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Like it or Not, Hospital Systems Must Plan for Price Transparency

Overview

For decades the prices negotiated by healthcare providers, insurance carriers, and networks have been tightly-guarded trade secrets. Carriers and networks included "gag clauses" in their contracts with providers, prohibiting any party from disclosing the prices and other financial terms to anyone. Only the carrier/network was aware of how much prices varied from one provider to another. Federally-mandated price transparency, however, is bringing an end to price secrecy.

The days of negotiating a simple trend to apply to yesterday's prices will be replaced by intense price negotiations. Soon, everyone negotiating contracts will have the ability to know what every payer is paying every provider. Hospital systems that are currently being underpaid relative to their markets will have support for their demand for higher prices; hospital systems being paid more relative to their market will face new pressure to justify their prices.

Hospital system negotiators need to start work now on revising their system's price strategy. To do so, they need to obtain and analyze their competitor's price data – data that is not yet consistently available via the transparency page of competitor-hospital websites. To fill the short-term gaps, systems should also use data that is available to them now as sponsors of their self-insured plans and, starting mid-2022, with data from insured and self-insured health plan websites.

Transparency Laws

Price transparency has had bipartisan support from Congress and both the Trump and Biden administrations. Transparency is progressing under three forces: hospital price transparency (a rule), self-insured employer claims payment transparency (a law), and health plan price transparency (a rule). Hospital system administrators are acutely aware of hospital price transparency but less familiar with the other two forces.

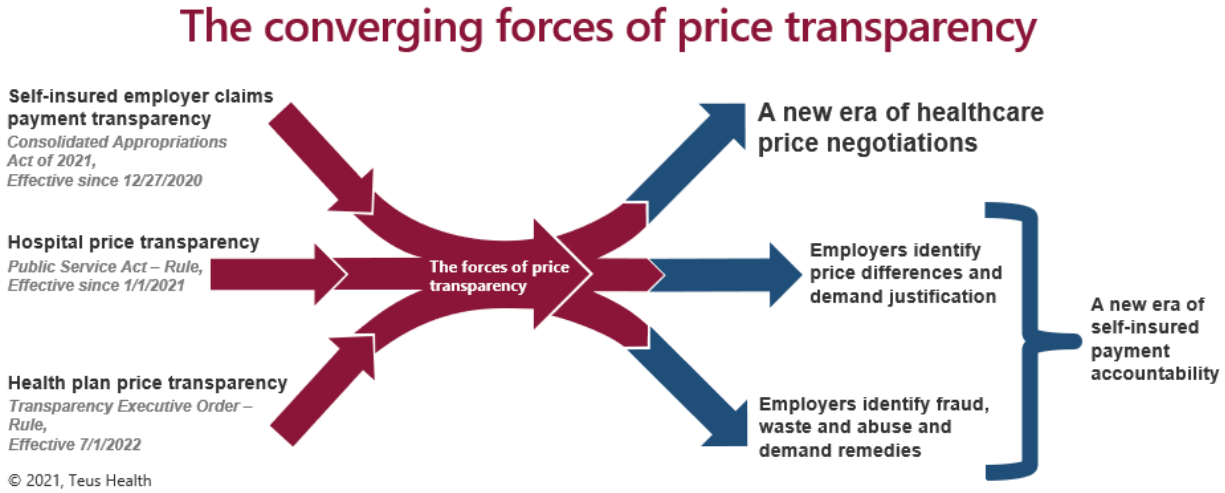
Hospital price transparency. Under the "Price Transparency Requirements for Hospitals to Make Standard Charges Public" Final Rule of the Public Health Service (PHS) Act, released November 2019, hospitals were required to publicly post by January 1, 2020 a machine-readable file that lists all of their negotiated prices with payers at the service line-level and also in-total for common bundles of services, with annual updates thereafter. Hospitals also have to provide a consumer-friendly online pricing tool.[1,2] The rule covers inpatient and outpatient facility services and the services of hospital-employed physicians and non-physician practitioners. Negotiated prices include the contractual prices for commercial coverage, Medicare Advantage, and Managed Medicaid.[3] In mid-2021 a more than 90% of hospitals posted insufficient data, unusable data, or none at all.[4] As a consequence, CMS has greatly increased the 2022 penalty for non-compliance.[5]

