

December 22, 2020

## Media Guidance and Other New Resources Available to Prepare for Hospital Price Transparency Rule That Takes Effect Jan. 1

*AHA, others continue to challenge the rule in the courts*

The hospital price transparency [rule](#) takes effect Jan. 1, 2021, requiring hospitals and health systems to disclose all standard charges, as defined by the Centers for Medicare & Medicaid Services (CMS) to mean privately negotiated rates with insurers, gross charges (a.k.a., “list prices”) and discounted cash prices. Hospitals also will be required to provide an out-of-pocket price estimator tool or negotiated rate information on 300 “shoppable” services for patients.

The AHA continues to oppose the requirement to publicly disclose privately negotiated rates. Negotiated rates will do nothing to help patients become more knowledgeable consumers of health care and instead will confuse and frustrate them. The AHA and three other national organizations sued the federal government challenging the final rule; the case is pending on appeal.

Those same organizations yesterday filed a [motion](#) asking the United States Court of Appeals for the D.C. Circuit to stay the rule until the new administration has the opportunity to review and revise it and because implementing it would divert essential personnel from caring for a huge influx of COVID-19 patients and administering life-saving vaccines. In addition, the AHA sent a [letter](#) yesterday to the Biden-Harris transition team asking it to use its enforcement discretion and consider whether to revise the rule.

Concurrent with our legal strategy, the AHA is working to prepare the field for the rule’s implementation. Our Oct. 30 [Member Advisory](#) outlined numerous available resources, including several on out-of-pocket cost estimators. To help hospitals and health systems discuss the price transparency rule with patients and the media, this advisory offers new resources that include:

- **Supplemental sample patient messages** – Updated template messages to tailor for your patients. See addendum.
- **Sample media messages** – Draft key messages to tailor for targeted audiences in your community. See addendum.
- **Tough Q&A** – Written to help address key elements of implementation with the media and public. See addendum.
- **Infographic** – Summarizes the two primary elements of the rule.
- **Video** – Patient-focused template video explaining hospitals’ commitment to help make costs understandable. For AHA members who want to use this video and add their own branding, [click here](#) to download.
- **Patient-centered Tools** – Use these tools to examine your price transparency communications to ensure they are patient-centered. Package includes action items, self-assessment, patient communication infographic and secret shopper exercise.

### **CMS Defines Standard Charges**

For the purpose of this rule, CMS defines *Standard Charge* in multiple ways:

- **Negotiated Rates.** The rate, or amount, that a hospital has negotiated with a third-party payer for an item or service (including a service bundle), such as a PET scan or heart bypass.
- **Gross Charge (a.k.a., “List Price”).** The charge for an individual item or service in the hospital’s chargemaster, absent any discounts.
- **Discounted Cash Price.** The charge that applies to an individual who pays cash (or cash equivalent) for a hospital item or service, often referred to as the “walk-in” or “self-pay” rate.

**Please share these media-focused resources with your public relations and government relations colleagues, and any other teams with an external-facing role.** And, visit [AHA's webpage](#) to access a full suite of tools and resources, including case studies, on-demand webinars and podcasts. (*Members must log in to access.*)

***Further Questions***

For questions or help logging in, please call 800-424-4301 or [email](#) us.

## Addendum: AHA Price Transparency Resources

### SUPPLEMENTAL SAMPLE PATIENT MESSAGES

*These are meant to help you talk with patients about understanding their out-of-pocket costs. The messages also address why the disclosure of privately negotiated rates does not advance this goal. These should be tailored to best align with your current initiatives.*

#### **Health insurance is complicated. We are here to help.**

- We know you are going to have questions about the costs related to hospital treatment. We want to provide information that helps you plan ahead.
- We recognize some people are facing higher out-of-pocket costs than they used to. We also know different plans have different cost-sharing amounts.
- While insurance is complicated, our commitment is simple – we want to help.

