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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

S.B. 97  
133<sup>rd</sup> General Assembly

## Bill Analysis

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**Version:** As Passed by the Senate

**Primary Sponsor:** Sen. S. Huffman

Lisa Musielewicz, Attorney

### SUMMARY

- Beginning January 1, 2021, generally requires a hospital to provide a patient with a verbal or written cost estimate for each health care service scheduled at least seven days in advance.
- Exempts a hospital from the cost estimate requirement when a health plan issuer fails to timely provide the information necessary to generate the estimate.
- Specifies that a patient remains responsible for the cost of a health care service even if an estimate is not received.
- Requires a health plan issuer to provide cost estimates to covered persons to the same extent required by federal law.
- Requires a hospital's standard charges list, which must be established under federal law, to be published on the hospital's website.
- Authorizes the Director of Health to seek an injunction against a hospital for failing to comply with the cost estimate and standard charges list requirements.
- Repeals previously enacted law governing cost estimates, which encompassed a number of other health care providers and health care insurers, but was permanently enjoined from enforcement in February 2019.

### DETAILED ANALYSIS

The bill repeals existing law that requires specified health care facilities and professionals to provide a reasonable, good faith estimate of various costs before products, services, or procedures are provided. Instead, the bill creates a system that requires only hospitals to provide reasonable, good faith estimates for services scheduled at least seven days in advance. The bill also establishes in Ohio law the following requirements in relation to federal law: (1) that health plan issuers provide cost estimates to their insureds to the same

extent required by federal law and (2) that hospitals publish on their websites their standard charges list required by federal law.

## **Hospital cost estimate for scheduled services**

The bill requires a hospital, on request, to provide a patient or the patient's representative a reasonable, good faith estimate of the cost for each health care service that has been scheduled at least seven days before the service is to be provided. The estimate may be written or verbal. A written estimate may be given in electronic form.<sup>1</sup>

The estimate must include all of the following:<sup>2</sup>

--The amount that the patient or party responsible for the patient's care must pay to the hospital for each scheduled service;

--If applicable, a notice that the professional services of physicians or other health care providers will be billed separately;

--A disclaimer that the information provided is only an estimate based on facts available at the time the estimate was prepared and that other required services could change the estimate;

--If known to the hospital at the time the estimate is provided and the patient is insured, a notification that the hospital or health care provider who will treat the patient is not in-network for the patient's health benefit plan; and

--The website address where the hospital publishes its standard charges list (see "**Standard charges list**," below).

The estimate must be based on information available at the time the estimate is prepared and does not have to take into account any information that subsequently arises, such as unexpected additional services. A hospital may state the estimate as a range rather than a specific dollar amount.<sup>3</sup>

The cost estimate requirement does not apply if the patient is insured and the health plan issuer fails to supply the necessary information needed to prepare the estimate within 48 hours of the hospital's request for that information.<sup>4</sup>

The bill's provisions relating to hospital estimates for scheduled services take effect on January 1, 2021.<sup>5</sup>

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<sup>1</sup> R.C. 3727.40(B).

<sup>2</sup> R.C. 3727.40(C)(1).

<sup>3</sup> R.C. 3727.40(C)(2) and (3).

<sup>4</sup> R.C. 3727.40(D).

<sup>5</sup> R.C. 3727.40(B).

## Payment responsibility

Under the bill, a patient remains responsible for the cost of health care service that is provided even if the patient did not receive an estimate from the hospital before receiving the service.<sup>6</sup>

## Health plan issuer estimates

The bill requires a health plan issuer to provide to its covered persons and their representatives estimates of the costs of health care services to at least the same extent that the health plan issuer is required to do so under federal law.<sup>7</sup> The Superintendent of Insurance is prohibited from taking any disciplinary action or enforcement action against a health plan issuer for failure to comply with this requirement.<sup>8</sup>

