ACCOUNTABLE CARE LEARNING COLLABORATIVE AT WESTERN GOVERNORS UNIVERSITY

INTELLIGENCE BRIEF | JUNE 2021

REVEALING VALUE?
HOSPITAL PRICE TRANSPARENCY

In addition to supporting informed consumer choice for certain health services and procedures, price transparency is a lever for advancing value-based care and payment models. In theory, recent regulations from HHS promote accessibility of price information from hospitals that should aid in comparisons across facilities. The reality is not so clear-cut. Read this brief to learn more about how you might harness hospital price data to inform your value strategies.

Executive Summary

Transparency aims to facilitate health care decision-making by increasing trust and confidence in providers and services through evidence of quality, reliability, and value. At least in theory, price transparency, in particular, can increase competition and lower, or at least slow the growth of, health care costs through downward market pressure. Health care spending in the US grew by one trillion dollars between 2009 and 2019, which equates to $11,582 per person. By some estimates, almost two-thirds of personal bankruptcies are due to medical bills. Clearly, health care costs and increases are unsustainable for individuals and the US, and mandating price transparency is but one policy lever to help slow cost increases. This brief examines the recent regulatory actions from the Centers for Medicare and Medicaid Services (CMS) in the Department of Health and Human Services (HHS) and the response of industry, and describes expectations for future transparency efforts.

Overview of Transparency in Health Care in the United States

The US has long been identified as a disproportionately high-spender on health care services, expending almost twice as much as the average of other high-income countries as a share of the economy, and policy analysts have proposed this is largely the result of relatively higher prices. In the absence of politically-risky price regulation policies or a self-regulating health care market, the economic theory is that markets will be motivated to drive down prices in the presence of consumer choice informed by transparency. The reality is not so clear cut, with some fearing that transparency in health care will actually lead to *higher* prices, less competition, and consolidation in certain markets.

Transparency efforts have a complicated history in health care. Unlike in many other industries, consumers have long had difficulty accessing valid, useful cost and quality information to inform their choice of service providers (when a choice is even possible). One of the earliest efforts, public reporting of hospital quality data, has a less than 20-year history. CMS now publishes consumer-oriented reports of quality and other information through their "Compare" websites for nursing homes, physicians, and several other post-acute providers, but they do not include price information. In a statement from industry stakeholders, the American College of Physicians published a 2010 position paper on transparency in health care price and clinical performance, calling for reliable and valid data on both price and

quality that is easily digestible and optimized for decision making, with a minimum of administrative and reporting burden.

While industry-directed efforts have achieved minimal progress, the imperative for transparency in health care was intensified by a series of provocative publications over the last decade. In his 2013 article and subsequent book, Stephen Brill illuminated key failures within the health care system that enabled uncontrolled and obscured pricing in a profit-driven industry. Similarly in his books, Dr. Marty Makary called for 'radical transparency' to empower individuals and businesses to better negotiate on health care prices. These works and others sparked vigorous national debate about transparency of prices and other details of hospital finances, but meaningful reform has been slow in coming. While the ACA required publishing of hospital chargemaster information as of 2019, the utility of that information to consumers is questionable at best. While it should seem straightforward to publish consumer-friendly prices in health care (as is done in virtually every other industry), it is not. Because of the complex nature of health care and the various stakeholders and regulations that govern health care documentation and transactions, information on cost of services is often not readily available in a manner that is standardized, timely, or consumable.

In addition, there has not been definitive demand for price transparency from consumers, although that appears to be changing. In a 2015 Kaiser Family Foundation poll, less than 20 percent of consumers reported having seen comparative price information, and less than 10 percent had actually used that information in decision making. With the recent fueling of consumer-directed health care, a substantial increase seems evident, with just over half of respondents to a 2020 survey using digital technologies to compare price and quality of health care services. However, making the leap from comparing prices to actually changing behavior is still a work in progress. New Hampshire, an early adopter of price transparency tools for consumers, was recently featured in a study on an advertising campaign that was highly successful at driving traffic to a price transparency website, but ultimately unsuccessful at driving consumers to actually utilize lower-priced providers. What will be the tipping point? As consumers bear increasing financial responsibility for their choices – through increased cost sharing and benefit designs like high deductible health plans – incentives for value-seeking through comparison shopping should continue to propel demand.

