The Opacity of Price Transparency: Loopholes, Enforcement Deficiencies, and a Path Forward

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Prices for healthcare in the USA are high and rising. While the data is not conclusive, studies have demonstrated that public reporting of healthcare prices can potentially decrease overall payments through increased competition between providers.[1–3] The ultimate goal of price transparency is to provide large health plans the means to collect publicly available data to leverage negotiating lower prices for services. Although increased transparency has been shown to decrease costs for patients, this will only occur when data is accessible and price comparison is incentivized.[2, 3]

In 2019, the Centers for Medicare and Medicaid Services (CMS) instituted the first national price transparency regulations, requiring essentially all hospitals in the USA to publish their list prices for all provided services. Further, on January 1, 2021, the Hospital Price Transparency Final Rule expanded the requirement to include a list of gross charges, discounted cash prices, and individually negotiated prices with all payers for all services. The rule also mandated that each hospital publish a patient-readable list of prices for 300 services, including a list of 70 common services, to allow for shopability between providers. On July 1, 2022, the regulations were expanded, further mandating that insurers publish their negotiated prices with all hospitals. Since June 2022, CMS has penalized 14 hospitals with fines from $56,940 to $979,000.[4] CMS also recently increased the maximum daily penalty to $5500 daily for large hospitals.[4] This higher monetary penalty has increased compliance (70.4% in 2021 to 87.7% in 2022).[5] Recently, the House of Representatives introduced a bill to increase fines and enhance requirements for insurer reporting in-network and out-of-network costs, in addition to beneficiary-specific cost sharing information.

These regulatory and legislative efforts are an important and significant step in the right direction, and there are currently even more efforts to introduce further legislation and improve enforcement. However, despite these forward steps, price transparency regulations are still limited by two key factors (Table 1).

First, the structure of the regulations is insufficient. Current regulations do not apply to physician groups and other professional organizations, essentially limiting price reporting to the technical fees provided by hospitals. While such fees comprise the majority of the total cost of most healthcare services, the professional component largely remains unreported. The regulations also do not apply to non-hospital sites of care or to physicians or other providers not directly employed by a hospital. Furthermore, even among this limited data, reported prices represent gross charges and not a patient's individual out-of-pocket costs. Though comparing gross prices may be informative, such prices may not be meaningful if patients do not know the portion they are responsible for. It would be impractical for physicians and hospitals to provide the patient cost sharing component, as there are a wide range of different benefit designs and a lack of access to patient deductible information, including what proportion they have met with the insurance company. Therefore, it is imperative that this responsibility be placed on the insurer to provide the patient-responsible payment in a timely and clear manner, as they do not currently provide this information in an easily accessible method. Additionally, by including both professional and technical fees in price reporting and including all sites of care, there would be a more significant downward pressure on true cost as a more comprehensive estimate of an episode of care would be publicly available. Another structural factor is that prices per procedure do not necessarily correlate with gross billing. Patients cannot predict the number and type of services they will need, and this may vary between hospitals. A hospital with higher per-service prices could conceivably perform fewer services to treat a specific diagnosis, meaning that a patient's overall cost would be lower than at a hospital whose per-service price is lower. Finally, the lack of a centralized repository for price data forces patients and insurers to comb through each hospital's website. Current regulations do not require standardization of formatting for published price data, allowing for variability in how data is presented and where it is found on hospitals' websites to the extent that it may be unusable.[6] This inconsistency further reduces the ability of patients and more importantly insurers to directly price compare and is a barrier to reducing cost.

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Table 1 Barriers to implementing price transparency regulations. Both the flaws in the regulations themselves and the roadblocks to proper implementation have been highlighted. To increase shopability of medical services between different providers and to increase insurers' bargaining power to drive down prices, these barriers need to be addressed in future iterations of the regulations and in the enforcement practices

Barriers to adequately realizing the benefits of price transparency
1. Prices reported only include the hospital technical fee component of cost and do not cover professional fees
2. Prices reported do not represent patient out-of-pocket fees which are determined by insurance
3. Regulation does not apply to non-hospital sites of care or physicians not employed by a hospital
4. Hospitals are not reporting prices
5. Hospitals are not reporting all insurance codes
6. Hospitals are not reporting all payer prices
7. Hospitals are not required to report prices in a standardized format
8. Hospitals are not lumping services in a standardized way
9. Patients do not know how many of each procedure they will receive in an episode of care

The second key limitation is enforcement, or the lack thereof. CMS has the power to strip hospitals of their CMS Certification numbers (CCNs) and fine hospitals a maximum daily fee of $5500. The first fines have been up to almost one million dollars, though most were only a small fraction of each hospital's revenue.[4] There has been substantial improvement in adherence as measured by CMS, but the problem is that CMS has determined compliance broadly, treating it as an all or nothing metric. This type of dichotomized compliance enforcement overlooks loopholes that allow hospitals to under-report and inaccurately report prices. Hospitals have leeway in deciding what prices to report. Some may elect to publish prices for only a subset of the insurers they contract with, while others may engage in a degree of "strategic compliance"—reporting prices for lower cost goods and services while neglecting to publish prices for higher margin services.[7] Furthermore, hospitals may inconsistently "lump" charges into certain billing codes. For instance, some hospitals may include the cost of the implant in their price for a hip replacement surgery, while others may not. It would be beneficial to require explicit detailing of what services are included in the listed price. Together, the lack of standardization of price reporting and insufficient enforcement limits the ability of patients to directly compare cost between providers and to better enable insurers to leverage this data to negotiate lower prices.

Despite these concerns about the effectiveness of current price transparency rules, CMS has an opportunity to refine its regulations and improve enforcement (Table 1). The most urgent matter is making detailed enforcement a priority to reduce strategic compliance and make more data available to increase market competition and decrease net cost. By treating enforcement as a binary of compliance versus noncompliance, CMS is inadvertently facilitating hospitals' use of loopholes. CMS has taken steps to implement a secondary enforcement of hospital compliance by having insurance companies publish which hospitals are reporting prices accurately. The next step is improving standardization. Regulations must be made more specific by mandating reporting of affiliated professional fees, establishing standardized reporting criteria and publishing format, and requiring publication of an estimated cost calculator by a patient's insurance. The time for CMS to act on the logistical implementation of its price transparency regulation is now. CMS can maximize impact by building on the current momentum to focus on standardization and enforcement of reporting by hospitals and insurers. This will introduce more transparency into the current opaque pricing system, potentially leading to competitive prices for healthcare services, and ultimately helping patients.

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Declarations:

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