On November 15, 2019, the U.S. Department of Health and Human Services, U.S. Department of Labor, and U.S. Department of the Treasury issued proposed rules directed at group health plans and health insurance issuers that intended to improve price and quality transparency. The proposed rules would require most group health plans, including self-insured plans, and health insurance issuers to disclose price and cost-sharing information to participants, beneficiaries, and enrollees. The departments are proposing to give consumers real-time, personalized access to cost-sharing information, including an estimate of their cost-sharing liability for all covered health care items and services through an online tool that most group health plans and health insurance issuers would be required to make available to all of their members, and in paper form, at the consumer's request. Through these proposed rules, plans and issuers would also be required to disclose on a public website their negotiated rates for in-network providers and allowed amounts paid for out-of-network providers.<sup>9</sup>

## Standard charges list

The bill requires a hospital to publish on its website the list of the hospital's standard charges for items and services provided by the hospital, as that list is established and updated in accordance with federal law. The website address where the list is published must be made readily available for purposes of public access and inclusion on the cost estimates provided by hospitals.<sup>10</sup>

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<sup>6</sup> R.C. 3727.40(E).

<sup>7</sup> R.C. 3902.32(B).

<sup>8</sup> R.C. 3902.32(C).

<sup>9</sup> U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services, *Transparency in Coverage Proposed Rule (CMS-9915-P)*, available at <https://www.cms.gov/newsroom/fact-sheets/transparency-coverage-proposed-rule-cms-9915-p>.

<sup>10</sup> R.C. 3727.41.

Federal law, effective January 1, 2019, requires hospitals to make available online a list of their current standard charges in a machine-readable format and to update this information at least annually, or more often as appropriate.<sup>11</sup>

## Rules

The bill authorizes the Director of Health to adopt rules in accordance with the Administrative Procedure Act<sup>12</sup> to implement the bill's provisions requiring hospitals to issue cost estimates and publish standard charges online.<sup>13</sup>

## Enforcement

The bill authorizes the Director of Health to seek a temporary or permanent injunction restraining a hospital from failing to comply with the bill's requirements on cost estimates and publishing standard charges online.<sup>14</sup>

## Repeal of existing system for providing cost estimates

The bill repeals the existing law governing providing cost estimates. Under that law, specified health care facilities and professionals must provide a reasonable, good faith estimate of various costs before products, services, or procedures are provided. The requirement does not apply in the case of an emergency. The estimate must be provided in writing and include all of the following information:

1. The amount the provider will charge the patient or the consumer's health plan issuer for the product, service, or procedure.
2. The amount the health plan issuer intends to pay for the product, service, or procedure. For this purpose, current law applies to health insuring corporations, sickness and accident insurers, and other entities subject to Ohio's insurance laws or the jurisdiction of the Superintendent of Insurance. It also applies to the Medicaid program and Medicaid managed care organizations.
3. The difference, if any, that the consumer or other party responsible for the consumer's care would be required to pay to the provider for the product, service, or procedure.

The existing requirement to provide cost estimates applies to the following types of licensed, accredited, or certified health care facilities and professionals:

- Hospitals;
- Nursing homes and residential care facilities;

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<sup>11</sup> 42 United States Code 300gg-18(e). See 83 FED. REG. 41686 *et seq.*, available at <https://www.govinfo.gov/content/pkg/FR-2018-08-17/pdf/FR-2018-08-17.pdf>.

<sup>12</sup> R.C. Chapter 119.

<sup>13</sup> R.C. 3727.44.

<sup>14</sup> R.C. 3727.45.

- Physicians, massage therapists, cosmetic therapists, naprapaths, and mechanotherapists;
- Dentists and dental hygienists;
- Optometrists and dispensing opticians;
- Chiropractors;
- Orthotists, prosthetists, and pedorthists;
- Hearing aid dealers and hearing aid fitters;
- Speech-language pathologists and audiologists;
- Occupational therapists, physical therapists, and athletic trainers;
- Psychologists and school psychologists;
- Professional clinical counselors, professional counselors, social workers, independent social workers, social work assistants, and marriage and family therapists.

Individuals in the list who work under the direction of another, such as an assistant, may not actually be subject to the provision's requirements, as the individual may be employed by another who bills the patient.

