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H.B. 49*
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Bill Analysis

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Version: As Reported by Senate Small Business and Economic Opportunity Committee

Primary Sponsors: Reps. Ferguson and Barhorst

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SUMMARY

- Requires hospitals to comply with the federal price transparency law.
- Requires the hospital to maintain and make public a machine-readable file containing a list of standard charges for the hospital's shoppable services.
- Requires the Director of Health to monitor each hospital's compliance with the bill's requirements and in cases of noncompliance, to impose penalties, including fines.
- Prohibits a medical creditor or medical debt collector from sharing or reporting any patient medical debt to a consumer reporting agency for a period of one year after the patient's first bill.
- Prohibits a hospital or multi-hospital system that acquires or acquired an existing, independent outpatient physician facility from requiring a third-party payor or self-pay individual to pay facility fees in connection with any health care services or items provided at that outpatient facility, beginning July 1, 2027.

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* This analysis was prepared before the report of the Senate Small Business and Economic Opportunity Committee appeared in the Senate Journal. Note that the legislative history may be incomplete.

DETAILED ANALYSIS

Availability of hospital price information

The bill directs each hospital located in this state to comply with the federal price transparency law and establishes several state-level requirements respecting the list of standard charges for the hospital's shoppable services that must be compiled and made publicly available under federal law. As part of establishing these requirements, the bill repeals current law requiring every hospital to make available for public inspection a price information list, which includes charges for certain hospital services.[1]

Definitions

The bill defines the following terms for the purposes of hospital price transparency:

- "**Hospital**" means an institution or facility that provides inpatient medical or surgical services for a continuous period longer than twenty-four hours and includes a children's hospital.

[1] R.C. 3727.42, 3727.44, and 3727.45.

- "**Personal data**" means any information that is linked or reasonably linkable to an identified or identifiable person in Ohio. "Personal data" does not include publicly available information or personal data that has been deidentified or aggregated using commercially reasonable methods, so that neither the associated person, nor a device linked to that person, can be reasonably identified.
- "**Process**" or "**processing**" means any operation or set of operations that are performed on personal data, whether or not by automated means, including the collection, use, storage, disclosure, analysis, deletion, transfer, or modification of personal data.
- "**Publicly available information**" means information that is lawfully made available from federal, state, or local government records or widely available media.
- "**Shoppable service**" means a service that a health care consumer may schedule in advance.
- "**Targeted advertising**" means displaying an advertisement that is selected based on personal data obtained from the use of a hospital's internet-based price estimator tool by a person in this state. "Targeted advertising" does not include any of the following:
  - Advertising in response to the user's request for information or feedback;
  - Advertisements based on activities within a hospital's own websites or online applications;
  - Advertisements based on the context of a user's current search query, visit to a website, or online application;
  - Processing personal data solely for measuring or reporting advertising performance, reach, or frequency.
- "**Federal price transparency law**" means section 2718(e) of the "Public Health Service Act," 42 U.S.C. 300gg-18, and hospital price transparency rules adopted by the United States Department of Health and Human Services and the United States Centers for Medicare and Medicaid Services implementing that section, including the rules and requirements under 45 C.F.R. 180.[2]

The following terms are not defined in the bill, but are incorporated into the bill through the federal price transparency law:

- "**Standard charge**" means the regular rate established by the hospital for an item or service provided to a specific group of paying patients and includes 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.
- "**Hospital items or services**" or "**items or services**" mean all items or services that may be provided by a hospital to a patient in connection with an inpatient admission or

[2] R.C. 3727.31.

outpatient department visit for which the hospital has established a standard charge, including supplies and procedures, room and board, hospital or facility fees, professional charges, and other items or services for which the hospital has established a standard charge.

- "**Chargemaster**" means the list maintained by the hospital of each hospital item or service for which the hospital has established a charge.
- "**Ancillary service**" means a hospital item or service that a hospital customarily provides as part of a shoppable service.
- "**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.
- "**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.
- "**Discounted cash price**" means the charge that applies to an individual who pays cash, or a cash equivalent, for a hospital item or service.
- "**Gross charge**" means the charge for a hospital item or service that is reflected on a hospital's chargemaster, absent any discounts.
- "**Machine-readable format**" means a digital representation of data or information in a file that can be imported or read into a computer system for further processing.
- "**Payor-specific negotiated charge**" means the charge that a hospital has negotiated with a third-party payor for a hospital item or service.
- "**Service package**" means an aggregation of individual hospital items or services into a single service with a single charge.
- "**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.[3]

Federal price transparency law

Since January 1, 2021, each hospital operating in the U.S. is required to make public both of the following under the federal price transparency law:

- A machine-readable file containing a list of all standard charges for all items and services;
- A consumer-friendly list of standard charges for a limited set of shoppable services.[4]

The list of standard charges must include – for each item or service – the item's or service's description, gross charge, payor-specific negotiated charge, de-identified minimum

[3] R.C. 3727.31; 45 Code of Federal Regulations (C.F.R.) 180.20, not in the bill.

