

Hospital And Insurer Price Transparency Rules Now In Effect But Compliance Is Still Far Away

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High and rising health care prices are the [biggest driver](#) of health care spending in the United States. Some experts and policy makers theorize that improving the transparency of health care prices will [empower consumers](#) <https://www.cms.gov/newsroom/fact-sheets/transparency-coverage-final-rule-fact-sheet-cms-9915-f> to be smarter shoppers and enable the [payers](#) of health care services, such as employers and insurers, to lower their health care spending. On July 1, 2022, a [federal rule](#) [https://www.ecfr.gov/cgi-bin/text-idx?](https://www.ecfr.gov/cgi-bin/text-idx?SID=52778a33ce4c3ae76c4da9005921aa60&mc=true&node=se45.2.147_1210&rgn=div8)

[SID=52778a33ce4c3ae76c4da9005921aa60&mc=true&node=se45.2.147_1210&rgn=div8](https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/FAQs-Part-49.pdf) went into effect <https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/FAQs-Part-49.pdf> requiring health plans to disclose the negotiated

prices they pay physicians and facilities for each item and service they provide. This follows an [earlier requirement <https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-E/part-180#180.40>](https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-E/part-180#180.40) for hospitals to disclose their negotiated prices for all items and services, which went into effect on January 1, 2021.

Does Price Transparency Help?

Insurers typically negotiate prices for items and services provided by physicians and facilities within their respective networks. The prices providers negotiate for their services vary widely among insurers. For example, a [review <https://www.nytimes.com/interactive/2021/08/22/upshot/hospital-prices.html>](https://www.nytimes.com/interactive/2021/08/22/upshot/hospital-prices.html) of negotiated rates for basic medical services at 60 major hospitals nationwide found that a single hospital can have more than a three-fold difference in what it charges different commercial insurers for the exact same service. Furthermore, the prices an insurer pays also [vary <https://www.fiercehealthcare.com/payer/differences-prices-likely-attributable-to-payers-not-providers-study-finds>](https://www.fiercehealthcare.com/payer/differences-prices-likely-attributable-to-payers-not-providers-study-finds) widely among providers. Historically, both insurers and providers have [gone to great lengths <https://www.wsj.com/articles/behind-your-rising-health-care-bills-secret-hospital-deals-that-squelch-competition-1537281963>](https://www.wsj.com/articles/behind-your-rising-health-care-bills-secret-hospital-deals-that-squelch-competition-1537281963) to keep prices confidential.

Given how opaque prices are, consumers frequently have to [wait until after <https://www.gao.gov/products/gao-11-791>](https://www.gao.gov/products/gao-11-791) they receive medical care and have their bill in hand to fully understand how much they owe. While [some <https://www.cms.gov/newsroom/fact-sheets/transparency-coverage-final-rule-fact-sheet-cms-9915-f>](https://www.cms.gov/newsroom/fact-sheets/transparency-coverage-final-rule-fact-sheet-cms-9915-f) have argued that having more transparency around these negotiated prices could help consumers make more informed decisions, [evidence <https://www.rand.org/pubs/research_reports/RR2645.html>](https://www.rand.org/pubs/research_reports/RR2645.html) suggests [that consumers tend not to shop around for health care services but rather follow the recommendations of their primary care or referring physician. <https://www.nejm.org/doi/full/10.1056/NEJMhpr1715229>](https://www.nejm.org/doi/full/10.1056/NEJMhpr1715229)

For other entities interested in containing health care costs, price transparency can be [a critical tool <https://www.rwjf.org/en/library/research/2021/09/new-health-care-transparency-requirements-recommendations-for-optimizing-pricing-data-to-reduce-system-costs.html>](https://www.rwjf.org/en/library/research/2021/09/new-health-care-transparency-requirements-recommendations-for-optimizing-pricing-data-to-reduce-system-costs.html). Large employers in particular have a lot to gain. These employers usually contract with insurers to administer health care benefits for their employees while bearing financial risk themselves. Third-party administrators have [little incentive <https://tradeoffs.org/2021/09/23/inside-big-health-insurers-side-hustle/>](https://tradeoffs.org/2021/09/23/inside-big-health-insurers-side-hustle/) to procure the best deals for employers when negotiating with providers. Large employers have

sometimes struggled to get access to their own claims data from third-party administrators, hindering them from being more actively involved in developing cost-containment strategies. Access to negotiated prices may [give employers the tools](https://www.rwjf.org/content/dam/farm/reports/issue_briefs/2021/rwjf466638#page=8) [<https://www.rwjf.org/content/dam/farm/reports/issue_briefs/2021/rwjf466638#page=8>](https://www.rwjf.org/content/dam/farm/reports/issue_briefs/2021/rwjf466638#page=8) they need to exert downward pressure on provider prices.

