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**H.B. 49**
**135th General Assembly**

# Bill Analysis

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**Version:** As Reported by House Insurance

**Primary Sponsors:** Reps. Ferguson and Barhorst

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## SUMMARY


- Requires each hospital to maintain and make public a list of all standard charges for all hospital items or services.
- Requires the hospital to maintain and make public a consumer-friendly 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 noncompliant hospital from taking a collection action against a patient for debts owed for hospital items or services provided during the period of noncompliance.
- 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.


## TABLE OF CONTENTS

# DETAILED ANALYSIS

## Availability of hospital price information

H.B.49 directs each hospital to maintain and make public both of the following:

- A digital file in a machine-readable format that contains a list of all standard charges for all hospital items and services;[1]
- A consumer-friendly list of standard charges for a limited set of shoppable services, or services that a health care consumer may schedule in advance.[2]

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.[3] Many of the bill's provisions closely mirror those in the hospital price transparency rule adopted by the federal Centers for Medicare and Medicaid Services (CMS) and effective since January 1, 2021.[4]

[1] R.C. 3727.32 and 3727.33.

[2] R.C. 3727.32 and 3727.34.

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

[4] 45 Code of Federal Regulations (C.F.R.) Part 180.

## Definitions

The bill relies on the following definitions.[5]

- "**Standard charge**" means the regular rate established by the hospital for a hospital 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**" mean all items or services that may be provided to a patient in connection with an inpatient admission or outpatient department visit for which the hospital has established a standard charge, including supplies and procedures, room and board, hospital fees, and professional charges.
- "**Shoppable service**" means a service that a health care consumer may schedule in advance.
- "**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 information in a file that can be imported or read into a computer system for further processing and includes .XML, .JSON, and .CSV formats.
- "**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.

[5] R.C. 3727.31.

## Standard charges

Under the bill, each hospital must maintain a list of all standard charges for all hospital items or services.[6] A hospital also must ensure that the list of standard charges is available at all times to the public.

### Single digital file – machine readable format

The bill requires the information contained in the list to be published in a single digital file that is in a machine-readable format.

### List items

Each hospital must include the below items in the required list of standard charges:

- A description of each hospital item or service that the hospital provides;
- The following charges for each hospital item or service when provided in either an inpatient setting or outpatient department setting: the gross charge, the de-identified minimum negotiated charge, the de-identified maximum negotiated charge, the discounted cash price, the payor-specific negotiated charge, and any billing or accounting code used by the hospital for the item or service.

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 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.

### Hospital location

The standard charges contained in a hospital's list must reflect the standard charges applicable to that hospital's location, regardless of whether the hospital operates in more than one location or under the same license as another hospital.

## Shoppable services

Under the bill, each hospital must maintain and make publicly available a list of certain standard charges for the hospital's shoppable services. These standard charges include the following: the de-identified minimum negotiated price, the de-identified maximum negotiated price, the discounted cash price, and the payor-specific negotiated charge.

### Hospital selection of shoppable services

During the period beginning on the bill's effective date and ending December 31, 2024, the hospital may select the shoppable services to be included on its list, with the following

[6] R.C. 3727.33.

conditions. First, the list must include at least 300 shoppable services, unless the hospital provides fewer than 300 shoppable cases. In that case, the list must include the number of shoppable services the hospital provides.

Second, of the 300 or fewer shoppable services that the hospital provides, 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.

In selecting a shoppable service, the bill requires each hospital to consider how frequently the hospital provides the service and the billing rate for that service. The hospital also must prioritize the selection of services that are among the services it most frequently provides.

Beginning January 1, 2025, the hospital will no longer select the shoppable services for its list and instead must include all shoppable services it provides.

### List items

The bill requires each hospital's list of shoppable services to 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 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.

If applicable, 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.

## Common requirements

### Conditions

The bill requires the list of standard charges and list of shoppable services to meet certain conditions, including those relating to accessibility and formatting.[7] The conditions are as follows:

- Each 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, including any information relating to an individual's health care coverage or other benefits; and without having to overcome any other impediment in order to access the list, including entering a code or completing any security measure;
- Each list must be 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 of a search engine user's search query;
- In the case of the list of standard charges, it must be digitally searchable;
- In the case of the list of shoppable services, it must be searchable by service description, billing code, and payor;
- With respect to the list of standard charges, it must use the naming convention specified by CMS, specifically <ein>_<hospital-name>_standardcharges.[jsonxmlcsv].
- Each list must be formatted in a manner prescribed by the template the Director develops (see "**Templates**" below).

### Hospital website

The bill requires each list to 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.[8]

### Updates

At least once each year, the hospital must update each list. In updating a list, the hospital must clearly indicate the date of the update, either on the list itself or in a manner that is clearly associated with the list.[9]

[7] R.C. 3727.33(F) and 3727.34(D).

[8] R.C. 3727.33(E) and 3727.34(D).

[9] R.C. 3727.33(H) and 3727.34(D).

