

# The Transparency in Coverage proposed rule

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Healthcare pricing is more complicated to understand than pricing for most goods and services in the economy. It is straightforward to learn the price of a dishwasher, warehouse club store membership, or bagel before making a purchase decision, and people can and routinely do comparison shop for these things before buying. Understanding the price in advance for a knee replacement, or virtually any other medical service, is much harder, which makes comparison shopping a difficult process.

A recent proposed rule from the U.S. Departments of Treasury, Labor, and Health and Human Services seeks to move healthcare pricing more into the open.<sup>1</sup> This paper explores how we got to where we are now, what the regulation requires, and the potential implications of this proposed rule.

Healthcare represents a large share of the U.S. economy: 17.7% of U.S. gross domestic product (GDP) as of 2018.<sup>2</sup> While this is a very large sector of the economy, it is useful to look for context from the other 82.3% of GDP when evaluating the impact of this proposed rule. Accordingly, this paper presents some examples of how price transparency works outside of healthcare in markets that share some common features with the healthcare market.

## How did we get here?

The Transparency in Coverage proposed rule is a reaction to the current opacity of healthcare pricing to most people. More and more people, even those with health insurance coverage, are directly affected by the prices charged for healthcare services.<sup>3</sup> This is because health plans commonly come with cost-sharing requirements (e.g., deductibles, copayments, coinsurance), and

these cost-sharing levels have increased over time.<sup>4</sup> Most healthcare providers do not prominently list, post, or publish the prices for their services. Even if they did, nearly all insured patients are subject to prices that differ from healthcare providers' list prices, because third-party payers negotiate discounts with providers. Moreover, most people are not experts in medical jargon or the nuances of the different types of billing codes used in the industry, e.g., Current Procedural Terminology (CPT) codes, Healthcare Common Procedure Coding System (HCPCS) codes, revenue codes, diagnosis-related groups (DRGs), International Classification of Diseases (ICD) procedure codes. In other words, it's not even always straightforward for a layperson to identify exactly what service is being or might be provided as part of a healthcare treatment plan.

One of the purposes of insurance plan designs with higher cost sharing is to incentivize members to shop for services and seek lower-cost providers. Of course, this is impossible to do unless pricing information for necessary services is available in advance. Price opacity is an obstacle to realizing the potential of these plan design types.

<sup>1</sup> The full text of the Transparency in Coverage proposed rule may be found in the Federal Register Vol. 84, No. 229, page 65464 (November 27, 2019), available at <https://www.govinfo.gov/content/pkg/FR-2019-11-27/pdf/2019-25011.pdf>.

<sup>2</sup> See <https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/NationalHealthAccountsHistorical>, accessed January 17, 2020.

<sup>3</sup> Throughout this paper, "healthcare services" is meant to be construed fairly broadly. Items like prescription drugs and durable medical equipment, which are widely covered under health benefit plans, are included under this umbrella even though they are really more like goods than services. The term "healthcare provider" is meant to encompass any provider or seller of healthcare services; this would generally include both doctors and hospitals. At the same time, there are all kinds of goods and services that are important to health but that traditionally are not covered by health benefit plans. These items, such as over-the-counter drugs, toothpaste, and fitness equipment, are not within the scope of "healthcare services" for the purpose of this paper.

<sup>4</sup> A discussion of cost-sharing trends in employer-sponsored health plans can be found in Kaiser Family Foundation, 2019 Employer Health Benefits Survey (September 25, 2019), available at <https://www.kff.org/health-costs/report/2019-employer-health-benefits-survey/> (accessed January 17, 2020). In the individual market, the richest standard plan designs (other than for certain individuals eligible for cost-sharing reduction subsidies) are at the platinum level, which on average require 10% cost sharing. However, few people are enrolled in platinum plans in the individual market; most enrollment is in the lower metallic levels (bronze and silver), which have significant cost-sharing levels. See <https://www.cms.gov/newsroom/fact-sheets/health-insurance-exchanges-2019-open-enrollment-report> (accessed January 17, 2020).

## What does the proposed rule require?

There are two main requirements of this proposed rule.<sup>5</sup>

First, a health plan issuer<sup>6</sup> must provide to a member, on request, an estimate for the member's expected cost-sharing liability for a specific healthcare service to be received from a specific healthcare provider, along with details on how that amount was calculated (including the allowed charge for the service[s] in question and any amounts already accumulated under a plan's deductible or out-of-pocket limit). The information to be provided is largely the same as what would be provided in an explanation of benefits (EOB) after the service is received and a claim is submitted. The proposed rule requires that health plan issuers make this information available in advance of receiving a service, upon request. The rule contains detail on the manner in which this information must be provided; there are requirements related to electronic or online search capabilities and information delivery, and health plan issuers must also be able to provide the information in paper form if requested. The information does not come with a guarantee that the service will be considered medically necessary or will ultimately be a covered benefit.

