



STATE HEALTH POLICY ISSUE BRIEF: INCREASING HOSPITAL PRICE TRANSPARENCY COMPLIANCE IN STATES

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WHAT IS HOSPITAL PRICE TRANSPARENCY?

Hospital price transparency requires hospitals to make standard charges for medical items and services available and accessible to the public. The goal is to reduce opacity in the healthcare system and empower consumers with information to choose the care that is best for them.

The high cost of healthcare is a top financial worry for many Americans, but patients generally do not know the cost of their care until they receive a bill.¹ This greatly disadvantages consumers, who can suffer financial hardship that may have been preventable if they were able to make an informed choice when seeking care.²

Prices for the same medical service can vary significantly by hospital.^{3,4} For example, routine colonoscopies can range from \$148 to \$15,789 in just the Dallas area.⁵ Some consumers may perceive that lower-cost care may not be quality care. However, the price of care does not always directly correlate to quality, so consumers should use available price and quality tools to inform decisions about where to receive care.⁶ Price transparency will allow consumers to see prices, compare them from provider to provider, and shop for the best rates. This will give patients more control over their health and finances.

Recent federal regulatory efforts have aimed to make hospital prices more transparent. In November of 2019, the Centers for Medicare and Medicaid Services (CMS) finalized a rule effective January 1, 2021, that required U.S. hospitals to provide accessible pricing information online by making it publicly available in two ways: 1) a machine-readable file listing five types of standard charges, including those negotiated with insurers, for all items and services, and 2) a consumer-friendly list of the same five types of standard charges for a limited set of shoppable services.⁷ The rule specifies the limited set as 70 CMS-specified shoppable services required by all hospitals and at least 230 hospital-selected shoppable services for a combined total of at least 300 shoppable services at each hospital. This rule stipulated a civil monetary penalty of \$300 per day for those hospitals that are noncompliant.⁸ The two formats for price information serve differing purposes. The machine-readable file allows third-party companies to create user-friendly websites that patients can use for comparison shopping, enables patients to do their own evaluation, and facilitates research analysis to determine

¹ <https://www.kff.org/health-costs/issue-brief/americans-challenges-with-health-care-costs/>

² <https://americafirstpolicy.com/latest/hospital-price-transparency-from-washington-d.c-to-austin-texas-and-beyond>

³ <https://thehill.com/opinion/healthcare/588007-a-year-of-hospital-price-transparency-offers-hope-for-affordable-care>

⁴ https://www.wsj.com/articles/boston-hospital-prices-healthcare-insurance-cost-11639576524?mod=article_inline

⁵ <https://americafirstpolicy.com/assets/uploads/files/price-transparency-white-paper-v3.pdf>

⁶ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4863949/>

⁷ <https://www.federalregister.gov/documents/2019/11/27/2019-24931/medicare-and-medicaid-programs-cy-2020-hospital-outpatient-pps-policy-changes-and-payment-rates-and>

⁸ Id.

relevant patterns. The consumer-friendly list of charges for shoppable services is readily accessible for consumers and can be used to make decisions about planned, non-emergent care.

Hospital compliance with this rule has been subpar since it took effect. Last year, only 53 percent of hospitals in the U.S. disclosed any prices,^{9,10} and an estimated 14.3 percent were in full compliance.¹¹ This hinders consumers from comparing prices for services in their area thoroughly. At the end of 2021, CMS had not fined any hospitals for noncompliance.¹²

Healthcare price transparency garners bipartisan support at the federal level, and 88 percent of Americans believe the government should make hospitals disclose prices.^{13,14} Under guidance from the Biden Administration,¹⁵ the Department of Health and Human Services finalized a rule in November 2021 to increase the financial penalties for noncompliance with the Trump Administration rule.¹⁶ Hospitals in violation of the rule will now be fined a minimum of \$109,500 to upwards of \$2,000,000 for a full year of noncompliance. This rule took effect on January 1, 2022.¹⁷

BENEFITS OF HOSPITAL PRICE TRANSPARENCY

In 2020, the U.S. spent 19.7 percent of its Gross Domestic Product on healthcare—up from 17.6 percent in 2019, largely attributable to the COVID-19 pandemic.¹⁸ Last year, 51 percent of adults surveyed reported that they had delayed or gone without certain medical care during the past year due to cost.¹⁹ Higher out-of-pocket costs are a particular concern, with 46 percent of adults reporting difficulty affording costs not covered by their insurance.²⁰ Giving families the ability to plan for future healthcare expenses and make comparisons across providers could result in fewer people delaying necessary care. This has the potential to help improve health outcomes for Americans by properly managing illnesses and chronic conditions and decreasing the need for higher acuity care.

