

109TH CONGRESS
1ST SESSION

H. R. 4450

To require hospitals and ambulatory surgical centers to disclose charge-related information and to provide price protection for treatments not covered by insurance as conditions for receiving protection from charge-related legal actions.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 6, 2005

Mr. SESSIONS introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To require hospitals and ambulatory surgical centers to disclose charge-related information and to provide price protection for treatments not covered by insurance as conditions for receiving protection from charge-related legal actions.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Hospital and ASC
5 Price Disclosure and Litigation Protection Act of 2005”.

1 **SEC. 2. PROTECTION FROM CERTAIN LEGAL ACTIONS PRO-**
2 **VIDED TO HOSPITALS AND AMBULATORY**
3 **SURGICAL CENTERS THAT COMPLY WITH**
4 **CHARGE-RELATED REQUIREMENTS.**

5 (a) IN GENERAL.—A charge-related legal action may
6 not be brought by an individual—

7 (1) against a hospital, if the hospital—

8 (A) has met the charge-related disclosure
9 requirements under paragraphs (1)(A) and
10 (2)(A) of section 3(a), with respect to such indi-
11 vidual;

12 (B) complies with the reporting and post-
13 ing requirements under paragraphs (1)(A) and
14 (3)(A) of section 3(b); and

15 (C) has entered into an agreement under
16 paragraph (1) of section 3(e) with the indi-
17 vidual and has met the terms of such agree-
18 ment; and

19 (2) against an ambulatory surgical center, if
20 the ambulatory surgical center—

21 (A) has met the charge-related disclosure
22 requirements under paragraphs (1)(B) and
23 (2)(B) of section 3(a), with respect to such in-
24 dividual;

1 (B) complies with the reporting and post-
2 ing requirements under paragraphs (1)(B) and
3 (3)(B) of section 3(b); and

4 (C) has entered into an agreement under
5 paragraph (2) of section 3(c) with the indi-
6 vidual and has met the terms of such agree-
7 ment.

8 (b) CHARGE-RELATED LEGAL ACTION DEFINED.—

9 (1) IN GENERAL.—For purposes of this section,
10 the term “charge-related legal action” means any
11 Federal or State legal action brought by an indi-
12 vidual for any damages or other relief, with respect
13 to the amount charged by a hospital or an ambula-
14 tory surgical center for a treatment (or course of
15 treatment), sought against the hospital or ambula-
16 tory surgical center, respectively, regardless of the
17 legal basis for the action, including a violation of the
18 Internal Revenue Code of 1986, section 1867 of the
19 Social Security Act (42 U.S.C. 1395dd), or any
20 other Federal law, a breach of contract claim, a
21 breach of good faith and fair dealing claim, or other-
22 wise.

23 (2) EXCEPTION.—Such term does not include a
24 State legal action for which the legal basis is a claim
25 of liability of the hospital or ambulatory surgical

1 center created by a statute of the State in which the
 2 action is brought.

3 (c) EFFECTIVE DATE.—This section shall take effect
 4 on the date of the enactment of this Act and shall apply
 5 to actions brought on or after such day.

6 **SEC. 3. CHARGE-RELATED REQUIREMENTS.**

7 (a) CHARGE-RELATED DISCLOSURE TO INDIVIDUALS
 8 REQUIRED.—

9 (1) PRE-TREATMENT DISCLOSURE.—

10 (A) HOSPITAL DISCLOSURE REQUIRE-
 11 MENT.—Subject to paragraph (3) and for pur-
 12 poses of complying with section 2(a)(1)(A), the
 13 charge-related disclosure requirement of this
 14 subparagraph is that a hospital provide to an
 15 individual who is scheduled to receive a treat-
 16 ment (or to begin a course of treatment) that
 17 is not for an emergency medical condition, the
 18 following (determined at the time of sched-
 19 uling):

20 (i) STATEMENT REGARDING DIS-
 21 COUNT PRICES.—The following statement:
 22 “Prices for enrollees in group plans and
 23 medicare beneficiaries may be lower be-
 24 cause individuals pooled together in groups
 25 are sometimes offered discounted prices.”.