Price Disparity in Austin, TX

Procedure: Colonoscopy

High price: $4,646

Low price: $1,385

Distance between providers: 367 feet

Source: Point Health

Still, consumers weigh a variety of factors in addition to cost and quality in their health care decision making – convenience, referral from respected others including family, friends, and providers – and the weight of these factors can vary across services, with low risk services like imaging more sensitive to price, while more complex treatments are often more sensitive to quality and referral. In fact, some studies have shown that provider referral is often the *most impactful influence* on consumer choice, which has enormous implications in value-based care arrangements where the referring provider's organization may ultimately be accountable or otherwise at-risk for total cost of care or other similar financial metrics for a population of patients.

With all of this in mind, CMS issued a final rule in 2019 that mandates the public reporting of certain hospital price information starting on January 1, 2021. One intended impact is to "increase market competition, and ultimately drive down the cost of health care services, making them more affordable for all patients," potentially saving between $8 and $26 billion dollars, by some estimates. An additional benefit accrues across a broad definition of 'the public', including "patients, employers, clinicians, and other third parties," who can use the information to make more informed choices about their care and contracting. These 'other third parties' could include health care advocacy groups who monitor and report on policies and trends and act for the public benefit on behalf of certain health care stakeholder groups, like consumers, employers, and purchasers. Also benefitting from transparency are ACLC members such as Accountable Care Organizations, Direct Contracting Entities, employers, and others who seek to form health provider partnerships to accept

risk for the total cost of care of a population under value-based contracts.

Key Regulations on Price Transparency

- **January 1, 2019** – requires hospitals to publish, update, and make public a list of standard charges (e.g., chargemasters) for provided items and services
- **January 1, 2021** – requires hospitals to publish more detailed pricing information online via machine-readable and consumer-friendly formats
- **January 1, 2022** – requires most health plans to publish machine-readable files with detailed pricing information, for plan years that begin on or after this date
- **January 1, 2023** – requires most health plans to publish a list of 500 shoppable services, including individually-personalized out of pocket cost information, in an online self-service tool, for plan years that begin on or after this date
- **January 1, 2024** – requires remainder of health plan items and services to be published with individually-personalized out of pocket cost information online, for plan years that begin on or after this date)

New Transparency Regulations from CMS

Overview of Requirements

In June 2019, the President signed an Executive Order to increase the availability of useful price and quality data to aid patients in making informed decisions about their care. In late 2019, CMS finalized the rule governing the publication of hospital price transparency information, advancing the agency's commitment to Putting Patients First. In short, the rule requires hospitals to publish, as of January 1, 2021:

Table 1: Hospital Standard Charges for Certain Items and Services

In a machine-readable format	In a consumer-friendly display of shoppable services
► Gross charges ► Discounted cash prices ► Payer specific negotiated charges, and ► De-identified maximum and minimum negotiated charges	► Discounted cash prices ► Payer specific negotiated charges, and ► De-identified maximum and minimum negotiated charges …at least 300 shoppable and schedulable services (or less, if a hospital does not provide 300 such services) A price estimator tool can be used to fulfill this requirement

Both of these reporting formats are required, it is not an option of one or the other. Further, CMS provides specific definitions of included hospitals, services, and charges, and offers examples for the content and formatting of the machine-readable files (e.g., .json, .xml, .csv). CMS also mandates that the data be updated and so labelled at least annually, and "the hospital must ensure the data is easily accessible, without barriers, including ensuring data is accessible free of charge, does not require the user to establish an account or password to submit personally identifiable information (PII), and is digitally searchable." The accessibility requirement, in particular, has come under recent scrutiny and is covered in more detail below.

The penalties for non-compliance include:

- Civil monetary penalty, $300 per day, which amounts to approximately $110,000 per year, and
- Publication on a website maintained by CMS, who plans to conduct compliance audits beginning in January 2021.

