



SUMMER of
SOLUTIONS

**Transparency in Healthcare:
Examining President Trump's
Executive Order**



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Transparency in Healthcare

Fighting the skyrocketing prices of drugs and medical care has emerged as a rare area of bipartisan common ground and consensus. As [a top concern with the American public](#) going into the 2020 elections, members of both parties are looking to brush up on their health care credentials by addressing it going into the 2020 elections.

After the 2019 State of the Union address in February, [69% of Americans said](#) health care costs should be a top priority for President Trump and Congress this year -- second only to the economy, which came in at 70%.

In response to this public concern, President Trump vowed to ensure the Republicans are [“the party of great healthcare.”](#) He followed up by signing the “Improving Price and Quality Transparency in American Healthcare to Put Patients First” Executive Order on June 24, 2019. The Order focuses on pricing transparency that aims to lower rising health care costs by publicizing prices to patients in a variety of ways. The idea being if people can shop around, know what the cost is ahead of a healthcare purchase or decision, market forces may drive down cost.

“Hospitals will be required to publish prices that reflect what people pay for services,” President Trump [said at a White House event](#). “You will get great pricing. Prices will come down by numbers that you wouldn’t believe. The cost of healthcare will go way, way down.”

[According to Donna Wilkinson, Senior Counsel, Ameriflex](#), the Order directs various departments of the government to issue guidance, develop reports or new regulations within 180 days of the Order. The goal of all of these actions being to increase transparency in health care price and quality.

Of particular interest, Wilkinson said, are three areas that direct the Department of the Treasury to do the following:

1. Allow Health Savings Account-eligible plans to provide low-cost preventative care before the deductible for medical care to help people suffering from chronic conditions;
2. Propose regulations that would make Direct Primary Care coverage a qualified medical expense, reimbursable by a Flexible Spending Account (FSA), Health Reimbursement Arrangement (HRA) or a Health Savings Account (HSA); and
3. Increase the amount of unused contributions that can be rolled-over in a Flexible Spending Account.

The more people read the Executive Order and see the overarching goals, the more open they are to having a dialogue about what the new measures will be,” said Wilkinson. “The lack of predictability in health care costs is something all parties and people agree on.”

Question: When will this take effect?

It is important to note that this is only an Executive Order and is not itself a change in law or regulations. It serves as a directive to draft new rules or guidance. From the proposed rules and regulations that government agencies develop and publish, public comment and consideration will be taken before formalizing anything. The process could take months, if not a year, and requires close monitoring.

“Most [healthcare organizations] haven’t done much yet - until the final regulations are issued by each governing body, everyone’s keeping a close eye on it - some parties are happy, some are not, depends which spoke you are on the wheel,” said Wilkinson.

Due to the timing of the Executive Order and the administrative law-making process, Wilkinson added that we probably won’t see final regulations until Summer 2020.

“It does mean great things for Consumer Directed Health Care accounts because the accounts will now be able to pay for more and may be allowed to have more money in them,” she said.

Challenges

Because of the relatively secretive nature around how health care prices are negotiated in the United States, there is very little research on the possible effects of the kind of transparency outlined in the executive order.

[Scholars examining the question](#) have had to look beyond the health care industry to find answers, even going outside of the United States, when looking for answers about repercussions in a transparent system. For example, they have looked at studies from markets like [Chilean gasoline](#), [Israeli supermarkets](#) and Danish ready-mix concrete.

These scholarship efforts suggest that more transparency in health care could cause prices to rise instead of fall.

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The Danish study, in particular, has proven to be an often-referenced example of how things could have the opposite of the desired effect.

In that example, The Danish government wanted to improve competition in the early 1990s, and required manufacturers of ready-mix concrete to disclose their negotiated prices with their customers. Prices for the product then rose 15 percent to 20 percent.

It was concluded by those studying the example that because there were few manufacturers competing for business, they simply looked up what the competition was charging, and all gradually raised their prices as a unit.

Because of price transparency, there was no direct collusion -- the companies were legally taking advantage of publicly available information. Because ready-mix concrete is difficult to ship across distances, it wasn't easy for new companies to undercut the existing ones.

This example is drawn as a parallel because in the health care industry, there are also a small number of players in a market, and entry is also difficult and new hospitals would have trouble competing. However, it is up for debate on whether the future can accurately be predicted from an example with so many different variables.

Potential Delays

The Executive Order is consistent with recent rules to, for instance, require drug manufacturers to disclose list prices in their advertisements or require hospitals to publish list prices on their websites.

The Trump administration's recent rule on prescription drug advertising has already been [challenged by drug makers](#) (specifically on the requirement to list prices in TV ads), which caused delays.

Something similar could happen if future lawsuits are raised against this effort -- insurance and hospital industries have already raised concerns about it, and have implied it could affect health care costs and the disclosure of proprietary information negatively.

The Federation of American Hospitals, the American Hospital Association and America's Health Insurance Plans have argued that disclosing contracted prices won't help consumers know what they'd actually be on the hook to pay.

Federation of American Hospitals (FAH) [stated in a released letter](#) that transparency is important for consumers prior to receiving medical services, and it is also important when they are making decisions on their health insurance coverage.

The letter asserts that healthcare transparency should focus on patient's out-of-pocket costs and provider networks, coupled with quality information for consumers to make informed decisions based on both the cost and quality of care.

