

House Engrossed Senate Bill  
hospital; price transparency

State of Arizona  
Senate  
Fifty-sixth Legislature  
First Regular Session  
2023

# SENATE BILL 1603

AN ACT

AMENDING TITLE 36, CHAPTER 4, ARTICLE 2, ARIZONA REVISED STATUTES, BY  
ADDING SECTION 36-425.09; AMENDING SECTION 36-437, ARIZONA REVISED  
STATUTES; RELATING TO HEALTH CARE INSTITUTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 36, chapter 4, article 2, Arizona Revised  
3 Statutes, is amended by adding section 36-425.09, to read:

4 36-425.09. Hospital price transparency; verification; annual  
5 report; exception

6 A. EACH HOSPITAL MUST COMPLY WITH THE REQUIREMENTS OF 45 CODE OF  
7 FEDERAL REGULATIONS PART 180. THE DEPARTMENT SHALL ANNUALLY VERIFY EACH  
8 HOSPITAL'S COMPLIANCE WITH THIS SECTION WITH THE CENTERS FOR MEDICARE AND  
9 MEDICAID SERVICES.

10 B. ON OR BEFORE JANUARY 1, 2025 AND EACH JANUARY 1 THEREAFTER, THE  
11 DEPARTMENT SHALL POST A REPORT ON ITS PUBLIC WEBSITE CONTAINING THE NAME  
12 OF ANY HOSPITAL THAT HAS BEEN FOUND TO BE NONCOMPLIANT WITH THE  
13 REQUIREMENTS OF 45 CODE OF FEDERAL REGULATIONS PART 180 AND THAT HAS BEEN  
14 ASSESSED A CIVIL MONETARY PENALTY BY THE CENTERS FOR MEDICARE AND MEDICAID  
15 SERVICES.

16 C. THIS SECTION DOES NOT APPLY TO THE ARIZONA STATE HOSPITAL.

17 Sec. 2. Section 36-437, Arizona Revised Statutes, is amended to  
18 read:

19 36-437. Health care facilities; charges; public availability;  
20 direct payment; notice; definitions

21 A. A health care facility with more than fifty inpatient beds must  
22 make available on request or online the direct pay price for at least the  
23 fifty most used diagnosis-related group codes, if applicable, for the  
24 HEALTH CARE facility and at least the fifty most used outpatient service  
25 codes, if applicable, for the HEALTH CARE facility. The services may be  
26 identified by a common procedural terminology code or by a plain-English  
27 description. The health care facility must update the direct pay prices  
28 at least annually based on the services from a twelve-month period that  
29 occurred within the eighteen-month period preceding the annual  
30 update. The direct pay price must be for the standard treatment provided  
31 for the service and may include the cost of treatment for complications or  
32 exceptional treatment.

33 B. A health care facility with fifty or fewer inpatient beds must  
34 make available on request or online the direct pay price for at least the  
35 thirty-five most used diagnosis-related group codes, if applicable, for  
36 the HEALTH CARE facility and at least the thirty-five most used outpatient  
37 service codes if applicable, for the HEALTH CARE facility. The services  
38 may be identified by a common procedural terminology code or by a  
39 plain-English description. The health care facility must update the  
40 direct pay prices at least annually based on the services from a  
41 twelve-month period that occurred within the eighteen-month period  
42 preceding the annual update. The direct pay price must be for the  
43 standard treatment provided for the service and may include the cost of  
44 treatment for complications or exceptional treatment.

1 C. Subsections A and B of this section do not apply if a discussion  
2 of the direct pay price would be a violation of the federal emergency  
3 medical treatment and labor act.

4 D. Veterans administration facilities, health facilities on  
5 military bases, ~~Indian health services hospitals and other~~ Indian health  
6 services facilities, ~~AND~~ tribal owned clinics ~~and the Arizona state~~  
7 ~~hospital~~ are exempt from the requirements of this section. If the  
8 director of the Arizona department of health services determines that a  
9 health care facility does not serve the general public, the health care  
10 facility is exempt from the requirements of this section if the HEALTH  
11 CARE facility does not serve the general public.

12 E. Subsections A and B of this section do not prevent a health care  
13 facility from offering either additional discounts or additional lawful  
14 health care services for an additional cost to a person or an employer  
15 paying directly.