[4] 45 C.F.R. 180.40.

negotiated charge, de-identified maximum negotiated charge, discounted cash price, and any billing or accounting code. The list must be updated annually.

In the case of shoppable services, a hospital must make public the standard charges for as many of the 70 CMS-specified shoppable services it provides. It also must make public as many additional hospital-selected shoppable services for a combined total of at least 300 shoppable services. CMS requires the standard charge information for shoppable services to be updated annually.

Should a hospital fail to comply with the federal hospital price transparency rule, CMS may provide written notice to the hospital of a specific violation, request a corrective action plan from the hospital, or impose a civil monetary penalty on the hospital and publicize the penalty on a CMS website. Monetary penalties range from $300 per day for smaller hospitals with a bed count of 30 or fewer to $10 per bed per day for hospitals with a bed count greater than 30, for a maximum daily amount of $5,500.[5]

The bill establishes an affirmative requirement under Ohio law that each hospital in the state comply with the federal price transparency law. In the event of noncompliance, a hospital may be subject to administrative penalties by both CMS and by the Ohio Department of Health (see "**Administrative penalties**" below).[6]

Shoppable services list

The bill restates that each hospital must maintain and make publicly available a list of certain standard charges for the hospital's shoppable services, as required by the federal price transparency law. It also includes several state-level requirements about the list, which are discussed in more detail below.[7]

Hospital selection of shoppable services

Under the federal price transparency law and the bill, subject to certain conditions, a hospital may select the shoppable services to be included on its list. The bill requires that, during the period beginning two years after the bill's effective date and ending four years after the bill's effective date, the list must include at least 400 shoppable services, unless the hospital provides fewer than 400 shoppable services, in which case the list must include the number of shoppable services the hospital provides. Beginning four years after the bill's effective date, the list must include at least 500 shoppable services, unless the hospital provides fewer than 500 shoppable services, in which case the list must include the number of shoppable services the hospital provides.[8]

[5] 45 C.F.R. 180.50 through 180.90, not in the bill.

[6] R.C. 3727.32(A).

[7] R.C. 3727.32(B)(1); 45 C.F.R. 180.60, not in the bill.

[8] R.C. 3727.32(B)(2).

Pursuant to the federal price transparency law, the list must include the 70 services that CMS specifies as shoppable services. If the hospital does not provide all 70 of those services, the list must include as many of them as the hospital provides.[9]

Plain language requirement

The bill requires that the list be readable in plain language without the use of software. So while a hospital must publish the list as a machine-readable file, as required by the federal price transparency law, it must also ensure that the file can be read in plain language, or publish the same information in a format which can be read in plain language.[10]

Price estimator tool

As an alternative to the list of standard charges for shoppable services, the bill allows a hospital to make available an internet-based price estimator tool. The price estimator tool must fulfill the requirements established in the federal price transparency law. Additionally, the bill requires a hospital to take reasonable steps to improve the accuracy and performance of the tool, to regularly update the underlying data used by the tool, and to audit price estimates generated by the tool for quality assurance purposes.

The bill prohibits hospitals from selling the personal data of a person in this state acquired from an internet-based price estimator tool. Furthermore, the bill prohibits hospitals from using, selling, or processing that personal data for the purposes of targeted advertising.[11]

Federal requirements

By requiring hospitals located in this state to comply with the federal price transparency law, the bill incorporates certain federal requirements related to the list of standard charges for shoppable services. These requirements are discussed in more detail below. But, to be clear, they are not restated in the bill or anywhere in the Revised Code.

Required data elements

Pursuant to the federal price transparency law, each hospital's list must contain the following information:

- A plain-language description of each shoppable service the list includes;
- The following charges for each shoppable service included on the list and any ancillary service: the payor-specific negotiated charge, the discounted cash price or gross charge, the de-identified minimum negotiated charge, the de-identified maximum negotiated price, and any billing or accounting code used by the hospital.