Greater price transparency can also be a critical tool for state and federal policy makers, by increasing their understanding of the drivers of health care cost growth to design targeted policy solutions. Several states have or are pursuing health care cost growth [benchmarks](https://www.nashp.org/how-states-use-cost-growth-benchmark-programs-to-contain-health-care-costs/) [<https://www.nashp.org/how-states-use-cost-growth-benchmark-programs-to-contain-health-care-costs/>](https://www.nashp.org/how-states-use-cost-growth-benchmark-programs-to-contain-health-care-costs/), a strategy to limit how much spending can grow each year. However, [enforcing](https://chirblog.org/states-attempt-rein-rising-health-care-costs-self-regulating-industry-enough/) [<https://chirblog.org/states-attempt-rein-rising-health-care-costs-self-regulating-industry-enough/>](https://chirblog.org/states-attempt-rein-rising-health-care-costs-self-regulating-industry-enough/) such benchmarks is far from easy; information about which providers or payers are responsible for large price jumps would help. Access to negotiated prices can also help state insurance regulators during their annual rate review process, by showing what might be driving an excessive or unreasonable rate increase. At the federal level, greater price transparency could support increased engagement from employer-based health plans in [federally sponsored](https://innovation.cms.gov/strategic-direction-whitepaper) [<https://innovation.cms.gov/strategic-direction-whitepaper>](https://innovation.cms.gov/strategic-direction-whitepaper) multipayer initiatives designed to contain costs and improve the value of health care.

Federal Transparency Rules

With the [primary goal](https://www.cms.gov/newsroom/fact-sheets/transparency-coverage-final-rule-fact-sheet-cms-9915-f) [<https://www.cms.gov/newsroom/fact-sheets/transparency-coverage-final-rule-fact-sheet-cms-9915-f>](https://www.cms.gov/newsroom/fact-sheets/transparency-coverage-final-rule-fact-sheet-cms-9915-f) of improving consumer decision making, the Centers for Medicare and Medicaid Services (CMS) issued rules requiring both hospitals and insurers to make their negotiated prices public. The [requirement for hospitals](https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-E/part-180#180.40) [<https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-E/part-180#180.40>](https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-E/part-180#180.40) went into effect on January 1, 2021. Hospitals now have to publish the following in a machine-readable format for all the items and services they provide: gross charges, discounted cash price for those not using insurance, payer-specific negotiated prices, de-identified minimum negotiated price, and de-identified maximum negotiated price. Hospitals are also required to prominently, publicly, and in “plain language,” display their prices for 300 of the most commonly used services, as defined by CMS.

Similar [requirements for insurers](https://www.ecfr.gov/cgi-bin/text-idx?SID=52778a33ce4c3ae76c4da9005921aa60&mc=true&node=se45.2.147_1210&rgn=div8) [<https://www.ecfr.gov/cgi-bin/text-idx?SID=52778a33ce4c3ae76c4da9005921aa60&mc=true&node=se45.2.147_1210&rgn=div8>](https://www.ecfr.gov/cgi-bin/text-idx?SID=52778a33ce4c3ae76c4da9005921aa60&mc=true&node=se45.2.147_1210&rgn=div8) were set to go into effect in January 2022, but CMS [decided](https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/FAQs-) [<https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/FAQs->](https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/FAQs-)

[Part-49.pdf](#)> to give insurers until July 2022 to comply with them. Under the rule, insurers have to publish the following in a machine-readable format for all covered items and services: negotiated prices for in-network providers, how much they have historically been billed for services by out-of-network providers, and how much they have historically paid out-of-network providers. The regulations also require disclosures about the negotiated prices for prescriptions drugs and for insurers to disclose cost-sharing information to enrollees when they request it.

Are Transparency Rules Working?

The short answer to the question of whether these transparency rules are working is—not quite yet.