16 F. A health care facility is not required to report the direct pay  
17 prices to a government agency or department or to a government-authorized  
18 or government-created entity for review. A government agency or  
19 department or government-authorized or government-created entity may not  
20 approve, disapprove or limit a health care facility's direct pay price for  
21 services. A government agency or department or government-authorized or  
22 government-created entity may not approve, disapprove or limit a health  
23 care facility's ability to change the published or posted direct pay price  
24 for services.

25 G. A health care system may not punish a person or employer for  
26 paying directly for lawful health care services or a health care facility  
27 for accepting direct payment from a person or employer for lawful health  
28 care services.

29 H. Except as provided in subsection O of this section, a health  
30 care facility that receives direct payment from a person or employer for a  
31 lawful health care service is deemed paid in full if the entire fee for  
32 the service is paid and shall not submit a claim for payment or  
33 reimbursement for the service to any health care system. This subsection  
34 does not prevent a health care facility from pursuing a health care lien  
35 for customary charges pursuant to title 33. This subsection does not  
36 affect the ability of a health care facility to submit claims for the same  
37 service provided on other occasions to the same or a different person if  
38 no direct payment occurs. This subsection does not require a health care  
39 facility to refund or adjust any capitated payment, bundled payment or  
40 other form of prepayment or global payment made by a health care system to  
41 the health care facility for lawful health care services to be provided by  
42 the health care facility for the person who makes, or on whose behalf an  
43 employer makes, direct payment to the health care facility.

44 I. Before a health care facility that is contracted as a network  
45 provider for a health care system accepts direct payment from a person or

1 an employer, and the person is an enrollee of the same health care system,  
2 the health care facility shall obtain the person's or employer's signature  
3 on a notice in a form that is substantially similar to the following:

4 Important Notice About Direct Payment  
5 For Your Health Care Services

6 The Arizona Constitution allows you to pay a health care  
7 facility directly for health care services. Before you make  
8 any agreement to do so, please read the following important  
9 information:

10 If you are an enrollee of a health care system (more  
11 commonly referred to as a "health insurance plan") and your  
12 health care facility is contracted with the health insurance  
13 plan, the following apply:

14 1. You may not be required to pay the health care  
15 facility directly for the services covered by your plan,  
16 except for cost share amounts that you are obligated to pay  
17 under your plan, such as copayments, coinsurance and  
18 deductible amounts.

19 2. Your provider's agreement with the health insurance  
20 plan may prevent the health care facility from billing you for  
21 the difference between the facility's billed charges and the  
22 amount allowed by your health insurance plan for covered  
23 services.

24 3. If you pay directly for a health care service, your  
25 health care facility will not be responsible for submitting  
26 claim documentation to your health insurance plan for that  
27 claim. Before paying your claim, your health insurance plan  
28 may require you to provide information and submit  
29 documentation necessary to determine whether the services are  
30 covered under your plan.

31 4. If you do not pay directly for a health care  
32 service, your health care facility may be responsible for  
33 submitting claim documentation to your health insurance plan  
34 for the health care service.

35 Your signature below acknowledges that you received this  
36 notice before paying directly for a health care service.

37 J. A health care facility that receives direct payment for a lawful  
38 health care service and that complies with subsection I of this section is  
39 not responsible for submitting documentation of any kind for purposes of  
40 reimbursement to any health care system for that claim if the failure to  
41 submit such documentation does not conflict with the terms of any federal  
42 or state contracts to which the health care system is a party and the  
43 health care facility has agreed to serve patients under or with applicable  
44 state or federal programs in which a health care facility and health care  
45 system participate.

1 K. A health care facility that receives direct payment pursuant to  
2 this section shall provide the person making the direct payment with a  
3 receipt that includes the following information:

4 1. The amount of the direct payment.

5 2. The applicable procedure and diagnosis codes for the services  
6 rendered.

7 3. A clear notation that the services were subject to direct  
8 payment under this section.