In the case of the payor-specific negotiated charge, the bill requires it to be listed by the third-party payor's name and health plan associated with the charge and be displayed in a

[9] 45 C.F.R. 180.60, not in the bill.

[10] R.C. 3727.32(B)(3).

[11] R.C. 3727.32(C) and (D).

manner that clearly associates the charge with each third-party payor and plan. And with respect to billing and accounting codes, the list may include 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 another common identifier.

The list must 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 service in an inpatient setting, an outpatient department setting, or both. The list also must indicate if one or more of the shoppable services specified by CMS is not provided by the hospital.[12]

Conditions

Pursuant to the federal price transparency law, the list of standard charges for these shoppable services to meet certain conditions, including those relating to accessibility and formatting.[13] The conditions are as follows:

- The list must be available free of charge; without having to register or establish a user account or password; without having to submit personal identifying information; and without having to overcome any other impediment in order to access the list, including entering a code or completing any security measure;
- The list must be accessible automated searches and direct file downloads through a link posted on a publicly available website;
- The list must be searchable by service description, billing code, and payor;
- The list must be published as a single, digital, machine-readable file (see "**Machine-readable files**" below). Beginning July 1, 2024, that machine-readable file must conform to CMS requirements under the federal price transparency law regarding a template layout, data specifications, and data dictionary.[14]

Machine-readable files

Pursuant to the federal price transparency law, a hospital must include the plain language description and charge information for each standard charge described above (see "**List items**"), the discounted cash price for any service or item when provided in an inpatient or outpatient department setting, and any code used by the hospital for purposes of accounting or billing.

However, beginning July 1, 2024, the federal price transparency law's requirements regarding how hospitals encode their machine readable files will change. Following this change, the file must still include the same charge information for each standard charge, any code used by the hospital for purposes of accounting or billing, and a description of each item or service,

[12] R.C. 3727.32(B)(1); 45 C.F.R. 180.60(b).

[13] R.C. 3727.32; 45 C.F.R. 180.50(d) and 180.60(d).

[14] 45 C.F.R. 180.50(c).

though that description must also state whether it was provided in connection with an inpatient admission or outpatient department visit. Additionally, the file must include certain identifying information of the hospital, CMS template information, payer and plan names, the method used to establish the standard charge, and whether the standard charge should be interpreted by a user as a dollar amount or if it is based on a percentage or algorithm. If it is the latter, must also describe the percentage or algorithm that determines the dollar amount for the item or service.[15]

If the bill's effective date occurs on or after July 1, 2024, then the bill will require hospitals to comply with the new set of requirements regarding machine-readable files.

Hospital website

Pursuant to the federal price transparency law, each list must either be displayed in a prominent location on the hospital's home page of its website or accessible by selecting a dedicated link that is prominently displayed on the home page. The website must also maintain a .txt file in its root folder which includes identifying and contact information for the hospital, the URL of the source page which hosts the machine-readable file, and a direct link to the file. Lastly, the hospital must include a link in the footer of its website labeled "Price Transparency" and which links directly to the webpage hosting the machine readable file.[16]

Updates

At least once each year, under the federal price transparency law, the hospital must update the list and clearly indicate the date of the update.[17]

Violations

The bill requires hospitals in this state to do all of the following:

- Make public and maintain both of the lists required by federal price transparency law;
- Make public and maintain the list required by the bill;
- Comply with all other provisions of the bill that apply to the lists, including the provisions of the federal price transparency law when applicable and with respect to the federally required lists.

Failing to comply with any of these requirements constitutes a violation of this bill. This means that any violation of the federal price transparency law would also be a violation of state law.[18]

[15] 45 C.F.R. 180.50(b), not in the bill.

[16] 45 C.F.R. 180.50(d), not in the bill.

[17] 45 C.F.R. 180.60(e), not in the bill.

[18] R.C. 3727.33(A).

Director of Health duties

The bill charges the Director of Health with enforcing the bill's list-related provisions, including by monitoring hospitals for compliance and imposing penalties.

