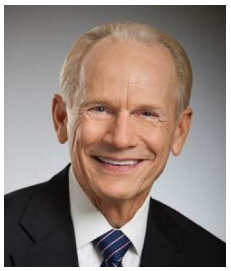
COPE HEALTH SOLUTIONS

Hospital Price Transparency: Unintended Consequences and Likely Impacts



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The Centers for Medicare & Medicaid Services (CMS) recently issued a final rule requiring hospitals to release pricing information before providing services. Under the rule, hospitals must list standard prices for 300 "shoppable services" as well as the lowest prices they will accept from cash-paying consumers.[1] According to CMS Administrator Seema Verma, the new price transparency rule will help patients by boosting quality and cutting costs.

With this move, the Trump administration is committing to the theory that cost transparency will lower health care costs by enabling consumers to "shop and compare" hospital services. In our view, the new price transparency rule is a superficial and naive approach to health care reform. Arguably, hospitals will have to put more energy into complying with the rule than taking constructive actions to improve quality and access while reducing costs.

Below, we analyze the main problem with price transparency in health care, explore how it will impact the existing health care system and spell out nine effects to expect from the new rule.

Price Transparency and Health Care Consumerism

The goal of the new price transparency rule is to lower health care costs by bolstering consumer-style competition. The main problem with this goal is that health care does not follow the traditional rules of consumer economics. Intuitively, we know there is a big difference between purchasing the latest in cell phone technology and having a surgical procedure.[2] While consumers choose some services, most patient care is emergent or urgent. In fact, over 85 percent of hospital admissions are unscheduled and most patients continue to rely on physician referrals to navigate specialists and services. The bottom line is there is no large-scale evidence that patients use price transparency tools to "shop" for services.[3]

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In addition, recent trends in consumer-driven health care will likely erode the effectiveness of the new rule. Cost transparency relies on high deductibles and coinsurance. However, evidence shows that such plans leave consumers feeling cheated and underinsured. In addition, most consumers with high-deductible health plans do not contribute to their health savings accounts.[4] Employers that need to attract qualified workers in a tight labor market are increasingly discarding high-deductible products that shift costs and "choices" to their employees.

Unintended Consequences of Price Transparency

While the price transparency rule will not strengthen the dynamics of health care consumerism, it will have a significant impact on the financial ecosystem of health care.

First, the rule will create compliance challenges as hospitals struggle to implement the new directive. The rule appears to premise on the assumption that prices and payments result from simple items and services rather than the detailed and inter-related charges a procedure may necessitate. Assigning prices to specific services will be a major undertaking. In addition, the rule requires hospitals to submit data they do not possess, especially payor information that is outside a given hospital's contractual authority to collect. This includes contracts subject to entities that have rented a payor's network.

Most importantly, the new rule will alter the balance of power in payor negotiations. The key issue here is the requirement for hospitals to publish minimum and maximum cash payment prices, including the lowest cash payment they will accept from consumers. This requirement creates a competitive advantage for large purchasers of health care services such as insurance companies, large self-insured companies and labor unions. In concrete terms, the publication of hospital minimum cash prices will give all payors a low floor from which to negotiate. With the help of in-house analytics experts, large purchasers of health care will be able to use price transparency to reduce their medical spending to the lowest common denominator. In a parallel impact, brokers will guide large self-insured companies to insurers with the best hospital pricing. The result will be payment compression from private payors and hospitals' loss of the ability to recover losses from Medicare and Medicaid payment shortfalls through cost shifts.

Similarly, price transparency strengthens the negotiating stance of delegated medical groups that assume risk for outpatient and sometimes in-patient care (California leads the nation in the number of people who receive part or all of their care through a delegated group, its contract providers or "out-of-network" providers.). The new rule places delegated groups and hospitals in potential conflict with each other and gives delegated groups an additional advantage in their negotiations with hospitals.