Second, health plan issuers must disclose to the public their negotiated fees by provider, service, and health plan. They must provide similar information on their allowable fees for services from out-of-network providers. This information must be made available online, free of charge, in machine-readable format, and without requiring a password or user account or any personal information. The fee amounts must be expressed in dollar form, as opposed to other possible manners of display such as percentage discounts from billed charges or a percentage of the Medicare fee schedule.

## Will the information be useful to the general public?

The short answer is, it depends. The ability of members to receive what amounts to a pre-service EOB is potentially useful to those who request and receive the information. The information would be personalized and, in theory, easy to understand and interpret. It could be obtained for several providers to help identify the most cost-effective provider for a given set of services. On the other hand, the information is only as useful as the accuracy of the underlying assumptions. Not everyone knows how to accurately

translate a needed service from plain language (e.g., knee replacement, shoulder surgery, cholesterol test) into the healthcare billing codes that actually drive payment rates. As well, services may ultimately be delivered that were not specifically anticipated at the time that a cost-sharing estimate was requested.

It is not clear that consumer behavior will have a large impact on reducing aggregate healthcare spending given currently typical benefit design structures. The well-known "80/20" rule of thumb is that roughly 80% of people account for only about 20% of aggregate cost.<sup>7</sup> The bulk of healthcare spending is for individuals who have significant expenses; those with significant expenses tend to have the same out-of-pocket costs (equal to the plan's out-of-pocket limit) irrespective of which providers are chosen, so there is less incentive to shop on price. Someone with a hospital inpatient stay in January has likely exceeded the plan's out-of-pocket limit for the entire calendar year, and therefore, for the following 11 months, normal consumer forces mostly do not apply; such a person is less likely to question whether a healthcare visit or service is necessary and less likely to be concerned about prices (whether those prices are knowable or not). This is true even for lower-cost, routine, nonemergency services that are theoretically shoppable. Members with lower expenses potentially have much greater incentive to shop on price if given the ability to do so, but from a population perspective these members represent only a small portion of total healthcare costs. In other words, shopping on price could be a big deal from the perspective of a lot of people, as they are able to reduce out-of-pocket spending by identifying lower-cost providers for the necessary service. At the same time, shopping on price could represent a small change factor for population healthcare costs as a whole, even if a significant number of people shop around.

The utility of the public disclosure of a plan's negotiated rates is likely contingent on whether a market develops for presentations of the information that are useful to consumers. Some members of the public are sufficiently well-versed in data of this type that they can utilize it to make personal healthcare decisions. But in all likelihood, most people would struggle to effectively use these large data files. The preamble to the proposed rule envisions the possibility that these data files "would allow health care software application developers and other innovators to compile, consolidate, and present this information to consumers in a manner that supports meaningful comparisons between different coverage options and providers, and that assists consumers in making informed health care and coverage decisions."<sup>8</sup> Indeed,

<sup>5</sup> There are still additional steps in the rule-making process that must occur before this rule takes effect, including receiving and reviewing public comments. The rule may or may not ultimately be finalized in its current form.

<sup>6</sup> The proposed rule would apply to group health plans and insurers offering coverage in the individual or group markets. For simplicity, they are all referred to in this paper as "health plan issuers."

<sup>7</sup> This is an oft-cited rule of thumb. It is by no means exact, but Milliman research on healthcare cost distributions suggests that it is close enough to what is typically experienced in commercially insured health plans to be satisfactory as a rule of thumb.

<sup>8</sup> Transparency in Coverage, op cit., p. 65478.

third-party tools are probably a prerequisite to making the public disclosures broadly useful to consumers. Such tools could potentially be very useful to the public, but there needs to be sufficient consumer demand for the information to make it profitable for companies to develop such products.

Different types of healthcare services are also differentially shoppable. Price transparency, whether through the personalized request of a health plan issuer or via the proposed large public disclosure, is potentially useful for planned healthcare encounters such as elective surgeries, physician visits, maternity admissions, etc. The information would be harder to make use of in urgent and emergent situations such as suffering injuries, acute illnesses, heart attacks, etc.

## Is there any precedent for this sort of price transparency, in healthcare or elsewhere?

There is some precedent for price transparency in healthcare in the United States. There are many precedents elsewhere in the economy in markets that share some features with the healthcare market (including precedents that were created by federal law or regulation). Some examples are given below.