Unfortunately, the $110,000 per year penalty is a price many hospitals seem willing to pay in exchange for not having to gather, process, normalize, and publish this information, either completely or at all. Although there are reports that CMS has begun to notify hospitals that are deemed out of compliance with the regulation, there are no hospitals listed on the website as being out of compliance as of June 2021. However, there have been many reports from private and news organizations of incomplete or even outright failures of compliance from hospitals, with many such reports summarized below.

In addition to, ostensibly, publishing the names of regulation violators, the website contains information for hospitals to aid in their compliance, and a resource page that includes links to regulations, FAQs, and guides for creating a compliant display. The website also contains information on how consumers can leverage the published information and also offers an option to submit a complaint to identify potential non-compliance.

Summary of Legal Challenges

The lack of immediate compliance with the rule by hospitals could, in some cases, be attributed to a lack of confidence that the rule would withstand legal challenges. In late 2019, a number of responses submitted during the required comment period questioned the authority of CMS and HHS to enforce the rule. Further, some alleged the rule would be detrimental to competition and that compliance would pose an undue burden on hospitals. As a result, many hospitals reported delaying their preparations, awaiting the outcome of legal challenges before undertaking the work to comply with the rule. However, in December 2020, a federal appeals court denied the challenge brought forth by hospitals and industry partners, including the American Hospital Association, and affirmed a lower District Court ruling, paving the way for the rule to take effect on January 1, 2021.

> *"Why is the price of the x-ray unknowable?"*
> *– Judge David Tatel, DC Court of Appeals*

Reception by Industry and Stakeholders

While consumer groups welcome the new regulations as representing meaningful forward progress, the hospital industry could be characterized as wary at best. Some verbalized concerns about the unintended consequences of compelling hospital price transparency, echoing previous arguments and including the theory that transparency drives prices up rather than down. And while consumer price shopping for health care is still relatively nascent in practice, it is highly unlikely that demand for such information will not increase, especially as digital health care engagement of consumers continues to expand rapidly in the wake of the COVID-19 pandemic. Meanwhile, consumer advocacy groups are mounting public information campaigns, even purchasing advertising during high-profile events like the Oscars to draw attention to the new regulation, which should further drive consumer awareness and demand.

From the perspective of operationalization, being less than prescriptive in how prices are published is perceived as a flaw in the regulation. For example, the lack of consistency and standardization in how prices are to be displayed or shared (e.g., code sets used, file formats) in the machine-readable files makes true comparisons incredibly difficult, if not outright impossible.

Other concerns include:

- Risk to hospitals in revealing their payer-negotiated rates;
- Display of price information without adjacent quality information (unless a hospital chooses to take this added step);
- Difficulties with estimates that are agnostic to complexity and other individual patient factors, rendering total price for specific procedures that are often a variety of services bundled together potentially misleading; and
- Overall lack of trust in hospital pricing by consumers.

The last point is particularly interesting, in that it is likely only through continuous improvement in reporting that hospitals will begin to earn the trust of consumers, which surveys have shown is quite low with respect to hospital-generated price information. One mechanism for earning this trust could be via implementing *truly* user-friendly cost-estimator applications. Several vendors have emerged to provide this service for hospitals, including some electronic health record vendors. Ultimately, viewing compliance with the *letter* of the regulation – rather than with the *intent* of the regulation – is unlikely to improve confidence or equip consumers with meaningful information to help guide their decision making.

Price Disparity in North Carolina

Procedure: Complete X-ray of Foot with 3 views

High price: $6,932

Low price: $93

Source: Point Health

Real People, Real Impacts.

Price transparency is more than just a policy issue. The lack of upfront pricing has had detrimental financial effects on millions of Americans over the years. For example, a Point Health patient advocate once helped a woman who received an ER bill that totaled around **$7,601.51 for merely five hours of service**. She was running a high fever and couldn't locate an urgent care facility, so she did what anyone would do. She went to an emergency room. While she was there, she received a few tests and waited around for a couple of hours before being sent home. Then, the huge bill came. The woman continuously expressed to her patient advocate that if she'd known how expensive that ER bill would be, she would have looked for a better solution. But, she didn't know how to go about finding that better solution. If she'd had access to a platform that allowed her to effectively find quality, affordable care or a provider that showed costs ahead of time, she could have potentially saved thousands of dollars.