#### **You deserve the best possible information about what you should expect to pay.**

- You should have meaningful information about your options for medical treatment and what your out-of-pocket cost will likely be.
- Your health plan is a key partner in any discussion about your expected costs because these costs depend on features of your plan, where you are in your deductible and what type of cost-sharing you have for a particular procedure.
- It is likely that cost estimates may only be available for so-called “shoppable” services. These estimates could also change as the course of treatment changes.
- Additionally, estimates are impossible in emergencies because it is hard to predict at the onset of an emergency the exact course of care that a patient will need.

#### **Some bills will not come from the hospital.**

- You may receive bills directly from physicians or labs that do not work for our hospital.
- We will work with you to understand these bills to the best of our abilities; however, you may need to contact those providers directly.

#### **You may be aware that the government has required that hospitals post additional information on the rates they negotiate with health plans. We urge caution when looking at this data.**

- There are many factors that determine the final amount that will be paid from a health plan to a provider. There is no way to capture all of those factors in a single set of number, For example:
  - Rates may change depending on how sick a patient turns out to be.
  - Rates may also change depending on whether patients are receiving multiple services at once, or whether the doctor learns something new about a patient’s condition while providing care.
  - The plan may not cover the service at all, or may impose conditions on coverage.
- We urge you to contact us or use our out-of-pocket cost estimator tool for a more accurate estimate of what you may need to pay for your care.

## **SAMPLE MEDIA MESSAGES**

*These are meant to help you explain the price transparency rule to reporters and should be tailored to best align with your position and current initiatives.*

### **Hospitals are working with patients to get them the information they need to make informed decisions about their care.**

- Hospitals are working to provide patients with upfront information about their costs, including through cost estimator tools and other services.
- These estimates are generally only available for certain services that are scheduled in advance, tend to follow a common course and do not depend on whether the patient has other health conditions that could complicate the care, such as diabetes.
- Estimates can also change as the course of treatment changes.

### **Technology is making it easier to share real-time cost information.**

- Evolving technology is making it easier for hospitals to make online patient cost estimators available.
- However, these continue to be complex and costly tools to implement that must be frequently updated for accuracy.
- We welcome government technical assistance to help develop and maintain these tools as economically as possible.

### **Some of the data points required through the new regulations are impossible to provide.**

- The government's requirements do not always align with the arrangements health plans make with hospitals to pay for care.
- Without further clarity from the government about how to display the information, it is impossible to meet the current requirements in a manner that is not confusing, misleading or inaccurate.

### **Releasing negotiated rates – the amount a hospital has negotiated with an insurer for items or services – is unhelpful and misleading for patients.**

- Most patients have private insurance. These patients' out-of-pocket costs are determined by the insurance plan they choose.
  - This includes whether the service is covered fully, partially or not at all and the amount of the plan's deductible and patient cost-sharing amounts.
- The rate of payment between the health plan and the hospital generally does not provide reliable information about what a patient should expect to pay.

### **Compiling and displaying negotiated rates for each health plan with which the hospital contracts is burdensome to hospitals, especially during the COVID-19 pandemic.**

- The data is expensive to compile, display and maintain.
- Hospitals have spent thousands of staff hours understanding and working to comply with the requirements, and many have had to redirect scarce financial resources to hire consultants and vendors to assist them – resources that could be better used for responding to COVID-19.
- This strain is particularly evident in rural and safety-net hospitals.

## **This data could give large commercial health plans an unfair advantage in negotiations with hospitals.**

- Health plans will see where they are able to get away with paying the lowest rates, even if those rates are below the cost of providing care.
- This could lead to a race to the bottom, resulting in fewer choices for patients as some providers are unable to sustain operations at these rates, thereby reducing access to care.
- Payers would also have less incentive to come to the table with hospitals around innovative value-based care models.

