



2023 ASSEMBLY BILL 338

June 30, 2023 - Introduced by Representatives BROOKS, ROZAR, ALLEN, BODDEN, BRANDTJEN, DITTRICH, DONOVAN, DUCHOW, GOEBEN, GREEN, GUNDRUM, GUSTAFSON, MACCO, RETTINGER, SCHRAA, SHANKLAND, SORTWELL and WICHGERS, cosponsored by Senators FELZKOWSKI, BRADLEY, HUTTON, KNODL, LARSON, NASS, STROEBEL and WIMBERGER. Referred to Committee on Health, Aging and Long-Term Care.

1 **AN ACT** *to create* 50.40 of the statutes; **relating to:** price transparency in
2 hospitals and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill creates several requirements for hospitals to provide cost information for certain items and services provided by the hospital. Under the bill, each hospital must make publicly available a digital file in a machine-readable format that contains a list of standard charges for certain items and services provided by the hospital and a consumer-friendly list of standard charges for certain shoppable services. “Standard charge” is defined to mean the regular rate established by the hospital for an item or service provided to a specific group of paying patients and includes certain price information, including the gross charge, the payor-specific negotiated charge, and the discounted cash price. “Shoppable service” is defined to mean a service that may be scheduled by a health care consumer in advance. If the Department of Health Services determines that a hospital is not in compliance with any of the price transparency requirements specified in the bill, the bill requires DHS to take certain actions, including providing a written notice to the hospital, requesting a corrective action plan from the hospital, or imposing a penalty. The bill establishes escalating penalties for violations of the hospital price transparency requirements specified in the bill based on the hospital’s bed count, from \$600 for each day in which a hospital with 30 beds or fewer violates the hospital price transparency requirements under the bill up to \$10,000 for each day in which a hospital with greater than 550 beds violates the hospital price transparency requirements under the bill. The bill also requires DHS to maintain a publicly

ASSEMBLY BILL 338

available list of hospitals that have been found to have violated any of the price transparency requirements specified in the bill.

Under the bill, the list of standard charges must be available at all times to the public in a machine-readable format, must be displayed in a prominent location on the home page of the hospital's website, and must include certain information, including a description of each hospital item or service provided and any code used by the hospital for purposes of accounting or billing. Further, the list of standard charges must meet certain criteria, including that it must be available free of charge and without having to establish a user account or password, that the list is available without having to submit personal identifying information, that the list is digitally searchable, and that the list is accessible to a commercial operator of an Internet search engine as necessary for the search engine to index the list and display the list as a result in response to a search query of a user of the search engine. The list of standard charges must be updated at least once each year.

Further, under the bill, the consumer-friendly list of standard charges for shoppable services must be publicly available and must contain standard charge information for each of at least 300 shoppable services provided by the hospital. The bill allows a hospital to select the shoppable services to be included in the list, except that the list must include either the 70 services specified as shoppable services by the federal Centers for Medicare and Medicaid Services (CMS) or, if the hospital does not provide all of the shoppable services specified by CMS, as many of the 70 services specified as shoppable services by CMS as the hospital provides. If a hospital does not provide at least 300 shoppable services, the bill requires the hospital to maintain a list of all shoppable services that the hospital provides. The consumer-friendly list of standard charges for shoppable services must include certain information, including certain price information and a plain-language description of each shoppable service included on the list, whether each hospital location provides the shoppable service and whether the standard charges included in the list apply at that location, and whether one or more of the shoppable services specified by CMS is not provided by the hospital. The consumer-friendly list of standard charges for shoppable services must meet certain criteria, including that the list is available free of charge without having to establish a user account or password, that the list is searchable by service description, billing code, and payor, and that the list is accessible to a common commercial operator of an Internet search engine as necessary for the search engine to index the list and display the list as a result in response to a search query of a user of the search engine. The consumer-friendly list of standard charges for shoppable services must be updated at least once each year.

The bill provides that every time a hospital updates the list of standard charges or the consumer-friendly list of standard charges for shoppable services, the hospital must submit the updated list to DHS. Under the bill, DHS must monitor each hospital's compliance with the price transparency requirements specified in the bill by evaluating complaints, reviewing any analysis prepared regarding noncompliance, auditing the websites of hospitals, or confirming that each hospital submitted the required lists.

ASSEMBLY BILL 338

For further information see the state fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 50.40 of the statutes is created to read:

2 **50.40 Hospital price transparency. (1) DEFINITIONS.** In this section:

3 (a) “Ancillary service” means a hospital item or service that a hospital
4 customarily provides as part of a shoppable service.