Source: Point Health

Current Status of Compliance

Because of the late ruling enforcing the regulation, many hospitals took (and some are still taking) a "wait and see" approach and implementation is ongoing or, perhaps more candidly, "scattershot," according to some sources. Compliance with the actual publication of prices is variable and there is a lack of consistency in the format of machine-readable files that are published, which makes them difficult to aggregate and compare across providers.

Some published reports of compliance sampling include those listed in Table 2:

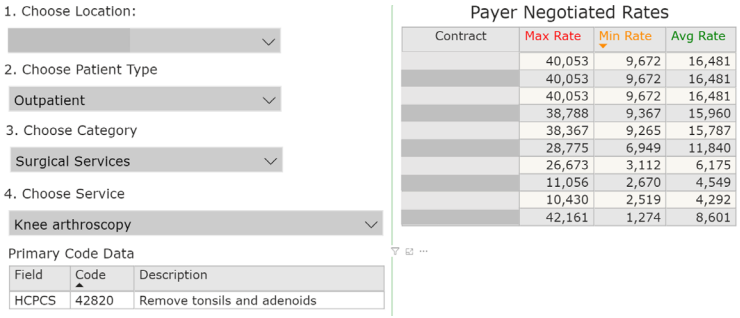
Table 2: Published Compliance Reporting

Publisher	Key Findings and Publication Date
ADVI Analytics	Looked at 20 largest hospitals in the country; low compliance found on requirement for 300 shoppable services; lack of standard use of procedure or service codes limits ability to compare across providers; wide variations of price for similar services, such as $90-$2,033 for head CT code 70450. (Jan 2021)
Guidehouse	Looked at 1,000 hospitals; 40% of providers not compliant with requirements for consumer-friendly reporting, 52% not compliant with the requirements for machine-readable reporting. (Feb 2021)
HealthCare Dive	Looked at data for five health systems; found wide variations of price for the same service both within ($23K – $102K) and across ($3K - $61K) providers. (Mar 2021)
Health Affairs	Searched for information on a sample of 100 hospitals; 65% "unambiguously non-compliant," including 18% that did not provide access to downloadable files and 82% that did not include payer-specific negotiated rates. (Mar 2021)
Milliman	Looked at over 600 hospitals from 55 health systems; found 32% had no or incomplete price information, and a great deal of variability in file and data structures. (Apr 2021)
Health Care Cost Institute	Looked at 222 hospitals in 16 systems; only one third of hospitals published data with fidelity to the intent of the regulation. (Apr 2021)
Peterson-Kaiser Family Foundation	Looked at the two largest health systems in each state; found inconsistencies in how and what data are reported, including discrepancies between the consumer-friendly and machine readable files; lowest compliance seen in the reporting of payer-specific negotiated prices (3% for consumer-friendly information, 34% for machine-readable files). (Apr 2021)

> *"The fact that the price for a knee replacement can vary from $23,000 to $100,000 at a single hospital in one area of the country just demonstrates the total insanity of American healthcare pricing." - Niall Brennan, CEO of the Health Care Cost Institute*

Even when the data are reported, similar to hospital chargemaster data transparency implemented in 2019, there is no standardization and the wide range of prices for a given service within hospitals or hospital systems raises questions about the reliability of the reported data.

Figure 1: Price Estimator Tool



Several items that validate these concerns are present in this snapshot of a published price estimator tool (Figure 1). First, the "Primary Code Data" fields are auto-generated by the site when the service is selected in item #4. Clearly, the code is inaccurate for the requested service. So it is unclear what the price list on the right side of the display references – surgery on tonsils or a knee. In any case, the listed prices vary by as much as 3,300 percent ***within the same payer***, with no explanation for this rather excessive variance, making meaningful consumer interpretation and use of the data practically impossible.

Further, when no such accessible tool exists, the price information often has to be ferreted out in a way that challenges the skills of even veteran investigative journalists.

