

As Introduced

135th General Assembly

Regular Session

2023-2024

H. B. No. 704

Representatives Ferguson, Barhorst

A BILL

To amend section 3727.44; to amend, for the purpose
of adopting a new section number as indicated in
parentheses, section 3727.44 (3727.40); to enact
sections 3727.31, 3727.32, 3727.33, 3727.34,
3727.35, 3727.36, 3727.37, 3727.38, 3727.381,
and 3727.39; and to repeal sections 3727.42,
3727.43, and 3727.45 of the Revised Code
regarding the availability of hospital price
information.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 3727.44 be amended; section
3727.44 (3727.40) be amended for the purpose of adopting a new
section number as indicated in parentheses; and sections
3727.31, 3727.32, 3727.33, 3727.34, 3727.35, 3727.36, 3727.37,
3727.38, 3727.381, and 3727.39 of the Revised Code be enacted to
read as follows:

Sec. 3727.31. As used in sections 3727.31 to 3727.40 of
the Revised Code:

(A) "Ancillary service" means a hospital item or service
that a hospital customarily provides as part of a shoppable

service. 20

(B) "Chargemaster" means the list maintained by a hospital 21
of each hospital item or service for which the hospital has 22
established a charge. 23

(C) "De-identified maximum negotiated charge" means the 24
highest charge that a hospital has negotiated with all third- 25
party payors for a hospital item or service. 26

(D) "De-identified minimum negotiated charge" means the 27
lowest charge that a hospital has negotiated with all third- 28
party payors for a hospital item or service. 29

(E) "Discounted cash price" means the charge that applies 30
to an individual who pays cash, or a cash equivalent, for a 31
hospital item or service. 32

(F) "Federal price transparency law" means section 2718(e) 33
of the "Public Health Service Act," 42 U.S.C. 300gg-18, and 34
hospital price transparency rules adopted by the United States 35
department of health and human services and the United States 36
centers for medicare and medicaid services implementing that 37
section, including the rules and requirements under 45 C.F.R. 38
180. 39

(G) "Hospital" has the same meaning as in section 3722.01 40
of the Revised Code, notwithstanding the meaning of that term in 41
3727.01 of the Revised Code. 42

(H) "Hospital items or services" means all items or 43
services, including individual items or services and service 44
packages, that may be provided by a hospital to a patient in 45
connection with an inpatient admission or an outpatient 46
department visit, as applicable, for which the hospital has 47
established a standard charge, including all of the following: 48

<u>(1) Supplies and procedures;</u>	49
<u>(2) Room and board;</u>	50
<u>(3) Use of the hospital and other areas, the charges for which are generally referred to as facility fees;</u>	51 52
<u>(4) Services of physicians and non-physician practitioners, employed by the hospital, the charges for which are generally referred to as professional fees;</u>	53 54 55
<u>(5) Any other item or service for which a hospital has established a standard charge.</u>	56 57
<u>(I) "Gross charge" means the charge for a hospital item or service that is reflected on a hospital's chargemaster, absent any discounts.</u>	58 59 60
<u>(J) "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. "Machine-readable format" includes.XML,.JSON, and.CSV formats.</u>	61 62 63 64
<u>(K) "Payor-specific negotiated charge" means the charge that a hospital has negotiated with a third-party payor for a hospital item or service.</u>	65 66 67
<u>(L) "Personal data" means any information that is linked or reasonably linkable to an identified or identifiable person in this state. "Personal data" does not include either of the following:</u>	68 69 70 71
<u>(1) Publicly available information;</u>	72
<u>(2) Personal data that has been de-identified or aggregated using commercially reasonable methods such that neither the associated person, nor a device linked to that</u>	73 74 75

person, can be reasonably identified. 76

(M) "Process" or "processing" means any operation or set 77
of operations that are performed on personal data, whether or 78
not by automated means, including the collection, use, storage, 79
disclosure, analysis, deletion, transfer, or modification of 80
personal data. 81