Monitoring

The Director of Health must monitor each hospital to determine if it is in compliance with the bill's charge list requirements. Such monitoring may include evaluating complaints made to the Director, reviewing any analysis prepared regarding hospital compliance or noncompliance, and auditing hospital websites. When the Director reviews a hospital's application to renew its license under Ohio law, the bill requires the Director to consider whether the hospital is violating or has violated the provisions of the bill.[19]

List of noncompliant hospitals

The bill also requires the Director to create and make publicly available a list identifying each hospital that is not in compliance. The initial list of noncompliant hospitals must be created and included on the Department of Health's website not later than 90 days after the bill's effective date. The Director then must update the list and website at least every 30 days thereafter.[20]

This list is considered a public record for the purposes of Ohio's Public Records Law. In addition, once the Director has determined that a hospital is not in compliance, the materials that consist of notices, orders, communications, and determinations by the Director are also considered public records.[21]

Notice of violation and corrective action plan

If the Director of Health determines that a violation has occurred, the Director must issue a notice of violation to the hospital. In the notice, the Director must clearly explain the manner in which the hospital is not in compliance.

When issuing a notice of violation, the Director must require the hospital to submit a corrective action plan. The notice must indicate the form and manner in which the corrective action plan is to be submitted and the date by which it must be submitted. Under the bill, the submission date must not be less than 15 days after the notice of violation is sent.

In the plan, the hospital must provide a detailed description of the corrective action it will take to address each violation the Director has identified. The hospital also must specify the date by which it will complete the corrective action, which cannot be more than 90 days after it submits the plan to the Director.

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[19] R.C. 3727.33(B) and (C).

[20] R.C. 3727.33(D)(1) and (E).

[21] R.C. 3727.33(D)(2) and (3).

The corrective action plan is subject to the Director's review and approval. If approved, the Director must monitor and evaluate the hospital's compliance with the plan. The bill specifically prohibits a hospital from failing to do the following: respond to the requirement to submit a plan; submit the plan in the form and manner and by the date specified by the Director; complete the corrective action by the date specified in the plan.[22]

Administrative penalties

If a hospital fails to maintain and make public any of the lists required by the bill or the federal price transparency law and fails to respond to a notice of violation or submit a corrective action plan or complete the corrective action, the Director must impose an administrative penalty on the hospital.[23] In imposing the penalty, the Director is required to act in accordance with Ohio's Administrative Procedure Act.[24]

Penalty amount

The Director must select the penalty amount for a violating hospital, subject to the maximum amounts outlined in the bill. In the case of a hospital with a bed count of 30 or fewer, the penalty must not be higher than $300. For a hospital with a bed count that is greater than 30 and equal to or fewer than 550, the penalty must not be higher than $10 per bed. And with respect to a hospital whose bed count exceeds 550, the penalty must not be higher than $5,500.[25]

In selecting a penalty amount, the Director must choose one that is sufficient to ensure compliance. The Director also is required by the bill to consider any previous violations by the hospital's operator, the seriousness of the violation, the demonstrated good faith of the hospital's operator, and any other matter as justice may require.[26]

The bill creates the Hospital Price Transparency Fund in the state treasury. Penalties collected under the bill must be deposited into this fund. This money will be used to administer and enforce the bill's provisions, except that the Director may use a portion for purposes of informing the public about the availability of hospital price information and other consumer rights under the bill.[27]

Reports

The bill requires the Director of Health to prepare on an annual basis a report on the hospitals that have violated its provisions. In addition, if Congress or CMS makes any changes to the federal price transparency rule, the Director must prepare a report within 60 days containing

[22] R.C. 3727.34.

[23] R.C. 3727.35(A).

[24] R.C. 3727.35(B); R.C. Chapter 119, not in the bill.

[25] R.C. 3727.35(C)(1).

[26] R.C. 3727.35(C)(2).

[27] R.C. 3727.35(D) and 3727.351.

recommendations for conforming the bill's provisions to match the change to the federal law, or stating that no conforming changes are necessary. These reports must be submitted to the Governor, General Assembly, and chairpersons of the standing committees with primary responsibility for health legislation.[28]

Collection actions

The bill also prohibits certain collection actions taken by medical creditors and medical debt collectors. As defined in the bill, a "medical creditor" means a facility or provider to whom a patient owes money for health care services, or the facility or provider that provided those services if the debt has been purchased by a medical debt buyer. A "medical debt buyer" is a person that is engaged in the business of purchasing medical debts for collection purposes, whether it collects the debts itself, hires a third party for collection, or retains an attorney for litigation to collect the debts. The bill defines a "medical debt collector" as a person that is engaged in the business of collecting medical debts originally owed or due to another, which includes a medical debt buyer.[29]

