



HEALTH CARE COST INSTITUTE

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January 29, 2020

Seema Verma
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-9915-P
PO Box 8010
Baltimore, MD 21244-8010

Delivered Electronically

Dear Ms. Verma:

Thank you for the opportunity to comment on the Transparency in Coverage tri-department proposed rule (CMS-9915-P). The Health Care Cost Institute (HCCI) is a nonprofit organization seeking to get to the heart of the key issues affecting the U.S. health care system by using comprehensive and high quality data from multiple private and public payers to generate answers and insights to better inform policymakers and the general public regarding the unsustainable trends in, and drivers of US health care spending. HCCI looks for truth and consensus around the most important trends in health care, particularly those economic issues that are critical to a sustainable, high-performing health system.

HCCI was founded, in large part, to address the opacity that bedevils our health care system and is a firm believer that more information about how money flows through the system – how much and to whom – can elucidate drivers of health care costs in a way that will allow decisionmakers (in the public and private sectors) to change structures and systems to lower costs.¹ As such, we appreciate the Departments' emphasis on price transparency.

The analyses and products HCCI produce are indicative of how information and transparency can call attention to cost drivers and to highlight potential solutions. For example, our flagship report, the [Health Care Cost and Utilization Report](#), provides annual and cumulative trends in health care spending for individuals with employer sponsored insurance.²

¹Brennan, N. "The Opacity of Transparency: The Search for a Cure to Our Health Care Woes." 19 June 2018.

<https://growthevidence.com/the-opacity-of-transparency-the-search-for-a-cure-to-our-health-care-woes/>

² <https://healthcostinstitute.org/research/annual-reports/entry/2017-health-care-cost-and-utilization-report>

Our [Healthy Marketplace Index](#) (HMI) explores variation in health spending across cities and has looked at price, utilization, and inpatient hospital market concentration.³ In [one study](#), by looking at negotiated prices for six common services, we found wide variation in prices paid for those services. For example, the median price for a C-section in the San Francisco metropolitan area was nearly 4.5 times that in Knoxville, TN. Within the San Francisco metropolitan area, the price for a C-section varied by more than \$24,000 in real dollar terms. A common blood test in Beaumont, TX, costs nearly 25 times more than the same test in Toledo, OH.⁴ We also have done studies looking at the [price of insulin](#) that have resulted in nearly 1,000 media citations and supported state and federal legislative action.⁵ This, and all of our work, equips public and private policymakers with information to change the systems and structures of health care that are leading to higher costs.

Too frequently, efforts to improve transparency are linked to policies primarily focused on consumers and increasing consumer engagement in health care. For example, in the preamble to this proposed rule, you aspire to “provide consumers with price and benefit information that will enable them to evaluate health care options and to make cost-conscious decisions.” There certainly are specific use cases for which consumer-focused transparency has value, for example, helping to assess treatment options. However, we believe that systemic transparency holds more promise to hold stakeholders other than consumers accountable for cost and quality benchmarks for care. To that end, our comments suggest ways to build on and improve the elements of the proposed rule that would improve system-wide transparency without putting the full onus on consumers.⁶

Information and tools that help consumers navigate the health care system can serve an important purpose for patients and their families. It is less clear that they can or should be the main pathway to controlling health care costs. The structures that underpin the US health care system have created the costs and outcomes. We do not believe that individual consumers navigating through health care decisions should be responsible for bending the cost curve. Evidence of the impacts of existing consumer-facing price initiatives offers additional reasons for skepticism. Studies suggest that fewer than 1 in 10 individuals offered price transparency tools use them, and the few who use them do not necessarily save money.⁷

Instead, we recommend CMS focus on improving transparency system wide. These efforts can help public and private decisionmakers better understand what is causing health care costs in

³ <https://www.healthcostinstitute.org/research/hmi>

⁴ Kennedy, K., Johnson, W., Rodriguez, S. and N. Brennan. (2019, April 30). Past the Price Index: Exploring Actual Prices Paid for Specific Services by Metro Area [Blog Post]. Retrieved from <https://www.healthcostinstitute.org/blog/entry/hmi-2019-service-prices>.

⁵ Fuglesten Biniek, J. and W. Johnson. (2019, January 21). Spending on Individuals with Type 1 Diabetes and the Role of Rapidly Increasing Insulin Prices [Blog Post]. Retrieved from <https://www.healthcostinstitute.org/research/publications/entry/spending-on-individuals-with-type-1-diabetes-and-the-role-of-rapidly-increasing-insulin-prices>

⁶ Brennan, N and K Martin. “Stop Blaming The Victim: The Case For Systemic Health System Transparency.” *Health Affairs Blog*. 12 November 2019. <https://www.healthaffairs.org/doi/10.1377/hblog20191109.336885/full/>

⁷ Desai S, Hatfield LA, Hicks AL, et al. [Association between availability of a price transparency tool and outpatient spending](#). *JAMA*. 2016;315(17):1874–1881.

the US to be so high and to identify and develop solutions. The requirements to publicly disclose meaningful price information for all items and services is a step toward that goal.

Public Disclosure of Negotiated Rates and Historical Allowed Amount Data

Disclosure of meaningful price information – not just charges – can be an important step in increasing understanding of trends in prices that lead to higher health care costs in the US health care system. Anchored in the belief that robust analytics allow all stakeholders to drive improvements in quality and value, HCCI works to use the best data to generate the best answers to critical policy questions. Accordingly, we support the principle of putting into the public domain broad, meaningful price information and, specifically, we support the proposed disclosure of negotiated rates and historical allowed amounts (amounts paid by plans and individuals).