(N) "Publicly available information" means information 82
that is lawfully made available from federal, state, or local 83
government records or widely available media. 84

(O) "Service package" means an aggregation of individual 85
hospital items or services into a single service with a single 86
charge. 87

(P) "Shoppable service" means a service that may be 88
scheduled by a health care consumer in advance. 89

(Q) "Standard charge" means the regular rate established 90
by the hospital for a hospital item or service provided to a 91
specific group of paying patients. "Standard charge" includes 92
all of the following: 93

(1) The gross charge; 94

(2) The payor-specific negotiated charge; 95

(3) The de-identified minimum negotiated charge; 96

(4) The de-identified maximum negotiated charge; 97

(5) The discounted cash price. 98

(R) "Targeted advertising" means displaying an 99
advertisement that is selected based on personal data obtained 100
from the use of a hospital's internet-based price estimator tool 101
by a person in this state. "Targeted advertising" does not 102

<u>include any of the following:</u>	103
<u>(1) Advertising in response to the user's request for</u>	104
<u>information or feedback;</u>	105
<u>(2) Advertisements based on activities within a hospital's</u>	106
<u>own web sites or online applications;</u>	107
<u>(3) Advertisements based on the context of a user's</u>	108
<u>current search query, visit to a web site, or online</u>	109
<u>application;</u>	110
<u>(4) Processing personal data solely for measuring or</u>	111
<u>reporting advertising performance, reach, or frequency.</u>	112
<u>(S) "Third-party payor" means an entity that is, by</u>	113
<u>statute, contract, or agreement, legally responsible for payment</u>	114
<u>of a claim for a hospital item or service.</u>	115
<u>Sec. 3727.32. A hospital shall make public both of the</u>	116
<u>following:</u>	117
<u>(A) As described in section 3727.33 of the Revised Code, a</u>	118
<u>digital file in a machine-readable format that contains a list</u>	119
<u>of all standard charges, expressed in dollar amounts, for all</u>	120
<u>hospital items or services;</u>	121
<u>(B) As described in section 3727.34 of the Revised Code, a</u>	122
<u>consumer-friendly list of standard charges for the hospital's</u>	123
<u>shoppable services or an internet-based price estimator tool.</u>	124
<u>Sec. 3727.33. (A) A hospital shall maintain a list of all</u>	125
<u>standard charges for all hospital items or services in</u>	126
<u>accordance with this section. The hospital shall ensure that the</u>	127
<u>list is available at all times to the public, including by</u>	128
<u>posting the list electronically in the manner provided by this</u>	129
<u>section.</u>	130

(B) The standard charges contained in the list shall 131
reflect the standard charges applicable to that location of the 132
hospital, regardless of whether the hospital operates in more 133
than one location or operates under the same license as another 134
hospital. 135

(C) The list shall include the following information, as 136
applicable: 137

(1) A description of each hospital item or service 138
provided by the hospital; 139

(2) The following charges, expressed in dollar amounts, 140
for each particular hospital item or service when provided in 141
either an inpatient setting or an outpatient department setting, 142
as applicable: 143

(a) The gross charge; 144

(b) The de-identified minimum negotiated charge; 145

(c) The de-identified maximum negotiated charge; 146

(d) The discounted cash price; 147

(e) The payor-specific negotiated charge, listed by the 148
name of the third-party payor and health plan associated with 149
the charge and displayed in a manner that clearly associates the 150
charge with each third-party payor and health plan; 151

(f) Any code used by the hospital for purposes of 152
accounting or billing for the hospital item or service, 153
including the current procedural terminology (CPT) code, 154
healthcare common procedure coding system (HCPCS) code, 155
diagnosis related group (DRG) code, national drug code (NDC), or 156
other common identifier. 157

(D) The information contained in the list shall be 158
published in a single digital file that is in a machine-readable 159
format. 160