Under the bill, a medical creditor or medical debt collector may not share or report any patient medical debt to a consumer reporting agency for a period of one year beginning on the date when the patient is first sent a bill for the medical debt. After this one-year period, a medical creditor or medical debt collector must send a patient at least one additional bill and provide notice required by the federal Debt Collection Practice Law at least 30 days before reporting any medical debt to any consumer reporting agency. The amount reported must be the same as the amount stated in the bill, and the bill must state that the debt is being reported to a consumer reporting agency.[30]

Hospital price information list – current law background

Under existing law repealed by the bill, a hospital must compile and make available to the public a price information list containing all of the following:

- The usual and customary room and board charges for each level of care within the hospital, including private rooms, semiprivate rooms, other multiple patient rooms, and intensive care or other specialty units;
- Rates charged for nursing care;
- The usual and customary charges for the following services: the 30 most common X-ray and radiologic procedures; the 30 most common laboratory procedures; emergency room services; operating room services; delivery room services; physical, occupational, and

[28] R.C. 3727.37.

[29] R.C. 3727.36(A)(5), (6), and (7).

[30] R.C. 3727.36(B) through (E); 15 United States Code (U.S.C.) 1692g, not in the bill.

pulmonary therapy services; and any other services designated as high volume in rules adopted by the Director of Health;

- The hospital's billing policies, including whether it charges interest on an amount not paid in full by any person or government entity and the interest rate charged;
- Whether or not the charges listed include fees for the services of hospital-based anesthesiologists, radiologists, pathologists, and emergency room physicians and, if a charge does not include those fees, how that fee information may be obtained.[31]

Current law requires the hospital to make the price information list publicly available in each of the following three ways.[32] First, it must be available free of charge on the hospital's website. Second, on request, the hospital must provide a paper copy of the list to any person or governmental agency, subject to payment of a reasonable fee for copying and processing. And third, at the time of a patient's admission or as soon as practical after admission, the hospital must inform the patient of the list's availability and on request, provide the patient with a free copy of it.

If a hospital does not make its price information list publicly available, current law allows the Director of Health to seek from the court of common pleas a temporary or permanent injunction restraining the hospital from failing to make it publicly available.[33]

Facility fees

The bill prohibits a hospital or multi-hospital system that acquires or acquired an existing, independent outpatient physician facility, from requiring a third-party payor or self-pay individual to pay facility fees in connection with any health care services or items provided to a patient at that facility. This applies when the hospital or multi-hospital system operates that facility as an outpatient facility subject to the hospital's control.[34]

An "outpatient facility" is defined as a health care facility that is an off-campus facility located apart from a hospital, which provides diagnosis or diagnosis and treatment for ambulatory patients, which conducts patient care under licensed physicians, and which offers to nonhospitalized patients various services from those physicians.

An "outpatient physicians facility" is defined to mean an outpatient facility owned and operated by one or more private licensed physicians, and does not include those owned, operated by, or subject to the control and direction of any hospital or multi-hospital system.[35]

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[31] R.C. 3727.42(B), repealed by the bill.

[32] R.C. 3727.42(C), repealed by the bill.

[33] R.C. 3727.45, repealed by the bill.

[34] R.C. 3727.42(A).

[35] R.C. 3727.41(M) and (N).

A "third-party payor" is an entity that is legally responsible for payment of a claim for a health care service or item. However, this includes governmental health plans which are established or maintained by the government of the United States, the government of any state or political subdivision, or any agency of the federal or state government or political subdivision. This includes Medicare and Medicaid managed care health plans. In other words, the bill permits a hospital to charge facility fees to governmental health plans including Medicare and Medicaid managed care health plans.[36]

The prohibition begins July 1, 2027, and applies only to existing outpatient physician facilities purchased or acquired by a hospital or multi-hospital system. It does not apply to outpatient facilities that are constructed by a hospital or multi-hospital system, or that did not previously operate as outpatient physician facilities prior to their acquisition by a hospital or multi-hospital system.[37]

HISTORY

Action	Date
Introduced	02-15-23
Reported, H. Insurance	03-29-23
Passed House (90-5)	06-27-23
Reported, S. Small Business and Economic Opportunity	--

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[36] R.C. 3727.41(F).

[37] R.C. 3727.42(B).