1 (ii) ESTIMATED PRICES TO BE
2 CHARGED.—The estimated price that the
3 hospital will charge for the treatment (or
4 course of treatment).

5 (iii) NETWORK PLANS AND MANAGED
6 CARE PLANS PAYMENT RATE.—The rate of
7 payment for the treatment (or course of
8 treatment) to the hospital that has been
9 negotiated by or on behalf of the hospital
10 with the network plan or managed care
11 plan that has the largest number of enroll-
12 ees, without regard to cost-sharing.

13 (iv) MEDICARE PAYMENT RATE.—The
14 rate of payment for the treatment (or
15 course of treatment) applicable to the hos-
16 pital under the medicare program, without
17 regard to cost-sharing.

18 (B) AMBULATORY SURGICAL CENTER DIS-
19 CLOSURE REQUIREMENT.—Subject to para-
20 graph (3) and for purposes of complying with
21 section 2(a)(2)(A), the charge-related disclosure
22 requirement of this subparagraph is that an
23 ambulatory surgical center provide to an indi-
24 vidual who is scheduled to receive a treatment
25 (or to begin a course of treatment) that is not

1 for an emergency medical condition, the fol-
2 lowing (determined at the time of scheduling):

3 (i) STATEMENT REGARDING DIS-
4 COUNT PRICES.—The statement described
5 in subparagraph (A)(i).

6 (ii) ESTIMATED PRICES TO BE
7 CHARGED.—The estimated price that the
8 ambulatory surgical center will charge for
9 the treatment (or course of treatment).

10 (iii) NETWORK PLANS AND MANAGED
11 CARE PLANS PAYMENT RATE.—The rate of
12 payment for the treatment (or course of
13 treatment) to the ambulatory surgical cen-
14 ter that has been negotiated by or on be-
15 half of the ambulatory surgical center with
16 the network plan or managed care plan
17 that has the largest number of enrollees,
18 without regard to cost-sharing.

19 (iv) MEDICARE PAYMENT RATE.—The
20 rate of payment for the treatment (or
21 course of treatment) applicable to the am-
22 bulatory surgical center under the medi-
23 care program, without regard to cost-shar-
24 ing.

25 (2) POST-TREATMENT DISCLOSURE.—

1 (A) HOSPITAL DISCLOSURE REQUIRE-
2 MENT.—Subject to paragraph (3) and for pur-
3 poses of complying with section 2(a)(1)(A), the
4 charge-related disclosure requirement of this
5 subparagraph is that the hospital include with
6 any bill that includes the charges for a treat-
7 ment an itemized list of component charges for
8 such treatment, including charges for drugs and
9 medical equipment involved, as determined at
10 the time of billing. With respect to each item
11 included on such list, the hospital shall include
12 the following:

13 (i) PRICES CHARGED.—The price that
14 the hospital charged for each item.

15 (ii) NETWORK PLANS AND MANAGED
16 CARE PLANS PAYMENT RATE.—The rate of
17 payment for each item to the hospital that
18 has been negotiated by or on behalf of the
19 hospital with the network plan or managed
20 care plan that has the largest number of
21 enrollees, without regard to cost-sharing.

22 (iii) MEDICARE PAYMENT RATE.—The
23 rate of payment for each item applicable to
24 the hospital under the medicare program,
25 without regard to cost-sharing.

1 (B) AMBULATORY SURGICAL CENTER RE-
2 QUIREMENT.—Subject to paragraph (3) and for
3 purposes of complying with section 2(a)(2)(A),
4 the charge-related disclosure requirement of
5 this subparagraph is that the ambulatory sur-
6 gical center include with any bill that includes
7 the charges for a treatment an itemized list of
8 component charges for such treatment, includ-
9 ing charges for drugs and medical equipment
10 involved, as determined at the time of billing.
11 With respect to each item included on such list,
12 the ambulatory surgical center shall include the
13 following:

14 (i) PRICES CHARGED.—The price that
15 the ambulatory surgical center charged for
16 each item.

