



April 1, 2019

#WheresThePrice: Proposed Rule Sneaks in Questions about Publishing Payer-Negotiated Rates

The most recent proposal in a series of efforts by the Trump administration to increase price transparency in health care is one that may eventually require hospitals and providers to publicly disclose the payer-negotiated rates charged to insurers for health care services.

ONC Interoperability Request for Comment

- On March 4, 2019, the Department of Health and Human Services (HHS) released a Proposed Rule (PR) on health care information technology: [21st Century Cures Act: Interoperability, Information Blocking, and the ONC Health IT Certification Program](#).
- The PR includes questions about publishing payer-negotiated prices and has received [192 comments](#) as of April 1, 2019.
- Specifically, the PR asks, “If price information that includes a provider’s negotiated rates for all plans and the rates for the uninsured were to be required to be posted on a public website, is there technology currently available or that could be easily developed to translate that data into a useful format for individuals?”
- It also asks, “Should price information be made available on public websites so that patients can shop for care without having to contact individual providers, and if so, who should be responsible for posting such information?”
- The comment period closes on May 3, 2019, and may lead to subsequent HHS rulemaking by officials to mandate the public disclosure of negotiated rates and disrupt how traditional price negotiations occur.
- The publication of the proposed rule has created renewed interest in digital interoperability in health care among policymakers. This week, the Senate Committee on Health, Education, Labor and Pensions (HELP) held a hearing on the ONC proposal during which the committee and witnesses discussed the cost and security implications of the proposal. Many members of the committee expressed interest in patients becoming more engaged in their own care through increased transparency and better access to data.

Background and Landscape

- Currently, prices for medical procedures are privately negotiated between hospitals and insurance companies and are kept confidential.
- HHS argues that complex and opaque pricing in health care makes the system less efficient and hurts patients’ care.
- In an effort to reduce costs and increase price transparency and competition, HHS is “considering subsequent rule-making to expand access to price information for the public, prospective patients, plan sponsors and health care providers.”
- As such, HHS is considering whether hospitals should be required to publicly disclose their payer-negotiated prices so consumers are aware of the variability among health care parties and institutions.
- In August 2018, CMS issued a [Final Rule](#) requiring hospitals to post standard charges online, effective Jan. 1, 2019.
- A hospital “chargemaster” is the master list of prices for the 100 most common Medicare inpatient hospital services.

Hospitals have argued that the list prices for services are meaningless for patients since those that have insurance will not pay the “sticker price.” The administration, however, believes that posting prices publicly will lead to more transparency and that could ultimately reduce costs for patients.

- CMS Administrator Seema Verma has acknowledged that the agency has no way to enforce the posting of hospital chargemasters online, but launched a Twitter campaign to hold hospitals accountable for their lack of compliance: [#WheresThePrice](#).
- The request for comment on publishing payer-negotiated prices goes one large step further. Not only would hospitals be compelled to publish the “sticker price” for popular Medicare services, but they would have to publish the actual rates that they negotiate with insurers. This has historically been considered to be closely guarded proprietary information.
- A February 2019 [Health Affairs analysis](#) on negotiated prices between hospitals and insurance companies between 2007–2014 found that:
- Physician prices have not increased in the last 10 years.
- Most health care inflation comes from rising prices for hospital care.
- Hospital prices have increased by 5 percent annually, which ends up incorporated in insurance premiums.
- The American Hospital Association (AHA) opposes making their negotiated prices public, questions its legality and argues that it would cut competition, not enhance it.
- The AHA argues that consumers instead need and want information on what their “out of pocket costs will be.” Insurers are the only ones that have this information, so AHA thinks they should make it available to hospitals so they can share it with their patients.

Outlook

- While the HHS National Coordinator for Health IT, Don Rucker, has stated that they have had “extensive discussions” with the White House on this issue, many insurers and hospital groups have been unaware or are currently examining the proposal more closely.
- Hospital price transparency alone is not expected to result in lower overall health care spending or lower prices for consumers since:
- Patients typically have little to no choice in selecting their hospital.
- Most consumers do not look at the price of health care services before accessing care.
- Ultimately, the negotiating power lies within insurance companies and physicians, as they decide what hospital a patient goes to through referrals.
- The administration and Congress, however, have consistently emphasized increased transparency as a policy goal. There also seems to be more bipartisan support for increased transparency in hospital drug prices than other health care policy areas. Surprise billing, where individuals with insurance are surprised by large bills from out-of-network providers, has also become a major priority for both Republicans and Democrats in Congress, signaling a continued interest in the importance of price transparency.
- Currently, the prospect of mandated hospital price disclosures is unlikely to result in real rulemaking, since it was not formally proposed in the proposed rule. Rather, ONC sought comment for future rulemaking. Further, such a policy might require congressional action and would likely result in legal action by many hospital and physician groups including the AHA, FAH and AMA.
- The request for comment on publishing payer-negotiated rates is a signal that the administration is serious about moving the needle toward price transparency, and that the administration believes that it will ultimately lower patient costs. It is likely there will be future rulemaking from both ONC and CMS in this space, and the agencies will use comments received during the comment period for this rule to inform future rulemaking.

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