the shoppable services specified by CMS, as many of those services as the facility does provide.

C.S.S.B. 1137 provides the following:

- in selecting a shoppable service for purposes of inclusion in the list, a facility must, as follows:
 - consider how frequently the facility provides the service and the facility's billing rate for that service; and
 - prioritize the selection of services that are among the services most frequently provided by the facility;
- if a facility does not provide 300 shoppable services, the facility must maintain a list of the total number of shoppable services that the facility does provide in a manner that otherwise complies with the bill's requirements for the list;
- the lists required under these bill provisions, as applicable, must include the following:
 - a plain-language description of each shoppable service included on the list;
 - 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;
 - 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;
 - the de-identified minimum negotiated charge that applies to each shoppable service included on the list and any ancillary service;
 - the de-identified maximum negotiated charge that applies to each shoppable service included on the list and any ancillary service; and
 - 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 those specified by the bill; and
- the lists required under these bill provisions must, if applicable:
 - 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
 - indicate if one or more of the shoppable services specified by CMS is not provided by the facility.

C.S.S.B. 1137 provides that the list must be, as follows:

- displayed in a prominent location on the home page of the facility's publicly accessible website or accessible by selecting a dedicated link that is prominently displayed on the home page of the facility's publicly accessible website;
- if the facility operates multiple locations and maintains a single website, posted for each location the facility operates in a manner that clearly associates the list with the applicable location of the facility; and
- available, free of charge, without having to do the following:
 - establish a user account or password;
 - submit personal identifying information; and
 - overcome any other impediment, including entering a code to access the list.

In addition, the list must be, as follows:

- searchable by service description, billing code, and payor;
- updated at least once each year with the date on which the list was most recently updated being clearly indicated either on the list or in a manner that is clearly associated with the list;

- 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
- formatted in a manner prescribed by HHSC.

A facility is considered to meet the requirements for posting the consumer-friendly list of shoppable services if the facility maintains, as determined by HHSC, an Internet-based price estimator tool that, as follows:

- provides a cost estimate for each shoppable service and any ancillary service included on the consumer-friendly list of shoppable services maintained by the facility;
- 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
- is prominently displayed on the facility's publicly accessible website, accessible to the public without charge and without having to register or establish a user account or password.

Reporting, Monitoring, and Enforcement

C.S.S.B. 1137 requires a facility, each time the facility updates one of those lists, to submit the updated list to HHSC and authorizes HHSC to prescribe the form in which the updated list must be submitted.

C.S.S.B. 1137 requires HHSC to monitor facility compliance with the requirements of the bill's provisions relating to the required disclosure of charges using any of the following methods:

- evaluating complaints made by persons to HHSC regarding noncompliance with those provisions;
- reviewing any analysis prepared regarding the noncompliance;
- auditing the websites of facilities for compliance with those provisions; and
- confirming that each facility submitted the required lists.

If HHSC determines that a facility is not in compliance, HHSC may take any of the following actions, without regard to the order of the actions:

- provide a written notice to the facility that clearly explains the manner in which the facility is not in compliance with the bill's provisions;
- request a corrective action plan from the facility if the facility has materially violated a provision of those provisions; and
- impose an administrative penalty on the facility and publicize the penalty on the HHSC website if the facility fails to respond to the HHSC request to submit a corrective action plan or comply with the requirements of a plan submitted to HHSC.

Material Violation and Corrective Action Plan

C.S.S.B. 1137 establishes that a facility materially violates the bill's provisions relating to the required disclosure of charges if the facility fails to:

- comply with the requirements of the bill's provisions relating to the required public availability of charge information; or
- publicize the facility's standard charges in the form and manner required by the bill's provisions relating to the required list of standard charges and to the consumer-friendly list of shoppable services.

If HHSC determines that a facility has materially violated the bill's provisions relating to the required disclosure of charges, HHSC may issue a notice of material violation to the facility and request that the facility submit a corrective action plan. The bill sets out requirements for the notice and requires a facility that receives a notice to do the following:

- 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 the plan to HHSC, act to comply with the plan.

C.S.S.B. 1137 sets out the required components of a corrective action plan and establishes that a plan is subject to review and approval by HHSC. After HHSC reviews and approves a facility's plan, HHSC may monitor and evaluate the facility's compliance with the plan. The bill establishes the circumstances in which a facility is considered to have failed to respond to the HHSC request to submit a corrective action plan and establishes 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.

Administrative Penalty

C.S.S.B. 1137 authorizes HHSC to impose an administrative penalty on a facility in accordance with the Texas Hospital Licensing Law if the facility fails to do the following:

- respond to the HHSC request to submit a corrective action plan; or
- comply with the requirements of a corrective action plan submitted to HHSC.

C.S.S.B. 1137 authorizes HHSC to impose an administrative penalty on a facility for a violation of each requirement of the bill's provisions relating to the required disclosure of charges and requires HHSC to set the penalty in an amount sufficient to ensure compliance by facilities with those provisions. The bill sets out a schedule for the administrative penalties that caps the amount of a penalty at \$10, \$100, or \$1,000 for each day the facility violates the bill's provisions, depending on the facility's total gross revenue reported to CMS or to another entity designated by HHSC rule, with each day a violation continues being considered a separate violation. The bill sets out the matters HHSC must consider in determining the amount of the penalty. The bill requires the administrative penalties to be deposited to the credit of an account in the general revenue fund administered by HHSC. Money in the account may be appropriated only to HHSC.

Legislative Recommendations

C.S.S.B. 1137 authorizes HHSC to propose to the legislature recommendations for amending the bill's provisions relating to the required disclosure of charges, including recommendations in response to amendments by CMS to federal law.

EFFECTIVE DATE

September 1, 2021.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 1137 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

The substitute does not apply to a hospital owned or operated by the state or an agency of the state, as the engrossed did. The substitute includes multiple updated references reflecting that the substitute is applicable only to a facility that is a hospital licensed under the Texas Hospital Licensing Law.

The substitute includes requirements, which were not included in the engrossed, for both the list of standard charges and the consumer-friendly list of shoppable services to be accessible to a common commercial operator of an Internet search engine and it also includes provisions absent from the engrossed requiring the lists to be formatted in a manner prescribed by HHSC.

The substitute includes a requirement, which was not included in the engrossed, for a facility, in selecting shoppable services for inclusion on the list of such services, to prioritize the selection of services that are among the services most frequently provided by the facility.

The substitute includes a reporting requirement, which was not included in the engrossed, for a facility to submit an applicable updated list, in a form that may be prescribed by HHSC, each time the facility updates the list of standard charges or the consumer-friendly list of shoppable services. The substitute includes an enforcement option, which was not included in the engrossed, for HHSC to confirm that each facility submitted an updated list.

The substitute does not include the administrative penalty, included in the engrossed, for each violation of the bill's provisions 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 the bill's provisions in the same day. However, the substitute requires HHSC instead to set the penalty in an amount sufficient to ensure compliance by facilities with the bill's provisions. The substitute sets out a schedule for the administrative penalties that caps the amount of a penalty at \$10, \$100, or \$1,000 for each day the facility violates the bill's provisions, depending on the facility's total gross revenue reported to CMS or to another entity designated by HHSC rule.

The substitute requires the deposit of an administrative penalty collected under the substitute's provisions to the credit of an account in the general revenue fund administered by HHSC and restricts appropriation of money in the account to HHSC. The engrossed did neither of those things.