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## FISCAL IMPACT REPORT

**SPONSOR** Thomson/Anaya/Silva/Szczepanski/ **LAST UPDATED** \_\_\_\_\_  
Gonzales **ORIGINAL DATE** 2/13/2025  
**SHORT TITLE** Hospital Price Transparency Act **BILL** \_\_\_\_\_  
**NUMBER** House Bill 263  
**ANALYST** Esquibel

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\* (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Miner's Hospital	No Fiscal Impact	\$62.0	\$65.0	\$127.0	Recurring	Miners' Trust Fund
UNM Hospital	No Fiscal Impact	\$687.0	\$707.6	\$1,394.6	Recurring	Hospital Operating Revenue
HCA	No Fiscal Impact	\$174.5	\$2.0	\$176.5	Recurring/Nonrecurring	General Fund
Hospitals	No Fiscal Impact	Indeterminate	Indeterminate	Indeterminate	Recurring	Operating funds
<b>Total</b>	No Fiscal Impact	\$923.5	774.6	\$1,698.1	Rec/Nonrec	Multiple

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect most recent analysis of this legislation.

### Sources of Information

LFC Files

#### Agency Analysis Received From

Attorney General's Office (NMAG)

Health Care Authority (HCA)

Miners' Hospital

New Mexico Hospital Association

University of New Mexico Health Sciences Center (UNMHSC)

#### Agency Analysis was Solicited but Not Received From

Department of Health

## SUMMARY

### Synopsis of House Bill 263

House Bill 263 (HB263) would require hospitals to post information on their public websites to disclose pricing, billing codes, and other detailed information for all items and services provided in inpatient and outpatient settings. HB263 provides penalties for violating the act, allows patients or patient guarantors to bring civil action against hospitals they believe to be in violation, and prohibits hospitals from taking collection actions against patients while civil

actions are pending. Violations include charging more for any item or service than the dollar amount published and “violating an order previously issued by the authority in a disciplinary matter.” Hospitals must submit their pricing lists to the Health Care Authority (HCA), which will make them publicly available within 60 days. HCA will report progress to the Legislative Finance Committee (LFC) and Legislative Health and Human Services Committee (LHHS) annually.

More specifically under the provisions of the bill, hospitals must post pricing details on their websites, including gross charges, negotiated charges, discounted cash prices, and billing codes. They must also list at least 300 shoppable services. Website information must be free, searchable, and updated annually. No barriers, such as account requirements or passwords, should restrict access. Before pursuing patient collection actions, hospitals must provide itemized statements, payment receipts, language assistance information, and contact details for clarification.

The bill proposes the Health Care Authority shall establish an electronic complaint system for consumers to report violations. Hospitals can be fined for price transparency violations in a tiered system of up to \$15 thousand on the fourth and subsequent violations. Each day of noncompliance is a separate violation. The authority can audit compliance and prohibit collection actions if violations occur. Section 5(H) prohibits collections actions by hospitals if the hospital was in violation of the act. Patients may bring a cause of action to have a court determine if the hospital is in violation of the Act. The hospital is prohibited from submitting information to the patient’s credit report while the civil action is pending. Section 5(I) allows for attorney fees and costs.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

## **FISCAL IMPLICATIONS**

HCA reports it would cost \$172.5 thousand to establish the proposed electronic complaint form and host it on HCA’s unified portal. HCA’s consolidated customer service center would answer complaint calls at an estimated cost of \$2,000 per year.

UNM Hospital (UNMH) reports compliance with this act would require UNMH to hire several additional analysts at an estimated cost of \$687 thousand annually. Other significant costs associated with this bill would include deferred or foregone revenue as well as increased civil litigation.

Miners’ Colfax Hospital reports under the bill’s provisions it would have to purchase hospital price transparency software to produce accurate machine readable and shoppable services files, and the changes would take an estimated 80 hours of staff time to implement, costing over \$60 thousand. Miners’ Hospital is funded with miners’ trust fund revenue and reports the costs would be absorbed by the hospital and could impact patient access to care.

## **SIGNIFICANT ISSUES**

### **University of New Mexico Hospital Issues**

UNMH reports HB263 overlaps and exceeds the federal Centers for Medicare and Medicaid Services (CMS) hospital price transparency rules, greatly increasing the compliance burden on hospitals, potentially confusing consumers with overlapping reports, and exposing hospitals to increased litigation without improving the quality or usefulness of information available to consumers.

Since 2021, CMS has required all hospitals to publicly post, via machine-readable files, five different standard charges: gross charges, payer-specific negotiated rates, de-identified minimum and maximum negotiated rates, and discounted cash prices. CMS also requires hospitals to provide patients with an out-of-pocket cost estimator tool or payer-specific negotiated rates for at least 300 shoppable services.

In compliance with federal law, UNMH notes it already makes charge data publicly available. However, the data provided are average charges. Individual patient charges for supplies, pharmaceuticals, etc., vary because medical care is tailored to the needs of individual patients.

UNMH reports, given that services and charges vary based on individual patient needs, it will be very difficult, if not impossible, to ensure that posted charges and actual charges always align, exposing hospitals to delayed payments, administrative burden, and civil liability. Similarly, Section 3.A.(f) requires the file contain the codes used by the hospital. Again, the actual care provided under a specific code can differ from patient to patient based on their medical needs and complexities.

