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**MODEL STATE POLICY SUMMARY** | Center for a Healthy America

# HOSPITAL PRICE TRANSPARENCY ACT

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## PURPOSE OF THIS ACT

The purpose of the model policy is to require healthcare facilities to disclose prices for certain items and services provided by defined medical facilities, provide administrative penalties, and prohibit collective action of debt for noncompliant facilities.

*The America First Policy Institute's Center for a Healthy America partnered with Patient Rights Advocate, Gingrich360, the Texas Public Policy Foundation, and Texas Representative Dr. Tom Oliverson to develop model policy that was adopted by the American Legislative Exchange Council (ALEC) Health and Human Services Task Force on July 28, 2022. The model policy text can be viewed at: <https://alec.org/model-policy/hospital-price-transparency-act/>*

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This model policy is based on a combination of the best policy provisions promulgated by Texas SB 1137<sup>1</sup> in the 2021 Texas legislative session and Colorado HB 1285<sup>2</sup> in the 2022 Colorado legislative session. The state-level hospital price transparency policies codify the Trump Administration's 2019 hospital price transparency rule<sup>3</sup> and strengthen the specific terms by which the rules must be created, published, and maintained. The Texas law creates

<sup>1</sup> [TX SB 1137](#), Texas 87<sup>th</sup> Legislature, 2021.

<sup>2</sup> [CO HB 1285](#), 73<sup>rd</sup> General Assembly, 2022.

<sup>3</sup> Medicare and Medicaid Programs: CY 2020 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates. Price Transparency Requirements for Hospitals To Make Standard Charges Public, [84 FR 65524](#), November 27, 2019.



stacking penalties on top of federal fines for noncompliance with the rule and creates a condition of licensure. The Colorado law further encourages compliance by hospitals by preventing collection of non-payment from patients if the hospital is not in compliance with transparency requirements. Colorado's law passed unanimously in the Senate and nearly unanimously in the House of Representatives; Texas's law passed unanimously in both chambers.

## POLICY BACKGROUND

In November of 2019, the Department of Health and Human Services (HHS) finalized a rule<sup>4</sup> requiring hospitals to publish prices, fulfilling a directive in an Executive Order signed by President Trump.<sup>5</sup> For too long, the price of care at hospitals has been shrouded from patients, leaving them with unexpected bills after they receive care. This lack of transparency leaves patients in the dark and renders them unable to make informed decisions about where and when to receive care. Efforts to improve transparency are bipartisan and aim to increase consumer knowledge, increase competition, and put downward pressure on the prices of medical devices and services. The final rule required hospitals to publish a machine-readable file of five types of standard charges for all items and services, and create a consumer-friendly, shoppable list of 300 items and services, including 70 identified by the Centers for Medicare and Medicaid Services (CMS).

Hospital compliance with this rule has been subpar since it took effect. Last year, only 53% of hospitals in the U.S. disclosed any prices,<sup>6,7</sup> and an estimated 16% are in full compliance.<sup>8</sup> Under the Biden Administration, HHS signaled support for these policies by increasing the penalties for hospitals who do not comply with regulations.<sup>9</sup> The higher penalties went into effect January 1, 2022. CMS has issued approximately 350 letters of warning to noncompliant hospitals and has fined two Georgia hospitals.<sup>10,11</sup> Several states have seized the opportunity to pass price transparency legislation that encourages greater compliance with the rule by hospitals in their states. And in doing so, they have empowered patients.

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<sup>4</sup> Id.

<sup>5</sup> Improving Price and Quality Transparency in American Health Care to Put Patients First, [Executive Order 13877](#), June 27, 2019.

<sup>6</sup> [A Year of Hospital Price Transparency Offers Hope for Affordable Care](#), by Ge Bai and John Xuefeng Jiang, The Hill, January 4, 2022.

<sup>7</sup> [Hospital Compliance Status as of January 1, 2022](#), data obtained from Turquoise Health.

<sup>8</sup> [Third Semi-Annual Hospital Price Transparency Report, August 2022](#). Patient Rights Advocate.

<sup>9</sup> Medicare Program: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; Price Transparency of Hospital Standard Charges; Radiation Oncology Model, [86 FR 63458](#), November 16, 2021.

<sup>10</sup> [After Months of Warnings, CMS Hands Out Its First Fines to Hospitals Failing on Price Transparency](#), by Dave Muoio, Fierce Healthcare, June 9, 2022.

<sup>11</sup> [Enforcement Actions](#), Centers for Medicare & Medicaid Services, accessed 7/27/22.



## KEY TECHNICAL COMPONENTS OF THE MODEL POLICY

### List Requirements:

- The model policy requires hospitals to publish and maintain a single machine-readable file that contains a list of all standard charges for all facility items or services.
- Hospitals must also publish and maintain a consumer-friendly list of searchable standard charges for at least 300 shoppable services, including 70 shoppable services identified by CMS.
- Each facility of a hospital system with multiple facilities must maintain and publish its own list.
- The list must include a description of the items or services, the gross charge, minimum and maximum negotiated charges, discounted cash price, payor-specific negotiated charge, and billing code.
- The list must be available online, free of charge, without establishing an account or password, and without requiring an access code or entering personal information.

### Compliance Monitoring and Penalties:

- Each state health agency will monitor and enforce compliance by evaluating complaints, reviewing any analysis conducted on compliance, auditing the websites of hospitals, and confirming compliance with hospitals.
- A list of noncompliant hospitals will be published online by the state health agency.
- State health agencies must consider whether the hospital is or has been in compliance with hospital price transparency laws in regard to applying for renewal of a hospital's license or certificate to operate.
- Process for corrective action will be taken against hospitals that are noncompliant, and fines may be issued. Minimum fines range from \$600 to \$11,000 per violation dependent on the hospital's bed count. Each day a violation continues is considered a separate violation.

### Prohibition of Collective Action:

- A hospital that is not in compliance with federal hospital price transparency requirements is prohibited from any action in attempt to collect payment from patients beyond the initial step of sending them a bill. Any legal action, mediation, or reporting of debt to collection or credit agencies is prohibited.
- If a patient believes that a hospital was not in compliance with hospital price transparency laws and the hospital takes a collection action against the patient, the patient may file suit to determine whether the hospital



was out of compliance with the hospital price transparency laws, rules, and regulations on the date of service, and whether the noncompliance is related to the items or services. The hospital must not take a collection action against the patient or patient guarantor while the lawsuit is pending. If the hospital is found to not be in compliance by judge or jury, the hospital must:

- refund any amount a payer has paid of the debt plus the full amount of the original debt;
- pay any attorney fees related to the suit; and
- remove any report made to a credit agency.