5 (b) “Chargemaster” means the list of all hospital items or services maintained
6 by a hospital for which the hospital has established a charge.

7 (c) “De-identified maximum negotiated charge” means the highest charge that
8 a hospital has negotiated with all 3rd-party payors for a hospital item or service.

9 (d) “De-identified minimum negotiated charge” means the lowest charge that
10 a hospital has negotiated with all 3rd-party payors for a hospital item or service.

11 (e) “Discounted cash price” means the charge that applies to an individual who
12 pays cash, or a cash equivalent, for a hospital item or service.

13 (f) “Gross charge” means the charge for a hospital item or service that is
14 reflected on a hospital’s chargemaster, absent any discounts.

15 (g) “Hospital items or services” means all items and services, including
16 individual items and services and service packages, that may be provided by a
17 hospital to a patient in connection with an inpatient admission or an outpatient
18 department visit for which the hospital has established a standard charge, including
19 all of the following:

20 1. Supplies and procedures.

21 2. Room and board.

ASSEMBLY BILL 338**SECTION 1**

1 3. Use of the hospital and other areas.

2 4. Services of physicians and nonphysician practitioners employed by the
3 hospital.

4 5. Any other item or service for which a hospital has established a standard
5 charge.

6 (h) "Machine-readable format" means a digital representation of information
7 in a file that can be imported or read into a computer system for further processing.
8 "Machine-readable format" includes .XML, .JSON, and .CSV formats.

9 (i) "Payor-specific negotiated charge" means the charge that a hospital has
10 negotiated with a 3rd-party payor for a hospital item or service.

11 (j) "Service package" means an aggregation of individual hospital items or
12 services into a single service with a single charge.

13 (k) "Shoppable service" means a service that may be scheduled by a health care
14 consumer in advance.

15 (L) "Standard charge" means the regular rate established by the hospital for
16 a hospital item or service provided to a specific group of paying patients and includes
17 all of the following:

18 1. The gross charge.

19 2. The payor-specific negotiated charge.

20 3. The de-identified minimum negotiated charge.

21 4. The de-identified maximum negotiated charge.

22 5. The discounted cash price.

23 (m) "Third-party payor" means an entity that is, by statute, contract, or
24 agreement, legally responsible for payment of a claim for a hospital item or service.

ASSEMBLY BILL 338**SECTION 1**

1 **(2) PUBLIC AVAILABILITY OF PRICE INFORMATION REQUIRED.** A hospital shall make
2 publicly available all of the following:

3 (a) A digital file in a machine-readable format that contains a list of all
4 standard charges for all hospital items or services described under sub. (3).

5 (b) A consumer-friendly list of standard charges for a limited set of shoppable
6 services as provided in sub. (4).

7 **(3) LIST OF STANDARD CHARGES REQUIRED.** (a) A hospital shall do all of the
8 following:

9 1. Maintain a list of all standard charges for all hospital items or services in
10 accordance with this section.

11 2. Ensure the list required under subd. 1. is available at all times to the public,
12 including by posting the list electronically in the manner provided in this section.

13 (b) The standard charges contained in the list required to be maintained by a
14 hospital under par. (a) 1. shall reflect the standard charges applicable to that location
15 of the hospital, regardless of whether the hospital operates in more than one location
16 or operates under the same license as another hospital.

17 (c) The list required under par. (a) 1. shall include all of the following
18 information:

19 1. A description of each hospital item or service provided by the hospital.

20 2. The following charges for each individual hospital item or service when
21 provided in either an inpatient setting or an outpatient department setting:

22 a. The gross charge.

23 b. The de-identified minimum negotiated charge.

24 c. The de-identified maximum negotiated charge.

25 d. The discounted cash price.

ASSEMBLY BILL 338**SECTION 1**

1 e. The payor-specific negotiated charge, listed by the name of the 3rd-party
2 payor and plan associated with the charge and displayed in a manner that clearly
3 associates the charge with each 3rd-party payor and plan.

4 3. Any code used by the hospital for purposes of accounting or billing for the
5 hospital item or service, including the current procedural terminology code, the
6 healthcare common procedure coding system code, the diagnosis related group code,
7 the national drug code, or other common identifier.

8 (d) The information contained in the list required under par. (a) 1. shall be
9 published in a single digital file that is in a machine-readable format.