In March 2021, the Wall Street Journal published a report that their research on over 3,000 hospital websites turned up hundreds of hospitals who have embedded code into their transparency websites, rendering them invisible to indexing search engines like Google. While the pages exist, it often takes a diligent effort of clicking through multiple pages on hospital websites to find them. In response, CMS issued additional guidance that files must be in formats "available to the public without restrictions that would impede the re-use of that information." While CMS made clear their expectation that hospitals follow this guidance, the posting of this information on GitHub, rather than the CMS-sponsored Hospital Price Transparency website, coupled with language directing this information to health plans and insurers is curious and leaves open doubts about its enforceability for hospitals.

In response to many of the published reports, the House Committee of Energy and Commerce and its Subcommittee on Health sent a letter to Secretary of Health and Human Services (HHS) Xavier Becerra on April 13, 2021, urging HHS to conduct regular audits, ensure compliance, and avail themselves of all appropriate enforcement tools, including the application of civil monetary penalties. According to the letter, bipartisan leadership of the Committee signaled their "commitment to increasing price transparency for consumers and employers," along with discontent with current levels of compliance, stating:

> *We are concerned about troubling reports of some hospitals either acting slowly to comply with the requirements of the final rule, or not taking any action to date to comply. We urge you to ensure that [HHS] conducts vigorous oversight and enforces full compliance with the final rule.*

In summary, compliance with both the spirit and letter of the regulation is variable. A few hospitals have dumped massive quantities of low-value information, while others have released only limited amounts of carefully vetted information. Some have released information but then used skillful coding to make it almost impossible to find, while others have not even made the effort to comply. It is also likely that some hospitals are diligently attempting to adhere to the regulations. A recent article identified several factors that appear to be associated (or not) with compliance to the rule, with organizational culture and hospital competition associated with better compliance overall.

Many stakeholders are looking to make sense of these data, providing an opportunity for entrepreneurial analytics and technology firms who can fill the gap by developing solutions to parse this new data meaningfully. Employers, payers, risk-bearing entities, and other coordinated or accountable care organizations should be eager to harness this information to identify higher value hospitals and/or to improve negotiating power when discharging a relatively high-priced hospital from a contracted network is not a viable option.

> *"Price transparency as a law is certainly a step in the right direction, but the execution has been lackluster. What we have now is data that's available but hard to understand, and prices that are technically transparent but difficult to find. That's why Point Health is working to present pricing data in an easily shoppable and usable format for consumers."*
>
> *- Matthew Dale, CEO of* ***Point Health***

Seeking Examples of Good Compliance

While there are many examples of hospital price transparency efforts that have fallen short of expectations and usability, there are also likely examples of diligent, responsible reporting that both convey actionable information and do not require an advanced degree in analytics in order to extract this information.

So where are these exemplar organizations? The CMS website dedicated to hospital price transparency provides a portal for submitting complaints about *non-compliance* with the regulation, but no apparent mechanism for recognizing excellence in *compliance*. As non-compliance entails the possibility of civil monetary penalties, the focus on the stick, rather than the carrot, is perhaps understandable.

Have you seen hospital pricing websites that are useful, consumer-oriented, and aligned with the CMS requirements? The Accountable Care Learning Collaborative wants to hear from you! We value positive deviance as a tool for learning and welcome any submission of excellence (not just compliance) in hospital price transparency reporting here.

While the effort and resources required to comply with the regulations are not insignificant (with some estimates ranging from $15K-$80K per year), hospitals who do identify a strategy that encompasses both the letter and the spirit of transparency may find themselves benefitting from their candor, especially as consumer demand for more equitable power and knowledge in the health care relationship grows. Informing consumers' choices on value indicators will likely become the norm, while closed-door deals and black boxes on price will only encourage distrust and potentially prompt more regulatory action. Similarly, health plans can look at this as an opportunity to review their pricing and consumer engagement strategies and validate their reporting and communication processes now, while they are readying for compliance with the companion regulation governing certain health plans that goes into effect in 2022.

> *"It [the hospital price transparency regulation] is a positive step forward, and it is long overdue. Will it have the [desired] effects? This policy may create an additional force to moderate price increases, but there are larger and more fundamentally just solutions that would go much farther than this."*
>
> *-****Vikas Saini****, MD,*
>
> ***President of the Lown Institute***

Looking Forward, What's Next?