The overall shift in negotiation leverage will affect different organizations in different ways. Health care is still local and the impact of price transparency on a given hospital will depend on factors like regional competition, size, cost structure (e.g., community hospital vs. academic medical center), physician networks, market dominance, distance to competitors, infrastructure, workforce and reputation. Hospitals and health systems that are major access points in networks should be able to leverage their strength to maintain balance in rate negotiations. Conversely, hospitals and health systems are not positioned as a "must have" access point and therefore, price transparency will further weaken their negotiating power.

Nine Things to Expect from the New Price Transparency Rule

Overall, the hospital price transparency rule will force both regressive and positive changes. Conflicts, lack of congruence, difficulties in compliance and absence of real improvements in the delivery system will likely force hospitals to pursue numerous strategies, some of which may not be compatible with others. The following are nine ways price transparency will likely affect the health care system in the near term:

1. **Hospital prices will become more competitive for some services:** In response to the new rule, hospitals will begin to set competitive prices for the requisite "shoppable" services and discretionary basics. Hospitals may also expand the number of elective procedures they provide in lower-cost ambulatory surgery centers and outpatient hospital departments, such as knee replacements or certain non-urgent coronary intervention procedures. Overall, prices are likely to stabilize for high-volume procedures that are subject to consumer influence or have a strong impact on payors.

2. **Prices will increase for other hospital services:** Many hospitals may need to raise prices on non-discretionary services in order to bridge the financial gap created by lower price shoppable services. Selective price increases may also be used to deal with unfunded mandates, the cost of new technology and increases in the cost of drugs. Expect price increases for trauma, emergency department services, emergent surgeries, hospitalizations, and other non-discretionary services.

3. **Some regions may see higher prices overall:** Many hospital leaders already suspect that their institution is underpaid. Once price transparency is in effect, these executive teams will learn that there is, in fact, a significant disparity in payment rates. Large health systems or those with top reputations may find that they do not command the highest rates in every category. Those with the

lowest rates will claim foul and make a case that they need significant increases. Ironically, price transparency may initially cause hospital prices to increase in some markets.

4. **The new dynamics of negotiation will accelerate consolidations:** As noted above, hospitals and health systems with less network leverage will face tougher payor negotiations. These organizations will have to choose whether they will be a commodity or attain competitive advantage by merging, consolidating or affiliating with other entities. Many hospitals and systems will need to partner to achieve market relevance and create enough market power to negotiate the payment rates they require.

5. **Some hospitals and systems will not be able to survive as low-cost providers:** Consolidation may not be feasible for many hospital organizations, especially essential providers in rural areas. These hospitals will require additional subsidies or closures will accelerate. This trend could have an outsized impact on safety net hospitals, and the closure of these facilities will send shockwaves through their communities.

6. **Adoption of new technology will slow unless it has a strong value proposition:** Risk aversion in the health care industry will intensify in light of the new dynamic of price transparency. Discretionary funds may shrink. For many executive decision makers, the latest technology will need to demonstrate a strong value proposition in terms of cost reduction, revenue generation or outcome improvement.

7. **Payors will experiment with benefit designs:** Price transparency will have an indirect impact on some services via benefit designs such as "reference pricing." For example, one hospital service that is moderately sensitive to consumer choice is the birth program. Under reference pricing, a payor might cover the first $3,500 of services, which may pay for up to 85 percent of the total delivery cos. The consumer can still choose a hospital with a negotiated case rate of $6,000 or more (the high end of the market) but the covered cost will be determined by the transparency-driven reference price.

8. **Price transparency will add a new dimension to antitrust compliance:** The mission of the Department of Justice (DOJ) Antitrust Division is to promote economic competition by enforcing and providing guidance on antitrust laws and principles. Price transparency will give the DOJ increased visibility into the consumer impact of proposed mergers and acquisitions. In some cases, the DOJ may impose requirements that help to mitigate potential health care cost increases by requiring combining entities to shift a percentage of their business to population health and value-based agreements.