10 (e) The list required under par. (a) 1. shall be displayed in a prominent location
11 on the home page of the hospital's website or accessible by selecting a dedicated link
12 that is prominently displayed on the hospital's website. If the hospital operates
13 multiple locations and maintains a single website, the list required under par. (a) 1.
14 shall be posted for each location the hospital operates in a manner that clearly
15 associates the list with the applicable location of the hospital.

16 (f) The list required under par. (a) 1. shall satisfy all of the following criteria:

17 1. The list is available free of charge and without having to establish a user
18 account or password.

19 2. The list is available without having to submit personal identifying
20 information.

21 3. The list is available without having to overcome any other impediment,
22 including entering a code.

23 4. The list is accessible to a common commercial operator of an Internet search
24 engine to the extent necessary for the search engine to index the list and display the
25 list as a result in response to a search query of a user of the search engine.

ASSEMBLY BILL 338

1 5. The list is formatted in a manner prescribed by the department.

2 6. The list is digitally searchable.

3 7. The list uses a naming convention specified by the federal centers for
4 medicare and medicaid services.

5 (g) In prescribing the format of the list under par. (f) 5., the department shall
6 do all of the following:

7 1. Develop a template for each hospital to use in formatting the list.

8 2. Consider any applicable federal guidelines for formatting similar lists
9 required by federal law or rule and ensure that the design of the template enables
10 health care researchers to compare the charges contained in the lists maintained by
11 each hospital.

12 3. Design the template under subd. 1. to be substantially similar to the
13 template used by the federal centers for medicare and medicaid services for purposes
14 similar to the purposes of the list required under par. (a) 1. if the department
15 determines that designing the template under subd. 1. to be substantially similar to
16 the template used by the federal centers for medicare and medicaid services benefits
17 the department.

18 (h) A hospital shall update the list required under par. (a) 1. at least once each
19 year. The hospital shall clearly indicate the date on which the list was most recently
20 updated, either on the list or in a manner that is clearly associated with the list.

21 **(4) CONSUMER-FRIENDLY LIST OF SHOPPABLE SERVICES.** (a) Except as provided in
22 par. (c), a hospital shall maintain and make publicly available a list of the standard
23 charges described under sub. (3) (c) 2. b., c., d., and e. for each of at least 300
24 shoppable services provided by the hospital. The hospital may select the shoppable
25 services to be included in the list, except that the list shall include either the 70

ASSEMBLY BILL 338**SECTION 1**

1 services specified as shoppable services by the federal centers for medicare and
2 medicaid services or, if the hospital does not provide all of the shoppable services
3 specified by the federal centers for medicare and medicaid services, as many of the
4 70 services specified as shoppable services by the federal centers for medicare and
5 medicaid services as the hospital provides.

6 (b) In selecting a shoppable service for inclusion in the list, the hospital shall
7 consider how frequently the hospital provides the services and the hospital's billing
8 rate for the services and prioritize the selection of services that are among the
9 services most frequently provided by the hospital.

10 (c) If a hospital does not provide at least 300 shoppable services, then the
11 hospital shall maintain a list of all shoppable services that the hospital provides
12 consistent with the requirements of this subsection.

13 (d) The list required under this subsection shall satisfy all of the following:

14 1. The list shall include the following information:

15 a. A plain-language description of each shoppable service included on the list.

16 b. The payor-specific negotiated charge that applies to each shoppable service
17 included on the list and any ancillary service, listed by the name of the 3rd-party
18 payor and plan associated with the negotiated charge and displayed in a manner that
19 clearly associates the negotiated charge with the 3rd-party payor and plan.

20 c. The discounted cash price that applies to each shoppable service included on
21 the list and any ancillary service or, if the hospital does not offer a discounted cash
22 price for one or more of the shoppable services on the list or ancillary services, the
23 gross charge for the shoppable service or ancillary service.

24 d. The de-identified minimum negotiated charge that applies to each
25 shoppable service included on the list and any ancillary service.

ASSEMBLY BILL 338**SECTION 1**

1 e. The de-identified maximum negotiated charge that applies to each
2 shoppable service included on the list and any ancillary service.

3 f. Any code used by the hospital for purposes of accounting or billing for each
4 shoppable service included on the list and any ancillary service, including the
5 current procedural terminology code, the healthcare common procedure coding
6 system code, the diagnosis related group code, the national drug code, or other
7 common identifier.