17 (ii) NETWORK PLANS AND MANAGED
18 CARE PLANS PAYMENT RATE.—The rate of
19 payment for each item to the ambulatory
20 surgical center that has been negotiated by
21 or on behalf of the ambulatory surgical
22 center with the network plan or managed
23 care plan that has the largest number of
24 enrollees, without regard to cost-sharing.

1 (iii) MEDICARE PAYMENT RATE.—The
2 rate of payment for each item applicable to
3 the ambulatory surgical center under the
4 medicare program, without regard to cost-
5 sharing.

6 (3) APPLICATION OF REQUIREMENT ONLY ON
7 REQUEST IF THIRD-PARTY PRICE ARRANGEMENT EX-
8 ISTS.—A hospital or an ambulatory surgical center
9 is not required to provide the applicable information
10 under paragraph (1) or (2) for a treatment (or a
11 course of treatment) for which there exists a third-
12 party price arrangement unless the individual in-
13 volved requests such information on or after the
14 time of scheduling and before the time of billing for
15 the treatment.

16 (b) HOSPITAL PUBLIC REPORTING AND AVAIL-
17 ABILITY OF CHARGE-RELATED INFORMATION RE-
18 QUIRED.—

19 (1) SEMIANNUAL REPORTING REQUIRE-
20 MENTS.—

21 (A) FOR HOSPITALS.—For purposes of
22 complying with section 2(a)(1)(B), the report-
23 ing requirement of this subparagraph is that,
24 not later than 80 days after the end of each
25 semiannual period described in subparagraph

1 (C), a hospital report to the Secretary the fol-
2 lowing data:

3 (i) The frequency with which the hos-
4 pital performed each procedure selected
5 under clause (i) or (ii) of paragraph (4)(A)
6 in an inpatient or outpatient setting, re-
7 spectively, during such period and the fre-
8 quency with which the hospital adminis-
9 tered a drug selected under clause (iv) of
10 such paragraph in an inpatient setting
11 during such period.

12 (ii) If such a procedure was so per-
13 formed or such a drug was so administered
14 during such period—

15 (I) the average charge billed by
16 the hospital during such period for
17 such procedure or drug in cases in
18 which there did not exist a third-party
19 price arrangement for such procedure
20 or drug;

21 (II) the rate of payment during
22 such period for such procedure or
23 drug to the hospital that has been ne-
24 gotiated by or on behalf of the hos-
25 pital with the network plan or man-

1 aged care plan that has the largest
2 number of enrollees, without regard to
3 cost-sharing; and

4 (III) the rate of payment during
5 such period for such procedure or
6 drug applicable to the hospital under
7 the medicare program, without regard
8 to cost-sharing.

9 (B) FOR AMBULATORY SURGICAL CEN-
10 TERS.—For purposes of complying with section
11 2(a)(2)(B), the reporting requirement of this
12 subparagraph is that, not later than 80 days
13 after the end of each semiannual period de-
14 scribed in subparagraph (C), an ambulatory
15 surgical center report to the Secretary the fol-
16 lowing data:

17 (i) The frequency with which the am-
18 bulatory surgical center performed each
19 procedure selected under clause (iii) of
20 paragraph (4)(A) during such period.

21 (ii) If the procedure was so performed
22 during such period—

23 (I) the average charge billed by
24 the ambulatory surgical center during
25 such period for such procedure in

1 cases in which there did not exist a
2 third-party price arrangement for
3 such procedure;

4 (II) the rate of payment during
5 such period for such procedure to the
6 ambulatory surgical center that has
7 been negotiated by or on behalf of the
8 ambulatory surgical center with the
9 network plan or managed care plan
10 that has the largest number of enroll-
11 ees, without regard to cost-sharing;
12 and

13 (III) the rate of payment during
14 such period for such procedure appli-
15 cable to the ambulatory surgical cen-
16 ter under the medicare program, with-
17 out regard to cost-sharing.