9. **The impact on value-based payment will be mixed:** On one hand, CMS continues to advance value-based payment initiatives such as bundled payments, STAR rating payment differentials, and hospital-acquired infection penalties. For hospitals, price transparency creates short-term incentives that conflict with these longer term value-based strategies. On the other hand, the challenges of price transparency may spur more hospitals to secure volume through value-based, risk-based, capitation arrangements and global revenue budgets. As part of this, more hospitals may shift to the population health business to position themselves more optimally in the "food chain" of premium dollar funds flow.

   On the payor side, price transparency could spawn more formula-driven hospital reimbursement models that compare price, quality, patient satisfaction, and other measures. Plans may experiment with offering value-based benefit designs that encourage consumers to shop for lower cost, higher value care. Under these plans, consumers will share the savings or bear the burden for choosing a higher-cost provider.

Responding to Price Transparency with Long-Term Strategy

The new price transparency rule is receiving tremendous pushback from the hospital industry.[5] The American Heart Association (AHA), the Association of American Medical Colleges (AMMC), Federation of American Hospitals and many other organizations have filed a lawsuit on December 4, 2019, to block Trump's price transparency rule. The suit argues that the rule violates the First Amendment and causes disclosure of confidential information for third-party payers. It also alleges the Department of Health and Human Services (HHS) does not have the authority to enforce the rule. While the rule implementation may be delayed, a potential change in government administration will have only minimal effect. Both Democrat and Republican support value-based reimbursement, price transparency and the publication of quality information. The full impact of these policies is still gaining momentum.

At the same time, health insurers will not be immune from this transparency movement. A separate proposed CMS rule would require payors to disclose out-of-pocket costs along with negotiated rates for in-network providers and allowed amounts paid for out-of-network providers[6] If adopted, this rule will make the impact of price transparency even more complex.

Right now, the best course for hospital and health system leaders is to stay abreast of the regulations and comply with the requirements. COPE Health Solutions will continue to follow the price transparency rule as it weaves its way through the administration and the courts. We will continue to offer insights to help health care organizations navigate policy changes and thrive in this changing policy environment.

COPE Health Solutions is the partner of choice for providers and payors across the United States who are committed to success in the new value-based payment environment. COPE Health Solutions has a proven track record in all aspects of strategy, population health management, Medicare/Medicaid transformation, and workforce training across the continuum of care.

Endnotes

[1] Centers for Medicare & Medicaid Services (CMS). Trump Administration Announces Historic Price Transparency Requirements to Increase Competition and Lower Healthcare Costs for All Americans (2019). https://www.cms.gov/newsroom/press-releases/trump-administration-announces-historic-price-transparency-requirements-increase-competition-and

[2] Most consumers do not know how to evaluate the hospital that offers the best value and outcomes for, e.g., a septal myectomy procedure, spinal osteomyelitis surgery, or an osteo-odonto-keratoprosthesis.

[3] California has published charges for a decade. State law requires hospitals to submit their chargemaster charges to the Office of Statewide Health Planning and Development (OSHPD) for publication on the OSHPD website. This massive amount of pricing data has had little impact on charges, costs or consumer behavior.

[4] Michigan Medicine M Health Lab. Study: People with High-Deductible Plans Don't Act Like Savvy Shoppers (2019). https://labblog.uofmhealth.org/industry-dx/study-people-high-deductible-plans-dont-act-like-savvy-shoppers

[5] CMS takes the position that the Social Security Act section 1102(a) (42. U. S. C. paragraph 1302) provides the authority to issue the rule, based on the assumption that the transparency requirements will promote the efficient administration of the Medicare and Medicaid programs. However, such an interpretation is a broad extrapolation of the statutory language.

[6] CMS. Fact Sheet: 2019 Medicaid Fiscal Accountability Regulation (MFAR). https://www.cms.gov/newsroom/fact-sheets/fact-sheet-2019-medicaid-fiscal-accountability-regulation-mfar

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