

August 1, 2022

PUBLIC COMMENT LETTER

HHS Rules Coordination Office
Health and Human Services Commission
4601 W. Guadalupe St.
P.O. Box 13247
Austin, Texas 78711-3247
Via electronic submission to: HCR_PRT@hhs.texas.gov

Re: Draft Rules, Hospital Price Transparency Reporting and Enforcement; Project No. 22R033

Dear Sir or Madam:

On behalf of our more than 470 member hospitals, including rural, urban, children's, teaching and specialty hospitals, the Texas Hospital Association appreciates the opportunity to comment on the Texas Health & Human Services Commission's draft rule implementing Senate Bill 1137, informally known as the Texas hospital price transparency law. There are federal requirements for hospitals to post the same or similar information – and THA hopes to align both regulations as much as possible to minimize the operational impact of the Texas hospitals making every effort to comply.

- 1. HHSC should revise the definitions of “prominent location” and “prominently displayed” to account for implementation cost and variations in formatting.*

The proposed rule defines “prominent location” and “prominently displayed,” in reference to the size and location of the hyperlink to hospital pricing information. THA understands the intent to make this information easily accessible and the desire to implement rules that can be enforced equally across all facilities. However, given the amount of information hospitals must post pursuant to the state and federal requirements (as well as the plethora of information already available on most hospital websites), THA asks the agency to consider a few changes.

First, some hospital systems would prefer to host price information for all their Texas facilities on a single webpage that is accessible from the home page of each hospital's website. This would violate the proposed requirement that the information be no more than one hyperlink away. For a multi-facility system to develop separate pages for each facility would be extremely inefficient and force the system to unnecessarily expend time and resources when a single landing page could be used to compile all the necessary information. THA believes that modifying the requirement to permit multiple hyperlinks, when good reason for multiple links is evident, would ameliorate this issue while remaining clear to the public.

Second, the proposed rules require a link to pricing information to be “immediately viewable upon

accessing the home page of the hospital's publicly accessible website...." The intent of this language appears to direct hospitals to post information without scrolling down. This requirement is subjective and will vary based on the device an individual utilizes to access a hospital webpage. Tablets, smartphones, and even computers often display web pages differently. THA proposes to strike the word, "immediately" from the definition in the proposed rule, as this will further the agency's goal in a fair and consistent manner.

Third, the proposed rules would require links to hospital pricing information to be "displayed in a size and a font at least as large as those of surrounding links or buttons, distinct from the background of the website...." THA suggests changing the size requirement to allow for a font that is "substantially similar in size" to the surrounding text, links, or buttons. While facilities will do their best to comply, we want to be sure no one is penalized for using best efforts and where a font may change size or location depending on the way the viewer accesses it. Consistent with the placement of information on a webpage, text may be viewed differently on a mobile device, as opposed to a desktop computer, or the viewer may have altered internet browser settings that alter the display. This will also aid systems who are producing the required information for multiple facilities.

2. Hospitals should be permitted to include helpful information in conjunction with data.

Hospitals should be permitted to provide additional information in concert with the required pricing information. This may include general information about the posted rates and charges, or information specific to the facility or community, but this additional context would almost certainly help the public in understanding the information provided by hospitals. Again, this would violate the "one hyperlink" requirement, but THA urges HHSC to consider edits to permit this important and helpful context to aid individuals before or while they access the pricing data.

3. HHSC's proposed penalty structure is inconsistent with the statutory language and represents a penalty structure that has never been implemented by the agency.

The rule proposes a penalty structure for violations but does not align with the statutory language in SB 1137. Under the plain language of the statute penalties are capped at a static amount:

the penalty imposed by the commission may not exceed:

- (1) \$10 for each day the facility violated this chapter, if the facility's total gross revenue is less than \$10,000,000;
- (2) \$100 for each day the facility violated this chapter, if the facility's total gross revenue is \$10,000,000 or more and less than \$100,000,000; and
- (3) \$1,000 for each day the facility violated this chapter, if the facility's total gross revenue is \$100,000,000 or more.

Tex. Health & Safety Code § 327.008(c). Although there is language stating, "[e]ach day a violation continues is considered a separate violation", the penalties are still unequivocally capped on a per day basis. *Id.* At 327.008(d).

THA has made numerous public statements reflecting the sincere intent of hospitals to comply with all the requirements of the statute because it is the law and not because of the amount of penalties, but the statutory language does not indicate that a cumulative penalty structure is appropriate. THA is unaware of any instance where HHSC has interpreted similar statutory language to result in compounded fines. Examples of entries in the Texas Administrative Code referencing similar penalty structures, but that do not include a compounding element, include 25 TAC §229.555, 25 TAC §137.24, 25 TAC §117.85, 25 TAC §139.33, 25 TAC §221.13, and 25 TAC §140.427, among others.

Compounding fines is excessively punitive towards hospitals – especially where those hospitals are making good faith compliance efforts or perhaps lack notice of any violation and have not had an opportunity to correct deficiencies. We ask that HHSC reconsider the compounding aspect of the penalty structure and keep the penalties as a static, per-day amount.

4. HHSC has not established a uniform and clear process for assessing penalties.

It is unclear from the proposed rule how and when penalties will be assessed. At a minimum, hospitals should be provided with actual notice and a clear timeline to ameliorate any deficiencies prior to incurring penalties. THA suggests at least 90 days' notice of a deficiency prior to assessing penalties. Hospitals often find themselves unaware that an issue actually exists – due to issues with receiving notice – and are many times unsure of whether the corrective action undertaken is acceptable. Penalties should not be assessed until hospitals have actual notice and an opportunity to review and cure the issue.

As referenced above, Texas hospitals are making great efforts to comply with the state and federal price transparency requirements. THA hopes these requirements can be aligned as much as possible, to provide the best opportunity for hospitals to comply with both and minimize the opportunity for a penalty despite those good faith efforts at compliance. This alignment would not only simplify the processes, but also help relieve one of the regulatory burdens placed on hospitals.

THA sincerely thanks you for the opportunity to comment and participate in this process, and for your time and attention to this matter. Texas HHSC should receive comments from THA Member hospitals that echo and expand what we proposed herein; we hope you will consider all these comments. We look forward to working with you, and please feel free to contact me at (512) 465-1027 or clopez@tha.org with any questions, comments, or if there is anything else THA can assist with.

Respectfully Submitted,



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Texas Hospital Association