18 (C) SEMIANNUAL PERIOD DESCRIBED.—

19 For purposes of this paragraph, a semiannual
20 period described in this subparagraph is a pe-
21 riod of six months beginning on January 1 or
22 July 1, with the first such period beginning
23 more than one year after the date of the enact-
24 ment of this Act.

1 (2) PUBLIC POSTING OF INFORMATION.—The
2 Secretary of Health and Human Services shall
3 promptly post, on the official public Internet site of
4 the Department of Health and Human Services, the
5 information reported under paragraph (1). Such in-
6 formation shall be set forth in a manner that pro-
7 motes charge comparison among hospitals and
8 among ambulatory surgical centers.

9 (3) AVAILABILITY OF INFORMATION POSTED.—

10 (A) REQUIREMENT FOR HOSPITALS.—For
11 purposes of complying with section 2(a)(1)(B),
12 the posting requirement of this subparagraph is
13 that, not later than the date of the enactment
14 of this Act, a hospital prominently post at each
15 admission site of the hospital—

16 (i) a notice of the availability of the
17 information described in paragraphs (1)(A)
18 and (2)(A) of subsection (a); and

19 (ii) a notice of the availability of the
20 information reported under paragraph
21 (1)(A) on the official public Internet site
22 under paragraph (2).

23 (B) REQUIREMENT FOR AMBULATORY
24 SURGICAL CENTERS.—For purposes of com-
25 plying with section 2(a)(2)(B), the posting re-

1 requirement of this subparagraph is that, not
2 later than the date of the enactment of this
3 Act, an ambulatory surgical center prominently
4 post at each admission site of the ambulatory
5 surgical center—

6 (i) a notice of the availability of the
7 information described in paragraphs (1)(B)
8 and (2)(B) of subsection (a); and

9 (ii) a notice of the availability of the
10 information reported under paragraph
11 (1)(B) on the official public Internet site
12 under paragraph (2).

13 (4) SELECTION OF PROCEDURES AND DRUGS.—

14 For purposes of this subsection:

15 (A) INITIAL SELECTION.—Based on na-
16 tional data, the Secretary shall select the fol-
17 lowing:

18 (i) The 25 most frequently performed
19 procedures in a hospital inpatient setting,
20 as identified by diagnosis-related group.

21 (ii) The 25 most frequently performed
22 procedures in a hospital outpatient setting,
23 as identified under the classification sys-
24 tem for covered OPD services under sec-

1 tion 1833(t)(2)(A) of the Social Security
2 Act (42 U.S.C. 1395l(t)(2)(A)).

3 (iii) The 25 most frequently per-
4 formed procedures in an ambulatory sur-
5 gical center setting.

6 (iv) The 50 most frequently adminis-
7 tered drugs in a hospital inpatient setting.

8 (B) UPDATING SELECTION.—The Sec-
9 retary shall periodically update the procedures
10 and drugs selected under subparagraph (A).

11 (c) CHARGE AGREEMENTS FOR UNINSURED TREAT-
12 MENTS.—

13 (1) FOR HOSPITALS.—Subject to paragraph (3)
14 and for purposes of complying with section
15 2(a)(1)(C), an agreement under this paragraph is an
16 agreement entered into between a hospital and an
17 individual, on or after the date of scheduling treat-
18 ment involved for the individual and before the date
19 of such treatment, that provides that the hospital
20 will not charge for the treatment an amount that is
21 greater than the price that has been agreed to by
22 the hospital and the individual and specified in writ-
23 ing in such agreement.

24 (2) FOR AMBULATORY SURGICAL CENTERS.—
25 Subject to paragraph (3) and for purposes of com-

1 plying with section 2(a)(2)(C), an agreement under
2 this paragraph is an agreement entered into between
3 an ambulatory surgical center and an individual, on
4 or after the date of scheduling treatment involved
5 for the individual and before the date of such treat-
6 ment, that provides that the ambulatory surgical
7 center will not charge for the treatment an amount
8 that is greater than the price that has been agreed
9 to by the ambulatory surgical center and the indi-
10 vidual and specified in writing in such agreement.