Once a list has been updated, the hospital must submit it to the Director of Health. The bill charges the Director with prescribing the form in which an updated list must be submitted.[10]

## 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 on them.

### Monitoring

The Director of Health must monitor each hospital to determine if it is in compliance with the bill's charge list requirements.[11] Such monitoring may include evaluating complaints made to the Director, reviewing any analysis prepared regarding hospital compliance or noncompliance, auditing hospital websites, and confirming that hospitals have submitted updated lists to the Director.

### List of noncompliant hospitals

The bill requires the Director to create and make publicly available a list identifying each hospital that is not in compliance.[12] The initial list of noncompliant hospitals must be created and included on the Department of Health's (ODH'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.

### 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.[13] 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.

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

[10] R.C. 3727.35.

[11] R.C. 3727.36.

[12] R.C. 3727.36.

[13] R.C. 3727.37.

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.

## Administrative penalties

If a hospital fails to maintain and make public a list of all standard charges as well as a consumer-friendly list of standard charges for shoppable services or 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.[14] In imposing the penalty, the Director is required to act in accordance with Ohio's Administrative Procedure Act.[15]

### *Penalty amount*

The Director must select the penalty amount for a violating hospital, subject to the minimum amounts outlined in the bill. In the case of a hospital with a bed count of 30 or fewer, the penalty must not be lower than $600. For a hospital with a bed count that is greater than 30 and equal to or fewer than 550, the penalty must not be lower than $20 per bed. And with respect to a hospital whose bed count exceeds 550, the penalty must not be lower than $11,000.

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.

Penalties collected under the bill must be used to administer and enforce its 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.

## Reports

The bill requires the Director of Health to prepare on an annual basis a report on the hospitals that have violated its provisions.[16] The report must be submitted to the Governor, General Assembly, and chairpersons of the standing committees with primary responsibility for health legislation.

On a periodic basis, the Director is to prepare and submit to the General Assembly a report containing recommendations for modifying the bill's provisions.[17] The report may include recommendations in response to changes to CMS's hospital transparency rule.

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[14] R.C. 3727.38.

[15] R.C. Chapter 119, not in the bill.

[16] R.C. 3727.40.

[17] R.C. 3727.40.

### Templates

The bill requires the Director to develop a template that each hospital must use in formatting both the standard charges and shoppable services lists. In developing the template, the Director must do the following:

- Consider any applicable federal guidelines for formatting similar lists required by federal law;
- Ensure that the template design enables health care consumers or other researchers to compare the charges contained in the lists maintained by each hospital;
- Design the template to be substantially similar to that used by CMS, if the Director determines designing the template in that manner serves the bill's purposes and that ODH benefits from requiring a substantially similar design.

## Collection actions

The bill prohibits certain collection actions taken by hospitals for debts owed for hospital items or services.[18] Under the bill's provisions, if the Director determines that a hospital failed to maintain or make public the lists required by the bill and the hospital was in violation on the date that it provided hospital items or services to a patient, then the hospital is prohibited from taking, or continuing to take, a collection action against the patient or patient guarantor for a debt owed for the items or services.

The bill includes other provisions related to its prohibition on collection actions. A hospital that has violated the bill's list requirements is subject to all of the following:

- The hospital must dismiss any suit it has brought to collect the debt and must pay any attorney's fees and costs incurred by the patient or patient guarantor relating to the suit;
- The hospital must remove or cause to be removed from the patient's or patient guarantor's credit report any report made to a consumer reporting agency relating to the debt;
- The hospital must refund the payer any amount of the debt that has been paid and must pay a penalty to the patient or patient guarantor in an amount that is twice the total amount of the debt.

The bill specifies that its provisions do not prohibit a hospital from billing a patient, patient guarantor, or third-party payor for hospital items or services provided to the patient. It also states that its provisions do not require a hospital to refund any payment made to the hospital for hospital items or services provided to the patient, as long as a collection action is not taken in violation of the bill.

[18] R.C. 3727.39.

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.[19]

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.[20]

## 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 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;

[19] R.C. 3727.39(A)(6), (7), and (8).

[20] R.C. 3727.39(F) and (G); 15 United States Code 1692g, not in the bill.

- 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.[21]

Current law requires the hospital to make the price information list publicly available in each of the following three ways.[22] 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.

### Enforcement

If a hospital does not make its price information list publicly available, the Director of Health may seek from the court of common pleas a temporary or permanent injunction restraining the hospital from failing to make it publicly available.[23]

## CMS hospital price transparency rule

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

- 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.[24]

Under the current rule, 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 negotiated charge, de-identified maximum negotiated charge, discounted cash price, and any billing or accounting code. Such a 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

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

[22] R.C. 3727.42(C).

[23] R.C. 3727.45.

[24] 45 C.F.R. Part 180.

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.

# HISTORY

| Action | Date |
|---|---|
| Introduced | 02-15-23 |
| Reported, H. Insurance | 03-29-23 |

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