The next major Federal step to increase price transparency in the healthcare market will occur on January 1, 2022 when certain insurance carriers and group health plans will be subject to similar regulation requiring them to publicly post price information in accessible formats. Similar to the hospital rule, health insurers and related stakeholders have mounted their own legal challenges, but reversal seems unlikely in light of executive administration and previous judicial support. In the absence of any emergent signals of delay from the Biden Administration, payers should be preparing a thoughtful strategy for compliance.

The primary intent with this rule is to enable consumers to accurately estimate their out-of-pocket costs when shopping for health care services. Many larger insurers already provide estimator services to their members, and now smaller plans will be compelled to develop or purchase such tools as well, along with the required machine-readable files. The ability to present individually-tailored plan deductible and cost sharing can be expected to increase the utility of price information for consumers over what hospitals have been mandated to provide thus far. Plans that also consider incorporating incentives for using estimator tools into their benefit design (such as a modest cash rebate to members for their use of lower-cost providers in certain circumstances) could motivate increased uptake of the tools, as well as an enhanced member experience.

The efforts to expose more information on hospital and health plan pricing are but two steps amongst many that constitute a larger Federal transparency strategy. For example, the No Surprises Act is intended to afford consumers some protections from unexpected out-of-network cost-sharing for many health services. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) is subject to proposed modifications intended to improve coordination and engagement in care. Section 4004 of the 21st Century Cures Act contains prohibitions on information blocking (especially governing electronic information exchange), and other sections of the Act also enable patient access to "free, full, and immediate electronic access" to their providers' clinical notes.

Beyond Federal efforts, states can also implement their own transparency policies and tools. New York has assembled a workgroup to guide the development of a comprehensive, consumer-friendly website to display health care prices for all providers in the state. Oregon and Connecticut are also leading out on this work, and model legislation is available for those who also want to further the cause and benefits of transparency for their citizens.

In the case of both the hospital and plan transparency efforts, the most immediate beneficiaries may well be creative and astute analytics and technology vendors – and their customers, such as policy makers, business coalitions, employers, consultants, risk-bearing entities, and fiduciaries – who are able to take the disparate file structures, normalize and ingest them, and then process them into actionable (and shoppable) information that exposes certain competitive opportunities and threats, and informs new strategy and policy development. The market and potential impact for such rational intelligence is likely to be substantial.

> *"This will put more pressure on the hospitals, who I believe should feel embarrassed by these reports of [non-compliance], and they will either decide to step up their game or not. To not be able to gather the data about these enormously important things is no longer acceptable. We're at a real tipping point where folks realize there's no way you can be a governor, legislature, or public health official, and not have this information available to you to take care of your citizenry."*
>
> *- John Freedman, MD, President and CEO of Freedman HealthCare*

While some may have hedged on implementation delays from environmental influences such as the COVID-19 pandemic and turnover in the executive and legislative branches of government, it has become apparent that the new Administration is not signaling an intent to change course on these policies, even as reporting of some Medicare Advantage data is put on hold, largely in a nod to reducing provider administrative burden. Largely held as a bipartisan issue, Secretary of HHS Becerra has affirmed his commitment to furthering efforts toward transparency. Although the specific policies described in this brief are the legacy of the previous Administration, new policies and forward progress on policies-in-process can be expected, especially those guiding marketplace actions toward anti-trust and anti-competitive practices.

About Point Health

Point Health is an Austin,Texas-based digital health startup paving the way for major changes in the healthcare industry, primarily through our Smart Healthcare Platform. Our suite of services combines powerful navigation services, shop-and-compare tools, personalized assistance, and the largest, most flexible selection of cash-pay providers in America on a single, intuitive platform. The healthcare system in the U.S. is confusing to navigate, but Point Health is guiding patients towards healthcare that is easier to find, understand, and afford.

point health

About the ACLC

The Accountable Care Learning Collaborative (ACLC) is a non-profit organization with a mission to accelerate the readiness of health care organizations to succeed in value-based payment models. Founded by former Secretary of Health and Human Services, Gov. Mike Leavitt, and former Administrator of the Centers for Medicare and Medicaid Services, Dr. Mark McClellan, the ACLC serves as the foundation for health care stakeholders across the industry to collaborate on improving the care delivery system. To learn more about the ACLC, visit accountablecareLC.org.