(E) The list shall be displayed in a prominent location on 161
the home page of the hospital's publicly accessible internet web 162
site or be accessible by selecting a dedicated link that is 163
prominently displayed on that home page. If the hospital 164
operates multiple locations and maintains a single internet web 165
site, a separate list shall be posted for each location the 166
hospital operates and shall be displayed in a manner that 167
clearly associates the list with the applicable location. 168

(F) The list shall satisfy all of the following 169
conditions: 170

(1) Be available free of charge; without having to 171
register or establish a user account or password; without having 172
to submit personal identifying information, including any 173
information pertaining to an individual's health care coverage 174
or other benefits; and without having to overcome any other 175
impediment in order to access the list, including such 176
impediments as entering a code or completing any type of 177
security measure known as challenge-response authentication; 178

(2) Be accessible to a common commercial operator of an 179
internet search engine to the extent necessary for the search 180
engine to index the list and display the list as a result in 181
response to a search query of a user of the search engine; 182

(3) Be formatted in a manner prescribed by the template 183
developed under division (G) of this section; 184

(4) Be digitally searchable; 185

(5) Use the following naming convention specified by the 186

United States centers for medicare and medicaid services, 187
specifically: 188

"<ein> <hospital-name>_standardcharges.[jsonxmlcsv]." 189

(G) For purposes of division (F) (3) of this section, the 190
director of health shall develop a template that each hospital 191
shall use in formatting the list. In developing the template, 192
the director shall do both of the following: 193

(1) Consider any applicable federal guidelines for 194
formatting similar lists required by federal statutes or 195
regulations and ensure that the design of the template enables 196
health care consumers or other researchers to compare the 197
charges contained in the lists maintained by each hospital; 198

(2) Design the template to be substantially similar to the 199
template used by the United States centers for medicare and 200
medicaid services for purposes similar to those of sections 201
3727.31 to 3727.40 of the Revised Code, if the director 202
determines that designing the template in that manner serves the 203
purposes of this section and that the department of health 204
benefits from the director developing and requiring that 205
substantially similar design. 206

(H) At least once each year, the hospital shall update the 207
list it maintains under this section. The hospital shall clearly 208
indicate the date on which the list was most recently updated, 209
either on the list or in a manner that is clearly associated 210
with the list. 211

Sec. 3727.34. (A) Subject to division (E) of this section, 212
a hospital shall maintain and make publicly available a list of 213
the standard charges described in divisions (C) (2) (b), (c), (d), 214
and (e) of section 3727.33 of the Revised Code for the 215

hospital's shoppable services. With respect to the shoppable 216
services that are included on the list, a hospital may select 217
the shoppable services to be included on the list, subject to 218
all of the following: 219

(1) The list shall include at least three hundred 220
shoppable services, unless the hospital provides fewer than 221
three hundred shoppable services, in which case the list shall 222
include the number of shoppable services that the hospital 223
provides. 224

(2) Of the shoppabale services selected for purposes of 225
division (A) (1) of this section, the list shall include the 226
seventy services specified as shoppable services by the United 227
States centers for medicare and medicaid services, unless the 228
hospital does not provide all of the seventy services, in which 229
case the list shall include as many of those services as the 230
hospital does provide. 231

(3) In selecting a shoppable service for purposes of 232
inclusion on the list, a hospital shall do both of the 233
following: 234

(a) Consider how frequently the hospital provides the 235
service and the hospital's billing rate for that service; 236

(b) Prioritize the selection of services that are among 237
the services most frequently provided by the hospital. 238

(B) A hospital's list maintained under this section shall 239
include all of the following information: 240

(1) A plain-language description of each shoppable service 241
included on the list; 242