Prices for services can vary greatly from hospital to hospital. Hospitals are more likely to disclose their prices if others in the area do as well.²¹ This compliance effect will benefit consumers who take advantage of available pricing information to shop for services. However, it also indicates that those who live in an area with noncompliant hospitals may miss out on the benefits of price transparency. Prices also vary within hospitals based on the form of payment. Cash prices, one of the standard charges required by the CMS rule, are often lower than commercial insurance prices for specific services.²² Transparency regarding

⁹ <https://thehill.com/opinion/healthcare/588007-a-year-of-hospital-price-transparency-offers-hope-for-affordable-care>

¹⁰ <https://drive.google.com/file/d/1uoNNRw5Xo0MlxlQdE-7N5xR8iWhlPE/view>

¹¹ <https://www.patientrightsadvocate.org/semi-annual-compliance-report-2022>

¹² <https://www.wsj.com/articles/hospital-price-public-biden-11640882507>

¹³ <https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/HHS.2021.04.13.pdf>

¹⁴ https://harvardharrisspoll.com/wp-content/uploads/2019/06/HHP_May19_vF.pdf?utm_source=hs_email&utm_medium=email&hsenc=p2ANqtz--NgSdTYggGUP4tWYR2IEQ7i8TCgls3DcHuOyhErlgkX3KFUi3SFgl9OZKm4-JUOOi9tmMQ

¹⁵ <https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/09/fact-sheet-executive-order-on-promoting-competition-in-the-american-economy/>

¹⁶ <https://www.federalregister.gov/documents/2021/11/16/2021-24011/medicare-program-hospital-outpatient-prospective-payment-and-ambulatory-surgical-center-payment>

¹⁷ Id.

¹⁸ <https://www.healthaffairs.org/doi/10.1377/forefront.20211214.144442/full/>

¹⁹ <https://www.kff.org/health-costs/issue-brief/americans-challenges-with-health-care-costs/>

²⁰ <https://www.kff.org/health-costs/issue-brief/americans-challenges-with-health-care-costs/>

²¹ <https://pubmed.ncbi.nlm.nih.gov/34902095/>

²² <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2787285>

these price dynamics can help consumers determine the best method to pay for services. Notably, previous price transparency efforts in cohorts of employees have resulted in lower costs.^{23,24,25}

Public prices incentivize providers to compete for business. For example, the Surgery Center of Oklahoma (SCO), a free-market surgical center posting public prices online since 2009, has a direct-pay price of \$15,499 for a total knee arthroplasty or knee replacement.²⁶ According to Turquoise Health data, cash prices for knee replacement surgery within 100 miles of SCO range from \$46,050.15 at Grady Memorial Hospital to \$7,843.68 at the Oklahoma Center for Orthopedic and Multi-Specialty Surgery.²⁷ Of the ten providers listed, there were only two with cash prices lower than the price at SCO.²⁸ Dr. Keith Smith, co-founder of the SCO, has described instances of other hospitals price-matching SCO services to prevent losing business, resulting in direct savings for patients.²⁹ Turquoise Health also allows consumers to view insurance-specific rates for a selected service at a specified hospital and receive an estimated charge that accounts for the individual's remaining deductible for the year, copay amount, and coinsurance percentage.³⁰ This tool demonstrates how patients can utilize price transparency information to make decisions about where to receive care and the most cost-effective way to pay for a specific medical service, including through insurance or direct-pay options. A 2019 analysis of direct-pay prices and median in-network estimates for total knee replacement demonstrated the saliency of the price information for price-sensitive patients and concluded that disclosing prices can help patients shop for lower-cost treatments and lead to increased competition.³¹

Complete pricing information can equip patients to make the best choices for themselves. Beyond that, the public posting of standard charges should incentivize providers to create greater value for patients. Healthcare price transparency policies, particularly for hospital services, increase competition and drive down costs.

HOSPITAL PRICE TRANSPARENCY IMPROVEMENTS FOR STATES

As previously discussed, healthcare price transparency initiatives are widely supported by the public and usually have bipartisan political support. Productive healthcare reforms should lower prices and improve access through increased provider competition. States can advance these policy goals by encouraging greater compliance with hospital price transparency requirements. This can be achieved by codifying federal hospital price transparency regulation into state law, allowing for stricter enforcement. States can choose to impose penalties for noncompliance beyond the current federal civil monetary penalties.