8 2. If applicable, the list shall do all of the following:

9 a. State each location at which the hospital provides the shoppable service and
10 whether the standard charges included in the list apply at that location to the
11 provision of that shoppable service in an inpatient setting, an outpatient department
12 setting, or in both of those settings.

13 b. Indicate if one or more of the shoppable services specified by the federal
14 centers for medicare and medicaid services is not provided by the hospital.

15 (e) The list required under this subsection shall satisfy all of the following
16 criteria:

17 1. The list is displayed in the manner provided in sub. (3) (e).

18 2. The list is available free of charge, without having to register or establish a
19 user account or password, without having to submit personal identifying
20 information, and without having to overcome any other impediment, including
21 entering a code to access the list.

22 3. The list is searchable by service description, billing code, and payor.

23 4. The list is updated in the manner provided in sub. (3) (h).

ASSEMBLY BILL 338**SECTION 1**

1 5. The list is accessible to a common commercial operator of an Internet search
2 engine to the extent necessary for the search engine to index the list and display the
3 list as a result in response to a search query of a user of the search engine.

4 6. The list is formatted in a manner that is consistent with the format
5 prescribed by the department under sub. (3) (f) 5.

6 **(5) REPORTING.** Every time a hospital updates a list as required under subs. (3)
7 (h) and (4) (e) 4., the hospital shall submit the updated list to the department. The
8 department shall prescribe the form in which the updated list shall be submitted to
9 the department.

10 **(6) MONITORING AND ENFORCEMENT.** (a) The department shall monitor each
11 hospital's compliance with the requirements of this section using any of the following
12 methods:

13 1. Evaluating complaints made by persons to the department regarding
14 noncompliance with this section.

15 2. Reviewing any analysis prepared regarding noncompliance with this
16 section.

17 3. Auditing the websites of hospitals for noncompliance with this section.

18 4. Confirming that each hospital submitted the lists required under sub. (5).

19 (b) If the department determines that a hospital is not in compliance with any
20 provisions of this section, the department shall take the following actions:

21 1. Provide a written notice to the hospital that clearly explains the manner in
22 which the hospital is not in compliance with this section.

23 2. Request a corrective action plan from the hospital if the hospital has
24 materially violated a provision of this section, as determined under sub. (7).

ASSEMBLY BILL 338

1 3. Impose a penalty determined under sub. (8) and publicize the penalty on the
2 department's website. The department shall impose a penalty only if the hospital
3 does any of the following:

4 a. Fails to respond to the department's request to submit a corrective action
5 plan.

6 b. Fails to comply with the requirements of a corrective action plan submitted
7 to the department.

8 (c) The department shall create and maintain a publicly available list on its
9 website of hospitals that have been found to have violated any provision of this
10 section, that have been issued a penalty, or that have been sent a warning notice,
11 request for a corrective action plan, or any other written communication from the
12 department.

13 (d) In considering an application for renewal of a hospital's license, the
14 department shall consider whether the hospital is or has been in compliance with
15 this section.

16 **(7) MATERIAL VIOLATION; CORRECTIVE ACTION PLAN.** (a) A hospital materially
17 violates this section if the hospital does any of the following:

18 1. Fails to comply with the requirements of sub. (2).

19 2. Fails to publicize the hospital's standard charges in the form and manner
20 required by subs. (3) and (4).

21 (b) If the department determines that a hospital has materially violated this
22 section, the department shall issue a notice of material violation to the hospital and
23 request that the hospital submit a corrective plan of action. The notice shall indicate
24 the form and manner in which the corrective action plan shall be submitted to the

ASSEMBLY BILL 338**SECTION 1**

1 department, and clearly state the date by which the hospital is required to submit
2 the plan.

3 (c) A hospital that receives a notice under par. (b) shall do all of the following:

4 1. Submit a corrective action plan in the form and manner, and by the specified
5 date, prescribed by the notice of violation.

6 2. As soon as practicable after submission of a corrective action plan to the
7 department, act to comply with the corrective action plan.

8 (d) A corrective action plan submitted to the department shall satisfy all of the
9 following criteria:

10 1. Describe in detail the corrective actions the hospital will take to address any
11 violation identified by the department in the notice provided under par. (b).

12 2. Provide a date by which the hospital will complete the corrective actions
13 described in subd. 1.

14 (e) A corrective action plan is subject to review and approval by the department.
15 After the department reviews and approves a hospital's corrective action plan, the
16 department shall monitor and evaluate the hospital's compliance with the corrective
17 action plan.