The letter makes numerous recommendations for improving quality measurement and public reporting, including with regard to the Star Ratings Program and the use of electronic health records (EHRs).

For insured patients, FAH asserts that insurers are in the best position to provide pricing information to their enrollees, as they have access to information regarding the entire episode of care.

Surprise Billing - FAH did recommend the adoption of the “surprise billing” section of the [‘National Association of Insurance Commissioners’ \(NAIC\) Model Act](#), which has come out of this. The NAIC model protects insured patients from surprise bills from an in-network hospital, where some of their services were performed by an out-of-network physician.

Question: What about the uninsured?

For uninsured consumers, FAH recommends that health care providers and state databases act as sources of pricing information. This set up would have limitations, as they recognized. Mainly, that information would be naturally limited by the involvement of multiple providers in an episode of care, as well as the uniqueness of each patient.

The FAH letter also cautions against the release of negotiated rates between insurers and providers, as, “such information is not useful or actionable for patients and could have anticompetitive effects.”

Lastly, the letter recommends Congress and the Trump Administration take action to lessen the extraordinary number of regulatory requirements currently on hospitals, stating that lessening these compliances would in itself improve health outcomes and efficiencies.

Revealing the process, they said, could reduce competition, as no doctor or hospital would want to be paid the lowest rate, and would ask for the higher payments neighboring facilities receive.

“We also agree that patients should have accurate, real-time information about costs so they can make the best, most informed decisions about their care,” Matt Eyles, AHIP president and CEO, [said in a statement](#). “But publicly disclosing competitively negotiated, proprietary rates will reduce competition and push prices higher — not lower— for consumers, patients and taxpayers.”

All in favor say, “aye”

Some groups have come out in favor of increasing transparency around industry prices. Joined by nearly 4,000 other physicians, (former) Senator Tom Coburn, a Republican party member from Oklahoma and a physician, was joined by nearly 4,000 other physicians in encouraging the administration to continue pursuing this executive order.

“While insurers and hospitals argue that posting prices simply isn’t feasible, we disagree,” former [Sen. Tom Coburn wrote](#). “In this digital day of Google, Amazon, and Uber, creating real-time price lists isn’t as hard as those who benefit from keeping prices in the dark would have you believe.”

The consumer group Families USA, which opposes the Trump administration’s Medicaid and Obamacare policies, [released a statement](#) in favor of price transparency.

“To lower health care costs and improve quality, Families USA encourages efforts to improve the transparency of health care cost information, such as those outlined in President Trump’s executive order. In every other industry, consumers know the cost of goods or services before purchasing; the same should be true of the costs of health care services,” the statement read.

From [the perspective of a singular patient](#) who joined President Trump when he announced the Executive Order, transparency is a necessity.

She told a story of spending three and a half years fighting stage-three cancer, and in that time seeing price variations that “took us by surprise from one facility to the next. And it caused us financial hardship.”

An example of this, she said, is when she had two identical bone biopsy procedures only 11 days apart at facilities that were 17 miles from each other.

“We learned, when we received the bills for the second procedure, that it cost us more than 330 percent than the first time we had it done. Different facility, identical procedure: drastically different pricing.”

The Latest?

Senate HELP Committee leaders unveiled in June the wide-ranging bill aimed at addressing “surprise” medical bills, improving transparency in the health care system and tackling critical public health issues like vaccine misinformation and maternal mortality. The federal benchmark is focused on the median in-network rate for an area.

The House Energy and Commerce Committee had a similar discussion draft that would keep insured patients from being slapped with hefty bills after inadvertently seeing an out-of-network doctor. House lawmakers are also working on proposals to clamp down on drug costs, such as capping out-of-pocket expenses for seniors, curbing patent gaming and boosting transparency in the supply chain.

Late July also saw the Trump administration proposing a rule that would require hospitals to post online the health care prices they have negotiated with insurers.

Under the proposed rule (which is open for a 60-day comment period) Centers for Medicare and Medicaid Services (CMS) would require hospitals to publicize the amount they charge for a set of so-called “shoppable services.” The agency defines those services as ones that patients can schedule in advance, such as an MRI or a hip or knee replacement.

Following that, hospitals also will have to post the prices they have negotiated with insurers. CMS said requiring such information would allow consumers to make “apples-to-apples comparisons” of health-care services and allow them the chance to better understand how much their care will cost.

As described above, hospitals and insurers have warned that being forced to share the results of secret negotiations would crush competition and drive up prices for consumers. However, if put into action, the proposed rule will impose a financial penalty on hospitals — up to \$300 per day — not in compliance with the requirement to post their prices.

“One of the biggest fears hard-working Americans have is the unaccounted-for cost of healthcare,” said Wilkinson.

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“To ease some of this anxiety, transparency is necessary and providers should be required to post their fees and prices so that Americans can shop for the best service that fits their situation, and then won’t be surprised on the back end.”

Transparency provides a true patient-controlled system where hard-working Americans have the information they need to make decisions, she added, and they are empowered to make informed choices and make themselves healthier.

Ameriflex is continuing its lobbying efforts in DC with other industry leaders and will continue to update on any new developments as new bills are introduced.

Keep up with [our blog](#) to stay informed.



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