

SUBJECT: Requiring licensed hospitals to disclose certain health care costs to public

COMMITTEE: Public Health — committee substitute recommended

VOTE: 10 ayes — Klick, Guerra, Allison, Campos, Coleman, Jetton, Oliverson,
Price, Smith, Zwiener

0 nays

1 present not voting — Collier

SENATE VOTE: On final passage, March 31 — 31-0

WITNESSES: None.

DIGEST: CSSB 1137 would require a facility, defined as a licensed hospital, to disclose to the public certain health care cost information, including a list of standard charges and shoppable services. The bill would specify the required content and format for disclosing information electronically.

Definitions. "Facility items or services" would be defined as all items and services that could be provided by a facility to a patient in connection with an inpatient admission or an outpatient department visit, as applicable, for which the facility had established a standard charge as specified by the bill.

"Standard charge" would mean the regular rate established by the facility for an item or service provided to a specific group of paying patients. The term would include the gross charge, the payor-specific negotiated charge, the de-identified minimum negotiated charge, the de-identified maximum negotiated charge, and the discounted cash price.

"Gross charge" would mean the charge for a facility item or service, absent any discounts.

"Payor-specific negotiated charge" would mean the charge that a facility

negotiated with a third party payor for a facility item or service.

"De-identified maximum negotiated charge" would mean the highest charge that a facility negotiated with all third party payors for a facility item or service. "De-identified minimum negotiated charge" would mean the lowest charge that a facility negotiated with all third party payors for a facility item or service.

"Discounted cash price" would mean the charge that applied to an individual who paid cash, or a cash equivalent, for a facility item or service.

"Shoppable service" would be defined as a service that could be scheduled by a health care consumer in advance.

Required disclosures. The bill would require a facility to publish online a digital file in a machine-readable format that contained a list of all standard charges for all facility items or services and a consumer-friendly list of standard charges for a limited set of shoppable services.

List of standard charges. The bill would require a facility to maintain a list of all standard charges for all facility items or services and ensure the list was available at all times to the public, including posting the list electronically. The standard charges in the list would have to reflect the standard charges applicable to a facility's location.

Content. The list would have to include a description of each item or service provided by the facility and specified charges for each individual facility item or service when provided in either an inpatient setting or outpatient department setting, as applicable, including:

- 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.

The list also would have to include the code used for accounting or billing for the facility item or service.

Format. The information in the list would have to be published in a single digital file that was in a machine-readable format.

The bill would require the list to:

- be prominently displayed on the facility's website;
- be available free of charge or without submitting personal identifying information;
- be accessible to a common commercial operator;
- be formatted in a manner as prescribed by the Health and Human Services Commission (HHSC);
- be digitally searchable; and
- use the naming convention specified by the Centers for Medicare and Medicaid Services (CMS).

The facility would have to update the list at least once a year.

Consumer-friendly list of shoppable services. The bill would require a facility to maintain and make publicly available a list of certain standard charges for each of at least 300 shoppable services provided by the facility. The facility could select the services for inclusion in the list, except the list would have to include the 70 services specified as shoppable services by CMS. If the facility did not provide all 70 services, the list would include as many of those services as the facility did provide.

In selecting a shoppable service, a facility would have to consider how frequently the facility provided the service and the facility's billing rate. The facility also would have to prioritize the selection of services that were among the services most frequently provided.

The bill would require facilities that did not provide 300 shoppable services to maintain a list of the total number of shoppable services.

Content. The list would have to include for each shoppable service:

- a plain-language description;
- the payor-specific negotiated charge;
- the discounted cash price;
- the de-identified minimum negotiated charge;
- the de-identified maximum negotiated charge; and
- the code used for accounting or billing.

The list would have to include additional information as specified in the bill.

Format. The bill would require the list to be:

- prominently displayed on the facility's publicly accessible website;
- available free of charge or without submitting personal identifying information;
- searchable by service description, billing code, and payor;
- updated at least once a year;
- accessible to a common commercial operator; and
- formatted in a manner as prescribed by HHSC.

Exception. A facility would be considered to meet the requirements for the shoppable services list if the facility maintained, as determined by HHSC, an internet-based price estimator tool that met criteria specified in the bill.

Reporting. The bill would require facilities to submit updated lists to HHSC.

Enforcement. HHSC would be required to monitor each facility's compliance with the bill's requirements using specified methods, including auditing facility websites and evaluating complaints submitted to the commission. If HHSC determined that a facility was noncompliant with a bill provision, the commission could take certain actions, including

requesting a corrective action plan from the facility and imposing an administrative penalty.

Material violation; corrective action plan. A facility would materially violate the bill if the facility failed to publicize the list of standard charges or a consumer-friendly list of standard charges for shoppable services.

If HHSC determined that a facility had materially violated the bill, the commission could issue a notice of material violation to the facility and request that the facility submit a corrective action plan. The notice would have to clearly state the date by which the facility would have to submit the plan.

If the facility failed to address a violation within the specified period of time contained in the corrective action plan, the facility would be considered to have failed to comply with the plan.

Administrative penalty. The bill would allow HHSC to impose an administrative penalty, subject to certain limitations, on a facility if the facility failed to respond to the commission's request to submit a corrective action plan or did not comply with the requirements of the corrective action plan.

The bill would prohibit administrative penalties from exceeding:

- \$10 for each day the facility violated the bill, if the facility's total gross revenue was less than \$10 million;
- \$100 for each day the facility violated the bill, if the facility's total gross revenue was at least \$10 million and less than \$100 million; and
- \$1,000 for each day the facility violated the bill, if the facility's total gross revenue was at least \$100 million.

Each day a violation continued would be considered a separate violation.

A collected administrative penalty would have to be deposited to the

credit of an account in the general revenue fund administered by HHSC. Money in the account could be appropriated only to the commission.

Other provisions. The bill would allow HHSC to propose to the Legislature recommendations for amending the bill, including recommendations in response to amendments by CMS to federal law.

The bill would take effect September 1, 2021.

**SUPPORTERS
SAY:**

CSSB 1137 would improve price transparency for consumers by codifying a federal rule that requires certain hospitals to disclose costs of health care services.

Currently, health care prices often are opaque, leaving consumers without adequate information to make decisions regarding health care services. Many Texans have reported skipping health care because they did not know the cost of services, and others have delayed care because of high costs. The bill would increase consumers' access to health care cost information, empowering them to make more informed choices about their health care prior to receiving services. Increasing access to health care cost information is especially important for consumers with high-deductible health plans, which generally require consumers to pay high out-of-pocket expenses before the plan starts covering certain services.

Requiring hospitals to disclose prices of hospital services would create competition in pricing and could incentivize hospitals to provide the same, high-quality care at lower costs in order to serve more patients. Additionally, the bill would create a joint effort by the federal and state government to ensure hospitals complied with the federal price transparency rule.

The bill also would create flexibility for hospitals by providing an exception to the requirements for the list of shoppable services if a hospital had a price estimator tool that met certain criteria.

CRITICS

CSSB 1137 may not address the primary cause of rising health care costs

SAY: by requiring the public disclosure of rates for certain services. Instead, the bill should focus price transparency efforts on the patient's cost-sharing responsibility.

OTHER CRITICS SAY: CSSB 1137 should apply to all hospitals, including hospitals that are owned or operated by the state or a state agency.

NOTES: The House companion bill, HB 2487 by Oliverson, was considered by the House Public Health Committee in a public hearing on April 7 and left pending.