(2) The payor-specific negotiated charge that applies to 243

each shoppable service included on the list and any ancillary service, listed by the name of the third-party payor and health plan associated with the charge and displayed in a manner that clearly associates the charge with the third-party payor and health plan; 244
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(3) The discounted cash price that applies to each shoppable service included on the list and any ancillary service or, if the hospital 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; 249
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(4) The de-identified minimum negotiated charge that applies to each shoppable service included on the list and any ancillary service; 255
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(5) The de-identified maximum negotiated charge that applies to each shoppable service included on the list and any ancillary service; 258
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(6) Any code used by the hospital for purposes of accounting or billing for each shoppable service included on the list and any ancillary service, including the current procedural terminology (CPT) code, healthcare common procedure coding system (HCPCS) code, diagnosis related group (DRG) code, national drug code (NDC), or other common identifier. 261
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(C) If applicable, the list shall do the following: 267

(1) 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 shoppable service in an inpatient setting, an outpatient department setting, or in both of those settings, as applicable; 268
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(2) Indicate if one or more of the shoppable services specified by the United States centers for medicare and medicaid services is not provided by the hospital. 273
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(D) The list shall satisfy the following conditions, as applicable: 276
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(1) Be displayed in the same manner prescribed by division (E) of section 3727.33 of the Revised Code for the list required under that section; 278
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(2) Be available and accessible in the same manner prescribed by divisions (F) (1) and (2) of section 3727.33 of the Revised Code for the list required by that section; 281
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(3) Be searchable by service description, billing code, and payor; 284
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(4) Be formatted in a manner that is consistent with the template developed by the director of health under division (G) of section 3727.33 of the Revised Code for the list required under that section; 286
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(5) Be updated in the same manner prescribed by division (H) of section 3727.33 of the Revised Code for the list required under that section. 290
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(E) (1) A hospital may, in lieu of maintaining and making publicly available the list of shoppable services otherwise required by this section, maintain an internet-based price estimator tool that satisfies all of the following: 293
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(a) Provides a cost estimate for each shoppable service and any ancillary service otherwise required to be included on the list of shoppable services; 297
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(b) Allows a person to obtain an estimate of the amount 300

the person will be obligated to pay the hospital if the person 301
elects to use the hospital to provide the service; 302

(c) Is available and accessible in the same manner 303
prescribed by division (F)(1) of section 3727.33 of the Revised 304
Code for the list required by that section. 305

(2) A hospital that maintains an internet-based price 306
estimator tool deemed by the United States centers for medicare 307
and medicaid services to meet the requirements of the federal 308
price transparency law regarding the list of standard charges 309
for shoppable services also meets the requirements of this 310
section. 311

(3) A hospital shall not sell personal data acquired from 312
the use of the hospital's internet-based price estimator tool by 313
a person in this state. 314

(4) A hospital shall not use, sell, or process personal 315
data acquired from the use of the hospital's internet-based 316
price estimator tool by a person in this state for the purposes 317
of targeted advertising. 318

Sec. 3727.35. Each time a hospital updates a list or 319
internet-based price estimator tool as required under sections 320
3727.33 and 3727.34 of the Revised Code, the hospital shall 321
submit the updated list or a description of the updates to the 322
internet-based price estimator tool to the director of health. 323
The director shall prescribe the form in which the updated list 324
or description is to be submitted. 325

Sec. 3727.36. (A) No hospital shall do any of the 326
following: 327

(1) (a) Fail to comply with the requirement to make public 328
the list described in section 3727.33 of the Revised Code; 329

(b) Fail to comply with the requirements to make public 330
the either the list or the internet-based price estimator tool 331
described in section 3727.34 of the Revised Code. 332

(2) (a) Fail to maintain the list required by section 333
3727.33 of the Revised Code in accordance with the requirements 334
of that section; 335

(b) Fail to maintain either the list or the internet-based 336
price estimator tool required by section 3727.34 of the Revised 337
Code in accordance with the requirements of that section. 338

(3) Fail in any other manner to comply with the 339
requirements that apply to a list and, if applicable, the 340
internet-based price estimator tool, under sections 3727.31 to 341
3727.40 of the Revised Code. 342