18 (f) A hospital is considered to have failed to respond to the department's request
19 to submit a corrective action plan if the hospital does any of the following:

20 1. Fails to submit a corrective action plan in the form and manner specified in
21 the notice provided under par. (b).

22 2. Fails to submit a corrective action plan by the date specified in the notice
23 provided under par. (b).

ASSEMBLY BILL 338**SECTION 1**

1 (g) A hospital is considered to have failed to comply with a corrective action plan
2 if the hospital fails to address a violation within the specified period of time contained
3 in the corrective action plan.

4 **(8) FORFEITURE.** (a) The department shall impose a forfeiture on a hospital in
5 if the hospital does any of the following:

6 1. Fails to respond to the department's request to submit a corrective action
7 plan.

8 2. Fails to comply with the requirements of a corrective action plan submitted
9 to the department.

10 (b) The department shall impose a forfeiture on a hospital for a violation of each
11 requirement of this section. The department shall set the forfeiture in an amount
12 sufficient to ensure compliance by hospitals with the provisions of this section
13 subject to the limitations under par. (c).

14 (c) The forfeiture imposed under this subsection shall comply with all of the
15 following:

16 1. In the case of a hospital with 30 beds or fewer, the forfeiture may not be lower
17 than \$600 for each day in which the hospital violates this section.

18 2. In the case of a hospital with a bed count that is greater than 30 but less than
19 101, the forfeiture may not be lower than \$1,200 for each day in which the hospital
20 violates this section.

21 3. In the case of a hospital with a bed count that is greater than 100 but less
22 than 551, the forfeiture may not be lower than \$2,500 for each day in which the
23 hospital violates this section.

ASSEMBLY BILL 338**SECTION 1**

1 4. In the case of a hospital with a bed count that is greater than 550, the
2 forfeiture may not be less than \$10,000 for each day in which the hospital violates
3 this section.

4 (d) Each day a violation continues is considered a separate violation for
5 purposes of this subsection.

6 (e) In determining the amount of the forfeiture under this subsection, the
7 department shall consider all of the following factors:

8 1. Previous violations by the hospital's operator.

9 2. The seriousness of the violation.

10 3. Any demonstrated good faith by the hospital's operator.

11 4. Any other matters that the department determines is relevant.

12 (f) If a hospital desires to contest the imposing of a forfeiture under this
13 subsection, the hospital shall, within 10 days after receipt of notice, notify the
14 department in writing of its request for a hearing under s. 227.44. The department
15 shall hold the hearing within 30 days after receipt of such notice and shall send notice
16 to the hospital of the hearing as provided under s. 227.44 (2).

17 (g) All forfeitures shall be paid to the department within 10 days after receipt
18 of notice of forfeiture or, if the forfeiture is contested under par. (f), within 10 days
19 after receipt of the final decision after exhaustion of administrative review, unless
20 the final decision is appealed and the order is stayed by court order.

21 (h) 1. All administrative remedies shall be exhausted before an agency
22 determination under this subsection shall be subject to judicial review. Final
23 decisions after hearing shall be subject to judicial review exclusively as provided in
24 s. 227.52, except that any petition for review of department action under this

ASSEMBLY BILL 338

1 subsection shall be filed within 15 days after receipt of notice of the final agency
2 determination.

3 2. The court may stay enforcement under s. 227.54 of the department's final
4 decision if a showing is made that there is a substantial probability that the party
5 seeking review will prevail on the merits and will suffer irreparable harm if a stay
6 is not granted, and that the hospital will meet the requirements of this section during
7 such stay. When a stay is granted, the court may impose such conditions on the
8 granting of the stay as may be necessary to safeguard the public and to assure
9 compliance by the hospital with the requirements of this section.

10 3. The attorney general may delegate to the department the authority to
11 represent the state in any action brought to challenge department decisions prior to
12 exhaustion of administrative remedies and final disposition by the department.

13 (i) The department shall remit all forfeitures paid under this subsection to the
14 secretary of administration for deposit in the general fund.

15 **(9) LEGISLATIVE RECOMMENDATIONS.** Biennially, the department shall prepare
16 a report to be distributed to the legislature in the manner provided in s. 13.172 (2)
17 recommending amendments to this section, including recommendations in response
18 to amendments to 45 CFR part 180.

19 **SECTION 2. Effective date.**

20 (1) This act takes effect on the first day of the 4th month beginning after
21 publication.

22 (END)