11 (3) APPLICATION OF REQUIREMENT ONLY TO
12 UNINSURED TREATMENTS.—Paragraphs (1) and (2)
13 shall apply only with respect to a treatment (or
14 course of treatment) for which there does not exist
15 a third-party price arrangement.

16 (d) ADMINISTRATIVE PROVISIONS.—

17 (1) IN GENERAL.—The Secretary shall pre-
18 scribe such regulations and issue such guidelines as
19 may be required to carry out this section.

20 (2) FORM OF REPORT AND NOTICE.—The regu-
21 lations and guidelines under paragraph (1) shall
22 specify the following:

23 (A) FOR DISCLOSURE TO INDIVIDUALS.—

24 The form and manner in which a hospital or an
25 ambulatory surgical center shall provide the in-

1 formation under subsection (a)(1)(A) or
2 (a)(1)(B), respectively.

3 (B) FOR PUBLIC REPORTING.—The elec-
4 tronic form and manner by which a hospital or
5 an ambulatory surgical center shall report data
6 under subsection (b)(1)(A) or (b)(1)(B), respec-
7 tively.

8 (C) FOR PUBLIC POSTING.—The form in
9 which a hospital or an ambulatory surgical cen-
10 ter shall post notices under subsection (b)(3)(A)
11 or (b)(3)(B), respectively.

12 (e) NON-PREEMPTION OF STATE LAWS.—Nothing in
13 this section shall be construed as preempting or otherwise
14 affecting any provision of State law relating to the disclo-
15 sure or posting of price, charge, or other information for
16 a hospital or an ambulatory surgical center.

17 **SEC. 4. DEFINITIONS.**

18 In this Act:

19 (1) AMBULATORY SURGICAL CENTER.—The
20 term “ambulatory surgical center” means an ambu-
21 latory surgical center described in section
22 1832(a)(2)(F)(i).

23 (2) EMERGENCY MEDICAL CONDITION.—The
24 term “emergency medical condition” has the mean-

1 ing given that term in section 1867(e)(1) of the So-
2 cial Security Act (42 U.S.C. 1395dd(e)(1)).

3 (3) HOSPITAL.—The term “hospital” has the
4 meaning given that term in section 1861(e) of the
5 Social Security Act (42 U.S.C. 1395x(e)).

6 (4) MEDICAID PROGRAM.—The term “medicaid
7 program” means the program under title XIX of the
8 Social Security Act (42 U.S.C. 1396 et seq.).

9 (5) MEDICARE BENEFICIARY.—The term
10 “medicare beneficiary” means an individual who is
11 entitled to benefits under part A, and enrolled under
12 part B, of the medicare program, and who is not en-
13 rolled in a Medicare Advantage plan under part C
14 of such program.

15 (6) MEDICARE PROGRAM.—The term “medicare
16 program” means the program under title XVIII of
17 the Social Security Act (42 U.S.C. 1395 et seq.).

18 (7) SECRETARY.—The term “Secretary” means
19 the Secretary of Health and Human Services.

20 (8) STATE.—The term “State” includes the
21 District of Columbia, the Commonwealth of Puerto
22 Rico, the Virgin Islands, Guam, and American
23 Samoa.

24 (9) THIRD-PARTY PRICE ARRANGEMENT.—The
25 term “third-party price arrangement” means, with

1 respect to a treatment (or course of treatment) in a
2 hospital or an ambulatory surgical center, a contract
3 or other agreement between the hospital or the am-
4 bulatory surgical center, respectively, and a third
5 party, including an arrangement—

6 (A) with a health maintenance organiza-
7 tion plan, network plan, or managed care plan,
8 or

9 (B) under the medicare or medicaid pro-
10 gram,

11 that establishes the price or the maximum price of
12 the treatment (or course of treatment) for bene-
13 ficiaries under the plan or title.

○