9 L. If an enrollee pays to a health care facility that is an  
10 out-of-network provider the direct pay price for a lawful health care  
11 service that is covered under the enrollee's health care plan, pursuant to  
12 the requirements of this section, the amount paid by the enrollee shall be  
13 applied first to the enrollee's in-network deductible with any remaining  
14 monies being applied to the enrollee's out-of-network deductible, if  
15 applicable. The amount applied to the in-network deductible shall be the  
16 amount paid directly or the HEALTH insurer's prevailing contracted  
17 commercial rate for the enrollee's health care plan in this state for the  
18 service or services. If the service or services do not match standard  
19 codes or bundled payment programs in use in this state by the HEALTH  
20 insurer, the amount applied to the in-network deductible shall be the  
21 amount paid directly. For the purposes of this subsection, "prevailing  
22 contracted commercial rate" means the most usual and customary rate that  
23 ~~an~~ A HEALTH insurer offers as payment for a specific service under a  
24 specific health care plan, not including a plan offered under medicare or  
25 medicaid or on a health insurance exchange.

26 M. If an enrollee is enrolled in a high deductible plan that  
27 qualifies the enrollee for a health savings account as defined in  
28 26 United States Code section 223, the health care system is not liable if  
29 the enrollee submits a claim for deductible application of a direct pay  
30 amount pursuant to subsection L of this section that jeopardizes the  
31 enrollee's status as an individual eligible for favorable tax treatment of  
32 the health savings account.

33 N. This section does not create any private right or cause of  
34 action for or on behalf of any person against the health insurer. This  
35 section provides solely an administrative remedy for any violation of this  
36 section or any related rule.

37 O. This section does not impair the provisions of a health care  
38 system's private health care network provider contract, except that a  
39 health care facility may accept direct payment from a person or employer  
40 or may decline to bill the health care system directly for services paid  
41 directly by a person or employer if the health care facility has complied  
42 with subsection I of this section and the health care facility's receipt  
43 of direct payment and the declination to bill the health care system do  
44 not conflict with the terms of any federal or state contract to which the  
45 health care system is a party and the health care facility has agreed to

1 serve patients under or with applicable state or federal programs in which  
2 a health care facility and health care system participate.

3 P. This section may not prevent the department of health services  
4 from performing an investigation of a health care facility under the  
5 department's powers and duties as prescribed in this title. If a health  
6 care facility fails to comply with this section, the penalty shall not  
7 include the revocation of the HEALTH CARE FACILITY'S license to deliver  
8 health care services.

9 Q. For the purposes of this section:

10 1. "Direct pay price" means the entire price that will be charged  
11 by a health care facility for a lawful health care service, regardless of  
12 the health insurance status of the person, if the entire fee for the  
13 service is paid in full directly to a health care facility by the person,  
14 including the person's health savings account, or by the person's employer  
15 and that does not prohibit a HEALTH CARE facility from establishing a  
16 payment plan with the person paying directly for services.

17 2. "Enrollee" means a person who is enrolled in a health care plan  
18 provided by a health insurer.

19 3. "Health care facility" means ~~a hospital~~, AN outpatient surgical  
20 center, health care laboratory, diagnostic imaging center or urgent care  
21 center.

22 4. "Health care plan" means a policy, contract or evidence of  
23 coverage issued to an enrollee. Health care plan does not include limited  
24 benefit coverage as defined in section 20-1137.

25 5. "Health care provider" means a person who is licensed pursuant  
26 to title 32, chapter 7, 8, 13, 14, 16, 17, 19 or 34.

27 6. "Health care system" means a public or private entity whose  
28 function or purpose is the management, processing or enrollment of  
29 individuals or the payment, in full or in part, of health care services.

30 7. "Health insurer":

31 (a) Means a disability insurer, group disability insurer, blanket  
32 disability insurer, health care services organization, hospital service  
33 corporation, medical service corporation or hospital and medical service  
34 corporation as defined in title 20.

35 (b) Does not include a governmental plan as defined in the employee  
36 retirement income security act of 1974 (P.L. 93-406; 88 Stat. 829;  
37 29 United States Code section 1002).

38 8. "Lawful health care services" means any health-related service  
39 or treatment, to the extent that the service or treatment is ~~permitted~~  
40 ALLOWED or not prohibited by law or regulation, that may be provided by  
41 persons or businesses THAT ARE otherwise ~~permitted~~ ALLOWED to offer the  
42 services or treatments.

43 9. "Punish" means to impose any penalty, surcharge or named fee  
44 with a similar effect that is used to discourage the exercise of rights  
45 under this section.