## **Federal regulators and independent researchers say this kind of information can actually raise costs.**

- The Federal Trade Commission itself has repeatedly said that this type of data disclosure does not help consumers or result in lower prices. (Source: [FTC](#))
- Research also indicates costs went up in other industries as a result of negotiated price disclosure. (Source: [New York Times](#))

## **TOUGH QUESTIONS & ANSWERS**

*These are meant to help you respond to tough questions about the price transparency rule and the position hospitals and health systems have taken on the requirement to disclose negotiated rates. These can also be tailored as needed.*

### **Do you oppose the rule? If so, why?**

We support making patient cost estimates available to patients. The extensive data disclosure component of the rule revealing privately negotiated rates, however, will not help patients obtain an accurate estimate of their costs. In addition, the data is expensive to compile, display and maintain. And, it could also give large commercial health plans an unfair advantage in negotiations with hospitals.

### **Why would this give health plans an unfair advantage?**

Commercial health insurance markets are increasingly concentrated; the American Medical Association found that 75% of metropolitan commercial markets studied were highly concentrated. Large commercial health plans have greater leverage at the negotiating table than any individual hospital or health system. Therefore, we can expect payers to demand lower rates from hospitals based on the lowest publicly-released rate even if that rate is inappropriate or unsustainable for that particular provider. And, it is unlikely that health plans would ever pass on the benefits of lower rates to patients instead of pocketing those profits.

### **Have you complied with the Hospital Price Transparency Rule?**

- *(If yes)* Our organization has done the best we can to comply with the regulation. However, the government failed to provide sufficient guidance, as some of the data points they are requesting do not exist. Therefore, we do not know if the government will agree that we are in compliance.
- *(If partially)* Patients want to know what they will be responsible for paying out-of-pocket for care. For that reason, we have dedicated our efforts during these significantly constrained times to build out our capabilities to provide out-of-pocket cost estimates.

- *(If no)* We have limited time and resources, especially during this global pandemic. We have had to focus our immediate efforts on providing the best care possible for our communities and helping patients understand their out-of-pocket costs.

### **Will you compare your rates with your competitors and/or use the information from peer organizations in negotiations with health plans?**

The government is requiring that these rates be disclosed, but this is not something we sought or support. It is much more likely that large commercial health plans will use this information to collude on the rates they pay to hospitals. Health plans may also attempt to match the rates of competitors that receive a better deal from hospitals as part of innovative arrangements to improve patient care.

### **Why is there so much variation in what different payers pay for the same service?**

A lot of factors go into negotiation of rates between health plans and providers. These could include the scope of the contract (e.g., is it a limited scope contract for a subset of services, like emergency or quaternary care services only); anticipated patient volume associated with the contract; whether or not the rate is adjusted after the fact based on provider performance; and the characteristics of the patients enrolled in a particular health plan. In addition, as is mentioned elsewhere, the rates as reflected in these spreadsheets often do not reflect what is actually paid as they too may be subject to a number of different adjustments as laid out in the contract.

### **Could this lead to government setting fixed prices?**

Rate-setting is the wrong approach. It is widely acknowledged that Medicare and Medicaid – the two largest public programs – pay below the cost of delivering care. Therefore, we strongly urge against moving in this direction.

### **If not this, what information should hospitals provide?**

Patients want to know what they will actually pay. We can say this with confidence as this is what patients ask us for when they reach out about their costs. Hospitals and health systems are committed to working with patients to make sure they can easily access out-of-pocket cost estimates when those can be reasonably provided, including through online patient cost estimator tools. Commercial health plans are a needed partner in making this information available.

### **Do you expect your revenue to go down as a result of sharing this data?**

Anyone with any real knowledge of health care financing should not make any kind of decisions based on this data. However, we are concerned that large commercial health plans with market power would attempt to use this information in our negotiations to drive reimbursement to unsustainable levels.

### **What do you expect the incoming administration to do on price transparency?**

We look forward to working with the new administration to achieve a shared goal of increasing price transparency by making patient out-of-pocket cost estimates easier for patients to access and understand. We hope they will agree that our efforts are best focused on providing patients with the information they actually need to make informed decisions about their health care.