Modeling state policies to conform to federal regulations will prevent legal discrepancies and could lead to greater compliance. In 2021, the Texas legislature passed a bill that codified federal hospital price transparency regulations, made price transparency a condition of

²³ <https://thefga.org/wp-content/uploads/2019/03/RTS-Kentucky-HealthCareIncentivesSavingMoney-DRAFT8.pdf>

²⁴ <https://www.bakerinstitute.org/media/files/event/01ce2e80/HPF-paper-AHEC-Floyd.pdf>

²⁵ <https://pubmed.ncbi.nlm.nih.gov/25335149/>

²⁶ <https://surgerycenterok.com/pricing/total-knee-arthroplasty-knee-replacement/>

²⁷ https://turquoise.health/service_offerings?q=Joint+replacement+%28hip+or+knee%29&service_name=joint-replacement-hip-or-knee&location=oklahoma+city&provider_name=

²⁸ Id.

²⁹ <https://surgerycenterok.com/blog-category/dr-keith-smith-at-the-2021-medical-freedom-summit/>

³⁰ <https://turquoise.health/providers/ou-medicine-inc/services/ou-medicin-374108-joint-replacement-hip-/>

³¹ Id.

licensure for hospital facilities, and added administrative penalties.³² The law went into effect on September 1, 2021, and the Texas Health and Human Services Commission published guidance for licensed providers in February 2022 that instructed hospitals to use the same format to comply with Texas law "that they use to comply with federal law and the CMS hospital price transparency rules."^{33,34} The law contains enforcement action steps for noncompliant hospitals, including penalties of up to \$1,000 for each day of noncompliance.³⁵ The bill analysis notes the author's/sponsor's statement of intent:

The CMS rule is designed to increase market competition and lower healthcare costs by providing standard hospital pricing information to the public. State codification of the rule will ensure that price transparency and consumer empowerment will continue in Texas even if the rule is repealed or changed at the federal level.³⁶

Other states can take similar steps to increase the likelihood of compliance with hospital price transparency requirements. A proposed bill in Florida codifies the federal price transparency requirement for standard charges for all items and services for medical facilities, makes compliance a condition of licensure and adds a penalty of \$500 per day.³⁷ Another proposed bill in Florida codifies the federal hospital price transparency requirement for standard charges for 300 shoppable services and makes compliance a state licensure condition.^{38,39} Notably, the proposed Florida laws encompass ambulatory surgical centers, which are not currently included in federal regulation. In Virginia, a proposed bill codifies the federal hospital price transparency regulations for hospitals into state statute and makes compliance a condition of hospital licensure.^{40,41} The Virginia bill passed the House and Senate with the final enrolled version codifying only the requirement for hospitals to make public the machine-readable file of all standard charges for all items and services.⁴² If these policies become law, it may result in increased compliance with hospital price transparency regulations, which will provide state residents with better access to pricing information.

To better inform policymakers at state and federal levels, further work is needed to evaluate the interaction of state laws and federal regulations on hospital compliance with price transparency requirements. Analysis should specifically account for the increased dollar amount of federal noncompliance fees that went into effect on January 1, 2022, new state financial penalties, and the state implementation of hospital price transparency as a condition of licensure.

Hospital price transparency policies give patients more control in how they plan for and consume medical care and services. This can potentially contribute to increased competition, lower healthcare costs, and improved health status. Increasing compliance

³² <https://capitol.texas.gov/tlodocs/87R/billtext/html/SB01137F.htm>

³³ <https://www.hhs.texas.gov/sites/default/files/documents/gl-21-2008.pdf>

³⁴ <https://www.federalregister.gov/documents/2019/11/27/2019-24931/medicare-and-medicaid-programs-cy-2020-hospital-outpatient-pps-policy-changes-and-payment-rates-and>

³⁵ <https://www.hhs.texas.gov/sites/default/files/documents/gl-21-2008.pdf>, Penalties are tiered based on a hospital's "...total gross revenues as reported to the Centers for Medicare and Medicaid Services or to another entity designated by commission rule in the year preceding the year in which a penalty is imposed..." (p. 7)

³⁶ <https://capitol.texas.gov/tlodocs/87R/analysis/html/SB01137F.htm>

³⁷ <https://www.flsenate.gov/Session/Bill/2022/296/BillText/Filed/PDF>

³⁸ <https://www.flsenate.gov/Session/Bill/2022/1527/ByCategory/?Tab=BillHistory>

³⁹ <https://www.flsenate.gov/Session/Bill/2022/1527/Analyses/h1527b.HHS.PDF>

⁴⁰ <https://lis.virginia.gov/cgi-bin/legp604.exe?221+sum+HB481>

⁴¹ <https://law.lis.virginia.gov/vacode/32.1-137.05/>

⁴² <https://lis.virginia.gov/cgi-bin/legp604.exe?221+ful+HB481ER+pdf>

with federal hospital price transparency requirements through codification into state law is a policy that states can implement to put patients first.