Hospitals have been slow to comply with transparency rules. Between July and September 2021, [fewer than 6 percent](#) [<https://jamanetwork.com/journals/jama/article-abstract/2792987>](https://jamanetwork.com/journals/jama/article-abstract/2792987) of hospitals had disclosed prices as required. Hospitals with higher revenues and in highly consolidated markets were found to be more likely to flout the law. CMS has set a maximum fine of about \$2 million a year for larger hospitals that fail to comply, but some of these hospitals have [stated](#) [<https://www.modernhealthcare.com/finance/fines-kicking-after-slow-start-hospital-transparency-rule>](https://www.modernhealthcare.com/finance/fines-kicking-after-slow-start-hospital-transparency-rule) that they would rather pay the fines than forgo their competitive advantage. As of June 2022, CMS has [issued](#) [<https://www.modernhealthcare.com/finance/fines-kicking-after-slow-start-hospital-transparency-rule>](https://www.modernhealthcare.com/finance/fines-kicking-after-slow-start-hospital-transparency-rule) 352 warning notices and 157 corrective action plan requests to hospitals. CMS has also fined two hospitals in Georgia; the fines amounted to only 0.04 percent of the hospitals' net patient revenue.

Even when hospitals have complied with the rules, experts have found the data to be “[consistently inconsistent](#) [<https://www.rwjf.org/en/library/research/2021/09/new-health-care-transparency-requirements-recommendations-for-optimizing-pricing-data-to-reduce-system-costs.html>](https://www.rwjf.org/en/library/research/2021/09/new-health-care-transparency-requirements-recommendations-for-optimizing-pricing-data-to-reduce-system-costs.html)” in terms of how data elements are defined and displayed, making it very difficult for third parties to make connections across hospitals and payers. Based on their experience with hospital transparency rules, CMS issued [several pieces of technical guidance](#) [<https://www.cms.gov/healthplan-price-transparency/resources>](https://www.cms.gov/healthplan-price-transparency/resources) to insurers before the rules applicable to health plans went into effect. Insurers that fail to comply with health plan transparency rules will face fines of around \$100 per violation, per day, per affected enrollee, which can quickly add up to far larger fines than those faced by hospitals. [Initial reports](#) [<https://www.fiercehealthcare.com/payers/health-insurance-price-data-its-out-there-its-not-faint-heart>](https://www.fiercehealthcare.com/payers/health-insurance-price-data-its-out-there-its-not-faint-heart) suggest that most insurers have

complied with the technical requirements of the rule, but the data files they have posted are largely inaccessible and indecipherable to anyone without access to a supercomputer.

Notably, unlike the hospital transparency rule, which is exclusively enforced by CMS, state and federal regulators share responsibility for the oversight and enforcement of the health plan transparency rule. The federal government enforces the requirements for self-funded employer plans, while state insurance departments have the primary enforcement role for plans sold in the individual and fully insured group markets. In either case, unless federal or state regulators provide new instructions to insurers to make the data more accessible, and hold them accountable when they do not comply, it is unlikely that employers, policy makers, researchers, or consumers will be able to put the data to any real use.

What Can States Do To Improve Compliance?

States have an important role to play in improving compliance to both the hospital and health plan transparency rules.

Colorado recently [enacted a law <https://leg.colorado.gov/bills/hb22-1285>](https://leg.colorado.gov/bills/hb22-1285) prohibiting hospitals from pursuing medical debt collection from patients if the hospital has failed to comply with the price transparency rule. These hospitals are also prohibited from suing patients or reporting the patient to a credit reporting agency. Furthermore, the law gives patients the right to file suit against the hospital if they receive a collection action from a noncomplying hospital. An earlier version of the law also authorized the state's hospital licensing agency to take into consideration a hospital's compliance with the price transparency rule when making a determination on its license renewal application, but this provision was not included in the final version of the bill. Many states might not even need such a direct legislative mandate to enforce federal transparency requirements against hospitals. States are responsible for licensing hospitals and have significant leverage during the licensing process to assess whether a hospital is complying with relevant federal and state laws, including transparency requirements. States can also use their [contracting power](#) as the purchaser of health care coverage, whether through the state employee health plan, Medicaid, or state-based Marketplaces, to require all downstream service providers, including hospitals, to be in full compliance with federal law.

State insurance departments can conduct oversight by requiring insurers to attest to their compliance in the annual rate review process. They can also conduct their own review of insurers' data files to confirm compliance, issue rules or guidance to insurers to improve

data accessibility and usability, provide user-friendly data-reporting templates, and hold plans accountable if and when they are not in compliance.

Looking Forward

Price transparency is a means to an end. Health care payers, policy makers, and researchers must be able to access and analyze data to identify cost drivers and make informed health care purchasing and policy decisions. Federal and state policy makers have more work to do to ensure compliance and provide hospitals and health plans with better data-reporting standards and usability guidelines to ensure that greater transparency leads to the ultimate goal of a more value-oriented, cost-efficient health care system.

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