Self-insured employer transparency. The "Increasing Transparency by Removing Gag Clauses on Price and Quality Information" provisions of the Consolidated Appropriations Act of 2021 (CAA), signed into law December 27, 2020, prohibits gag clauses and other contractual provisions that restrict self-insured employer and other plan sponsor access to comprehensive health insurance claims data. Carriers and networks holding plan data must share it with plan sponsors. Employers are furthermore allowed to share

the data, consistent with applicable patient privacy regulations, with anyone, including the public.[6] The gag prohibition already applies to all employer-sponsored plans. Furthermore, in 2022, employers must attest that gag clauses have been removed from all of their contracts. Self-insured employer transparency is the least discussed of the three transparency forces. This may be because the provisions were overshadowed by other topics in the massive CAA, or because people are mistakenly waiting for rules. The Department of Labor confirmed in August 2021 that the provisions were effectively immediately and are to be implemented based on a good faith interpretation rather than rules.[7]

Health plan transparency. Under deferred enforcement of the "Transparency in Coverage" (TiC) Final Rule for President Trump's "Improving Price and Quality Transparency in American Healthcare to Put Patients First" Executive Order, by July 1, 2022, all health plans must publicly post a machine-readable file that lists all of their negotiated prices with all contracted providers (hospital and otherwise), at the service line-level and also for common bundles of services. Plans soon thereafter also must provide a consumer-friendly online pricing tool.[8,9] These obligations extend to all non-ACA-grandfathered plans with negotiated prices: individual, fully insured group, self-insured group, Medicare Advantage, and managed Medicaid. Fulfilling the obligations is the legal responsibility of the plan sponsor, which in the case of self-insured plans is the employer and not the carrier or network. (The plan sponsor will likely delegate the fulfillment tasks to their carrier or network.)

Figure 1



Acquiring competitors' transparency data

Hospital systems should, of course, learn what they can from the downloadable transparency files that their competitors have already posted and the improved files that may be posted in 2022. It's likely, however, that even 2022 hospital data will be incomplete.

Fortunately, hospital systems, do not need to depend on their competitor's transparency compliance to obtain prices. A system's employees undoubtedly obtain some healthcare services from competitors, and, right now, systems can receive their self-insured claims data and see competitors' service-level the prices as paid by their own health plan(s).

The big surge in data availability will come in July 2022 when health plans, insured and self-insured, must post public, downloadable price files—including both hospital and non-hospital medical care prices.[10] Hospital systems will then theoretically be able to obtain the prices paid by any plan to any provider.

Like hospitals, not all plans will immediately comply, by choice or because their network providers (carriers and stand-alone networks) will not cooperate. However, eventually leading self-insured employers, with potential downstream savings from transparency and legal liability for non-compliance, will force their network providers to prepare price files for their plans. See "The Converging Forces of Healthcare Price Transparency: Self-Insured Employers Will Lead the Way to Cost Reductions" for how self-insured employers will gain from transparency.

Using transparency data

Unfortunately, even when price data is available, making it useful for price negotiations will be hard work. There is no standard data format, and there will be large and small data quality issues. (Odd formats and poor data quality are, after all, a way to appear to comply without actually complying.) Compiled data will then need to be merged and compared with data from other sources, such as estimates of each plan's volume in the local market. That work needs to start now, not the week before negotiations, and will require time, data, expertise, and analysis skills that most health systems do not have. Teus stands ready to help health systems with this critical work.

Conclusion

Hospital system non-compliance is not going to stop price transparency. Prices are very soon going to be known and, when they are, hospital system price negotiations will dramatically change. Hospital systems, even those who are still not posting their own prices, should be gathering the emerging transparency data posted by others and/or available to them as a self-insured employer and developing their strategy for a price-transparent future.

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[1] Federal Register, "Price Transparency Requirements for Hospitals To Make Standard Charges Public Final Rule", November 27, 2019.
[2] CMS, "Compliance with Hospital Price Transparency Final Rule: 8 Steps to a Machine-Readable File", August 2021.
[3] CMS, "Hospital Price Transparency Frequently Asked Questions (FAQs)", January 15, 2021.
[4] Healthcare Executive Intelligence, "Hospitals Fall Short of Price Transparency Rule Compliance", July 22, 2021.
[5] CMS, "CMS OPPS/ASC Final Rule Increases Price Transparency, Patient Safety and Access to Quality Care", November 2, 2021.
[6] US Congress, "Consolidated Appropriations Act, 2021", December 27, 2020, page 1711.
[7] Department of Labor, "FAQs about Affordable Care Act and Consolidated Appropriations Act, 2021, Implementation Part 49", August 21, 2021, page 7.
[8] CMS, Fact Sheet: Transparency in Coverage Final Rule Fact Sheet (CMS-9915-F), October 29, 2020.
[9] Department of Labor, "FAQs about Affordable Care Act and Consolidated Appropriations Act, 2021, Implementation Part 49", August 21, 2021.
[10] Prescription dug price transparency will take a bit longer.