Hospitals need the flexibility to adjust charges if costs change substantially or if new products, services, lab tests, medications or supplies are added. Pharmaceutical pricing is typically based on national average wholesale prices, which are frequently updated. HB263 would necessitate that lists be updated daily. In contrast, federal law requires that lists be updated annually.

The bill's requirement that lists be maintained on hospital websites for seven years is especially onerous in light of the need for daily updates.

### **Miners' Hospital Issues**

Miners' Colfax Medical Center is a state-run critical access hospital (CAH). CAH billing primarily uses a cost-based reimbursement method. CAHs normally bill both technical fees and professional fees, as well as for the actual cost of patient supplies. Some technical and professional fees are bundled while others are not. Therefore, it becomes difficult to calculate the amount of reimbursement received from insurance companies. Keeping the website files up to date and the penalties for billing a small amount more than what is stated on the hospital's website could have a significant impact on the hospital's financial stability.

## Health Care Authority Issues

HCA notes the bill duplicates federal CMS's hospital price transparency requirements, which require hospitals to make standard charges public. The Hospital Price Transparency regulation establishes enforceable guidelines by which hospitals must make public the standard charges they have established. The regulation defines several types of standard charges, including gross charges, discounted cash prices, and charges negotiated between the hospital and third-party payers. Hospitals are required to make these standard charges public via a single comprehensive machine-readable file with all standard charges established by the hospital for all the items and services it provides and with a consumer-friendly display of standard charges for as many of the 70 CMS-specified shoppable services that are provided by the hospital, and as many additional hospital selected shoppable services as is necessary for a combined total of at least 300 shoppable services. This requirement can be satisfied through the release of a shoppable services file or by offering a price estimator.

## New Mexico Hospital Association Issues

The New Mexico Hospital Association notes the bill differs from federal rules in the following ways:

- Federal rule allows hospitals to use a price estimator in lieu of listing 300 shoppable services. This option is not provided for in the bill.
- Federal rule allows systems with multiple hospitals with the same pricing to utilize one machine-readable file for multiple locations, as long as the names/locations of the hospitals are listed clearly. The bill, on page 8, line 14, would not allow that as it requires a machine-readable file for each individual hospital.
- Federal rule requires hospitals to publish these items annually on their website but does not require more than the current year's information to be posted. The bill, on page 16, line 7, requires hospitals to make seven years' worth of data available.
- Federal rule requires one annual update of the information. The bill page 10, line 4, also only requires annual updates once the first set of data is posted. However, in practice hospitals would be required to update the information any time any of the data may change.
- Federal rule requires hospitals to publish the data on their website only. The bill, on page 10, line 23, requires hospitals also send data to HCA to post on their website.

## ADMINISTRATIVE IMPLICATIONS

HCA staff would need training and expertise in the various hospital billing and procedural codes used in care. This expertise is currently outside the scope of HCA staff, according to the agency. Section 6 requires the hospital to provide easy-to-understand itemized statements to the patients. It is unclear how HCA would have access to evaluate original itemized statements provided to patients.

## TECHNICAL ISSUES

HCA notes the civil penalty section (E) has an array of penalties per incident that initially seems to imply penalty per instance and then in (F) makes the penalties per day with an assumption that every day out of compliance after day four will accrue \$15 thousand per day and perhaps per incident. Section (I) allows a detailed process for private action then section (J) (2) constrains the action to collection-oriented breaches.

UNMH notes despite overlapping the federal reporting mandates, HB263 does not require HCA to adopt a compatible file format. Section 3.E. requires the authority to develop a template that is "substantially similar" to the federal template, but given the differing data elements that must be reported, two separate reports appear likely. This could be very confusing to patients.

The definition of collection action and collection agency appear overly broad. "Collection action" includes "attempting to collect a debt from a patient or patient guarantor by referring the debt, directly or indirectly, to a debt collector, a collection agency or other third party retained by or on behalf of the hospital." This would impede hospitals' abilities to outsource any part of accounts receivable management processes.

NMAG notes Section 5(B)(3) states a hospital will violate the act if said hospital "fails to take immediate action to remedy a violation." The term "immediate action" is followed by a requirement in Section 5(C)(2) that HCA shall tell a hospital in violation of the act that the hospital is required to "provide prompt confirmation" that the corrective action was taken.

The New Mexico Hospital Association suggests the bill be amended to align with federal rule, the definition of collection action be narrowed, publishing of hospital information be less frequent, penalties and violations align with federal rule, the bill align with the Patients' Debt Collection Protection Act, and the collection, revenue management, and disbursement of collected fees and penalties be specified.

## OTHER SUBSTANTIVE ISSUES

NMAG notes the bill would endow HCA with the power to impose civil penalties after an administrative determination. In *SEC v. Jarkesy*, the U.S. Supreme Court determined that when civil penalties concern "culpability, deterrence, and recidivism," they may be construed as legal rather than equitable remedies and may require a jury trial to impose. As the *Jarkesy* decision is a substantial change to administrative law jurisprudence, it is not yet clear whether and how state courts will apply its principles to New Mexico agencies.

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