(B) The director of health shall monitor each hospital's 343
compliance with division (A) of this section. The monitoring may 344
occur by any of the following methods: 345

(1) Reviewing any credible analysis prepared regarding 346
compliance or noncompliance by hospitals; 347

(2) Auditing the internet web sites of hospitals for 348
compliance; 349

(3) Confirming that each hospital submits updated lists as 350
required by section 3727.35 of the Revised Code. 351

(C) (1) The director of health shall create and make 352
publicly available a list that identifies each hospital that is 353
not in compliance with division (A) of this section. The list of 354
noncompliant hospitals shall include any hospital that has been 355
sent a notice of violation under section 3727.37 of the Revised 356
Code, is subject to an order imposing an administrative penalty 357

under section 3727.38 of the Revised Code, has been sent any 358
other written communication from the director regarding a 359
violation of division (A) of this section, or otherwise has been 360
determined by the director to be not in compliance with division 361
(A) of this section. 362

(2) The list of noncompliant hospitals is a public record, 363
as defined in section 149.43 of the Revised Code. 364

(3) After the director of health has determined that a 365
hospital is not in compliance with division (A) of this section, 366
the materials that consist of notices, orders, communications, 367
and determinations under sections 3727.31 to 3727.40 of the 368
Revised Code are public records, as defined in section 149.43 of 369
the Revised Code. 370

(D) Not later than ninety days after the effective date of 371
this section, the director of health shall create the initial 372
list of noncompliant hospitals and include the list on the 373
internet web site maintained by the department of health. The 374
director shall update the list and web site at least every 375
thirty days thereafter. 376

Sec. 3727.37. (A) If the director of health determines 377
that a hospital has violated division (A) of section 3727.36 of 378
the Revised Code, the director shall issue a notice of violation 379
to the hospital. The director shall clearly explain in the 380
notice the manner in which the hospital is not in compliance. 381

When a notice of violation is issued, the director shall 382
require the hospital to submit a corrective action plan to the 383
director. In the notice, the director shall indicate the form 384
and manner in which the corrective action plan is to be 385
submitted and clearly specify the date by which the hospital is 386

required to submit the plan. The date that is specified shall 387
not be less than sixty days after the notice is sent. 388

(B) A hospital that receives a notice of violation shall 389
submit to the director of health a corrective action plan in the 390
form and manner indicated, and by the date specified, in the 391
notice. In the plan, the hospital shall provide a detailed 392
description of the corrective action the hospital will take to 393
address each violation identified by the director. The hospital 394
shall specify the date by which it will complete the corrective 395
action. The date that is specified shall not be more than one 396
hundred eighty days after the plan is submitted. 397

(C) A corrective action plan is subject to review and 398
approval by the director of health. After the director reviews 399
and approves the plan, the director shall monitor and evaluate 400
the hospital's compliance with the plan. 401

(D) No hospital shall do any of the following: 402

(1) Fail to respond to the director's requirement to 403
submit a corrective action plan; 404

(2) Fail to submit a corrective action plan in the form 405
and manner indicated in the notice of violation or by the date 406
specified in that notice; 407

(3) Fail to complete the corrective action specified in a 408
corrective action plan by the date specified in the plan. 409

Sec. 3727.38. (A) (1) Notwithstanding any conflicting 410
provision of the Revised Code, the director of health shall 411
impose an administrative penalty on a hospital if the hospital 412
does both of the following: 413