In light of ongoing and likely future litigation around negotiated rates that may put disclosure at risk, we point to HCCI as an example of how de-identified data can advance the goals of transparency. HCCI's data is provider, plan, and patient de-identified, and our analyses use procedure-specific charges and allowed amounts to understand cost and utilization trends as well as market drivers. We believe such de-identified information can mitigate concerns about proprietary information while maintaining meaningful, granular information that illuminates price variation in the health care system.

Use of Third Parties to Satisfy Public Disclosure Requirements

HCCI supports the proposal that would allow use of third parties for plans and issuers to comply with the public disclosure requirements. In addition to offering an efficient way to comply, third parties also could represent a mechanism to make price information publicly available at the payer level without identifying specific plans or issuers. We would encourage you to support all HIPAA-compliant third parties, not just clearinghouses, in this role without preference for any particular kind of third party.

We also would suggest the Departments consider establishing a safe harbor for plans and issuers that voluntarily submit their data to multi-payer claims databases, such as HCCI. The goal of shedding light on drivers of health care spending can be met by making payer-, provider-, and patient-deidentified data available to researchers, policymakers, and other health care stakeholders. For example, as noted above, HCCI generates meaningful reports at a granular level of information based on our data, which is deidentified at all three levels. Built on nearly a decade of experience, HCCI has expertise in the minimum data, coverage, and provider thresholds to produce significant, actionable analyses without identifying patients, plans, or providers.

HCCI believes plans that voluntarily contribute to our dataset are complying with the spirit of the regulation. Through their anonymized claims, they are making available their negotiated rates and allowed amounts in ways that are meaningful and impactful to public and private policymakers. If the Departments establish a safe harbor for voluntary contributors to multi-payer claims databases, HCCI could attest that the plans and issuers that contribute their data are making available meaningful, actual price information pursuant to the goals of the proposed regulation. We also would be happy to discuss this idea further with you if it is of interest.

Concerns about Transparency Leading to Price Increases

As you note in the rule's preamble, it is difficult to know exactly what the impact of greater price transparency will be. Although it is the hope of many that increased transparency will lead to lower health spending, we have heard concerns from stakeholders similar to those you cite: that publicly available negotiated rates may actually increase "costs for services in highly [provider] concentrated markets or result in anticompetitive behaviors."⁸ Additionally, it is unclear what effect changes in the prices of services may have on utilization. For instance, decreases in spending may be mitigated by greater use or providers substituting unaffected services caused by price declines.

What is clear, though, is that health care prices vary widely across the US. In fact, earlier HCCI work demonstrates dramatic variation both across and within markets – finding, for example, that the same blood tests could vary 39-fold within Tampa, FL. One of the stated goals in the proposed rule is to lower health care spending as increasing competition "begin[s] to narrow price differences for the same services in the same health care markets" by excluding or reducing the prices of some of the highest-priced providers. To date, however, there is little empirical evidence surrounding the potential impact such a reduction in price variation would have on spending. As such, HCCI recently released an interactive dashboard exploring what might happen to medical spending among the employer-sponsored insurance (ESI) population if, holding all else equal, price variation was reduced within every market via three different scenarios: (1) the prices of the most expensive claims for each service decreased, (2) the prices of the least expensive claims for each service increased, or (3) some combination of both circumstances.

Studying a sample of nearly 420 million medical claims across 963 markets, we found that in 2017, for the majority of service price distributions in the majority of markets, the highest priced services were relatively more expensive compared to the average price than the lowest priced services are comparatively inexpensive. That suggests that a minimal reduction in price variation through the lowering of the highest prices would outweigh substantially larger reductions through the raising of the lowest prices, and therefore lead to a decrease in medical spending. Some high-level findings include:

- If the median market price were applied to all claims within all services, national spending among the ESI population would decrease by 9%
- If within each service, the highest-priced claims were lowered to the 75th percentile market price and the lowest-priced claims increased to the 25th percentile market price, spending would decrease by 6.4%
- The 60th percentile market price could be applied to all claims – priced above and below – within each service and ESI spending would still decrease.

⁸ Sanger-Katz, M. "Why Transparency on Medical Prices Could Actually Make Them Go Higher." *New York Times: The Upshot*. 24 June 2019. <https://www.nytimes.com/2019/06/24/upshot/transparency-medical-prices-could-backfire.html>

Although the potential impact of greater price transparency remains unclear, the dashboard provides some context to various hypothetical outcomes by exploring how ESI medical spending would be affected by different changes in within-market price variation. This work is not intended to directly predict how price transparency policies would impact spending. Importantly, there are a number of limitations in our report to consider. For example, we do not account for differences in market structure, such as provider and payer market power, which could lead to differences in how likely and to what extent prices and spending would be affected by any potential policy. Additionally, we do not account for market differences that would impact the extent to which price changes affect spending. For instance, utilization shifts in response to changing prices may vary across markets. However, we believe this work serves as an important first step in displaying (1) how substantially most prices vary within markets, and (2) the range of potential changes in spending that would occur if this price variation were to be reduced in a number of directions and/or to any number of degrees.

We encourage you to explore the interactive dashboard at this link:

<https://healthcostinstitute.org/blog/entry/what-if-price-transparency-reduced-commercial-price-variation>.

Once again, we appreciate your attention to these issues and are encouraged by proposals to increase health care price transparency.

Thank you for considering our feedback and for the opportunity to comment on these proposals. If you have any questions about our comments and recommendations or if additional information may be helpful, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Niall Brennan", written in a cursive style.

Niall Brennan
President & CEO