The Medicaid Director is required to adopt rules to carry out the cost estimate requirements.<sup>15</sup> To date, however, no rules have been adopted. (See **COMMENT**.)

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## **COMMENT**

The cost estimate requirements in current law described above never went into effect because the statute establishing the requirements has been the subject of ongoing litigation. Shortly after the statute's enactment, Community Hospitals and Wellness Centers, the Ohio Hospital Association, and other health care providers sued to prevent its enforcement, arguing that it was unconstitutional.

By court order, the statute was temporarily restrained from enforcement while the lawsuit was pending. On February 13, 2019, the court issued a permanent injunction preventing the statute from being implemented. The court struck down the statute on procedural, constitutional grounds – finding that the General Assembly's passage of the law violated the Ohio Constitution's "single-subject" and "three-readings" rules. The state has appealed this decision to the Sixth District Court of Appeals.<sup>16</sup> A Sixth District Court of Appeals representative

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<sup>15</sup> R.C. 5162.80, repealed.

<sup>16</sup> Williams County Court of Common Pleas, <http://pa.wmsco.org/eservices/search.page.3?x=cp2KdLacFmP--gxhyUC4sw>, search Case Number 16CI000128 (accessed September 30, 2019); Academy of Medicine of Cleveland and Northern Ohio, *Permanent Injunction Issued in Price Transparency Case*, available at <http://amcno.org/index.php?id=1515>.

stated that the judges reviewed the briefs on October 21, 2019, and that a decision could be coming soon.<sup>17</sup>

The Governor vetoed provisions of Am. Sub. H.B. 166 of the 133<sup>rd</sup> General Assembly, the main appropriations act for fiscal years 2020 and 2021, that would have added to the existing price transparency provisions.<sup>18</sup> On the same day as his veto message (July 18, 2019), the Governor signed an executive order directing state agencies, boards, and commissions to seek to adopt or implement the rules, regulations, and recommendations that result from an executive order issued June 24, 2019, on price transparency.<sup>19</sup> The proposed rules described previously result from President Trump's executive order (see "**Health plan issuer estimates**," above).

On November 15, 2019, the U.S. Centers for Medicare & Medicaid Services (CMS) issued a final rule pertaining to price transparency requirements for hospitals. According to a CMS press release, the final rule (1) implements section 2718(e) of the Public Health Service Act and (2) improves upon prior agency guidance that required hospitals to make public their standard charges on request starting in 2015 and subsequently online in a machine-readable format starting in 2019. Section 2718(e) requires each hospital operating in the U.S. to establish, update, and make public a yearly list of the hospital's standard charges for items and services provided by the hospital, including for diagnosis-related groups established under section 1886(d)(4) of the Social Security Act.<sup>20</sup>

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<sup>17</sup> Telephone conversation with a Sixth District Court of Appeals (Ohio) representative, December 4, 2019.

<sup>18</sup> See Office of the Governor, *Statement of the Reasons for the Veto of Items in Am. Sub. H.B. 166* (July 18, 2019), Item Number 3: "Health Care Price Transparency," available at <https://rb.gy/7e5e4e>. See also Executive Order 2019-18D, available at <https://governor.ohio.gov/wpsportal/gov/governor/media/executive-orders/2019-18d>.

<sup>19</sup> Presidential Executive Order 13877 of June 24, 2019, 84 Fed. Reg. 30850 (Thursday, June 27, 2019), available at <https://www.govinfo.gov/content/pkg/FR-2019-06-27/pdf/2019-13945.pdf>.

<sup>20</sup> U.S. Centers for Medicare & Medicaid Services, *CY 2020 Hospital Outpatient Prospective Payment System (OPPS) Policy Changes: Hospital Price Transparency Requirements (CMS-1717-F2)*, available at <https://www.cms.gov/newsroom/fact-sheets/cy-2020-hospital-outpatient-prospective-payment-system-opps-policy-changes-hospital-price>.

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## HISTORY

Action	Date
Introduced	03-11-19
Reported, S. Health, Human Services & Medicaid	10-07-19
Passed Senate (32-0)	10-09-19

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