(a) Violates division (A) of section 3727.36 of the 414

<u>Revised Code;</u>	415
<u>(b) Violates division (D) of section 3727.37 of the</u>	416
<u>Revised Code.</u>	417
<u>(2) Each day a violation continues is considered a</u>	418
<u>separate violation.</u>	419
<u>(B) In imposing an administrative penalty under this</u>	420
<u>section, the director of health shall act in accordance with</u>	421
<u>Chapter 119. of the Revised Code. The amount of the penalty to</u>	422
<u>be imposed on a hospital shall be selected by the director,</u>	423
<u>subject to the minimum amounts and considerations specified in</u>	424
<u>division (C) of this section. For all penalties that are</u>	425
<u>imposed, the director shall select amounts that are sufficient</u>	426
<u>to ensure that hospitals comply with the requirements of</u>	427
<u>sections 3727.31 to 3727.40 of the Revised Code.</u>	428
<u>(C) (1) An administrative penalty imposed under this</u>	429
<u>section shall not be less than the following:</u>	430
<u>(a) In the case of a hospital with a bed count of thirty</u>	431
<u>or fewer, three hundred dollars;</u>	432
<u>(b) In the case of a hospital with a bed count that is</u>	433
<u>greater than thirty and equal to or fewer than five hundred</u>	434
<u>fifty, ten dollars per bed;</u>	435
<u>(c) In the case of a hospital with a bed count that is</u>	436
<u>greater than five hundred fifty, five thousand five hundred</u>	437
<u>dollars.</u>	438
<u>(2) In setting the amount of the penalty to be imposed on</u>	439
<u>a hospital, the director of health shall consider all of the</u>	440
<u>following:</u>	441
<u>(a) Previous violations by the hospital's operator;</u>	442

<u>(b) The seriousness of the violation;</u>	443
<u>(c) The demonstrated good faith of the hospital's</u>	444
<u>operator;</u>	445
<u>(d) Any other matters as justice may require.</u>	446
<u>(D) An administrative penalty collected under this section</u>	447
<u>shall be deposited into the state treasury to the credit of the</u>	448
<u>hospital price transparency fund created by section 3727.381 of</u>	449
<u>the Revised Code.</u>	450
<u>Sec. 3727.381.</u> <u>There is hereby created in the state</u>	451
<u>treasury the hospital price transparency fund, consisting of</u>	452
<u>administrative penalties collected under section 3727.38 of the</u>	453
<u>Revised Code. The director of health shall administer the fund.</u>	454
<u>The amounts deposited shall be used for purposes of</u>	455
<u>administering and enforcing sections 3727.31 to 3727.40 of the</u>	456
<u>Revised Code, except that the director may use a portion for</u>	457
<u>purposes of informing the public about the availability of</u>	458
<u>hospital price information and other consumer rights under those</u>	459
<u>sections.</u>	460
<u>Sec. 3727.39.</u> <u>The director of health shall prepare reports</u>	461
<u>and submit them in accordance with all of the following:</u>	462
<u>(A) On an annual basis, the director shall prepare a</u>	463
<u>report on hospitals that are in violation of division (A) of</u>	464
<u>section 3727.36 or division (D) of section 3727.37 of the</u>	465
<u>Revised Code.</u>	466
<u>(B) Within sixty days after any change to the federal</u>	467
<u>price transparency law, the director shall prepare a report of</u>	468
<u>the director's recommendations for conforming sections 3727.31</u>	469
<u>to 3727.40 of the Revised Code with the change or,</u>	470
<u>alternatively, stating that no conforming changes are necessary.</u>	471

(C) The director shall submit the reports required by 472
divisions (A) and (B) of this section to the general assembly in 473
accordance with section 101.68 of the Revised Code, the 474
chairperson of the standing committee of the house of 475
representatives with primary responsibility for health 476
legislation, the chairperson of the standing committee of the 477
senate with primary responsibility for health legislation, and 478
the governor. 479

Sec. ~~3727.44~~ 3727.40. The director of health may adopt 480
rules to carry out the purposes of sections ~~3727.42 and 3727.43~~ 481
3727.31 to 3727.40 of the Revised Code. All rules adopted 482
pursuant to this section shall be adopted in accordance with 483
Chapter 119. of the Revised Code. 484

Section 2. That existing section 3727.44 of the Revised 485
Code is hereby repealed. 486

Section 3. That sections 3727.42, 3727.43, and 3727.45 of 487
the Revised Code are hereby repealed. 488