Within healthcare, there have been previous efforts to increase price transparency. The proposed rule's preamble cites several smaller-scale endeavors, largely driven by states.<sup>9</sup> Obviously, price transparency is the norm in most markets in the broader economy. Healthcare is perhaps an extreme counterexample, but there are other goods and services where pricing information is harder to obtain than it is for routine, everyday consumer goods. One example is automotive repair. No one can call a repair shop, ask, "What will it cost to fix my car?" and get any kind of a useful answer, because the answer depends on what is wrong with the car and what is required to fix it (which may not be knowable without a mechanic physically examining it). Likewise, "What will it cost to remodel my kitchen?" cannot be usefully answered without significant follow-up because it depends on the current condition of the kitchen, what materials will be used, the magnitude of the changes requested, and a host of other factors. Nonetheless, in either of these examples, it is common for a consumer to be able to obtain either an estimate or a fixed-price bid in advance, once the service provider has been able to obtain the necessary information. These type of pre-service estimates or quotes have remained substantially more difficult to obtain in healthcare, where quite similar factors are at play even when time is not of the essence (service providers not always knowing in advance

precisely what is needed or how complex a procedure will be, and consumers not having the expertise to independently evaluate the necessity of a treatment or the quality of the provider).

Other goods and services outside of healthcare are subject to transparency requirements. One prominent example is the funeral industry. There are a number of interesting parallels between planning a funeral and obtaining many healthcare services. In both cases:

- They are occasional purchases for many people—a lack of expertise and experience is common. It is not always obvious to laypeople what services are available, necessary, optional, useful, or inadvisable.
- They may be needed urgently. It is possible to plan some healthcare procedures well in advance and it is also possible to plan and pay for funeral services in advance, but not everyone does so in either case.
- They may both present stressful situations for the purchasers or decision makers.
- As a result of the above, it can feel intimidating and overwhelming to select a service provider and make decisions, and it can be difficult to judge whether prices are reasonable or to even give much thought to financial considerations at all.

At one time, pricing for funeral services was often similarly opaque as healthcare pricing is today. In 1984, the Federal Trade Commission adopted the Funeral Rule, which imposes detailed price transparency requirements on providers of funeral services.<sup>10</sup> There are, of course, many differences between healthcare and funerals. However, this serves as an example of an industry where price transparency has been driven by federal regulation.

Mortgages are another example that will be familiar to many people. Obtaining a mortgage involves payments to numerous parties—the lender itself is one, of course, but there are also title companies, mortgage brokers or originators, county clerk and recorder offices, and many other parties who may receive payment as a result of a mortgage transaction. Consumers may be unaware of even who all of these parties are, much less what their fees are. Federal rules require advance, detailed disclosures of prices for all of these services that occur in connection with a mortgage transaction, as well as all of the terms and conditions of the actual mortgage (interest rates and total amounts, fees, penalties, etc.).<sup>11</sup> As with major healthcare services, mortgages are an infrequent transaction for many people and involve complex and potentially costly elements with which many people lack expertise.

<sup>9</sup> Ibid., p. 65467.

<sup>10</sup> See <https://www.consumer.ftc.gov/articles/0300-ftc-funeral-rule> for information on this rule (accessed January 17, 2020).

<sup>11</sup> See <https://www.consumerfinance.gov/know-before-you-owe/> (accessed January 17, 2020).

In summary, healthcare has historically been much less price-transparent than most other industries. There are a variety of reasons for this. There are also other services in the economy that have some features in common with healthcare, where price transparency nonetheless exists to one degree or another; sometimes transparency is required by federal regulations (and perhaps would not occur on its own).

## Conclusion: Is healthcare really different?

There's an oft-repeated adage that "healthcare is different"—in other words, that the normal economic assumptions and forces that apply to the rest of the economy can't operate the same way in healthcare.<sup>12</sup> Indeed, healthcare is different in many respects from food service or car manufacturing or accounting or any other good, service, or industry. However, some differences result from healthcare truly being different. Other differences exist simply because they always have, not because they must.

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<sup>12</sup> For example, a Google search for the term "healthcare is different" returns numerous articles and discussions on this general theme (<https://www.google.com/search?q=healthcare+is+different>, visited January 17, 2020). This same search for other industries does not tend to produce such consistent discussions about those industries not being subject to typical economic forces (e.g., "retail is different," "manufacturing is different," "agriculture is different"). Obviously all industries are different from all other industries in some respect, but it seems unusually common (relative to other industries) to believe that healthcare is fundamentally not subject to normal economic forces.

The Transparency in Coverage proposed regulation would create some important changes in how healthcare pricing has traditionally operated. There will be compliance costs to make them occur; the proposed regulation estimates these costs at over \$200 million over a five-year period.<sup>13</sup> But it is not technically impossible to create the level of transparency envisioned by this regulation; all of the information that is required to be disclosed must currently exist, somewhere, in some form (otherwise it would be impossible for health plan issuers to make healthcare claim payments). The current lack of transparency is certainly how it has always been in healthcare, but this proposed rule highlights that it does not necessarily have to be that way.

If the rule takes effect as proposed, it will provide information that many people want to have access to. Time will tell whether a shift toward price transparency, which will make healthcare more like most of the rest of the economy in that one respect, will have practical success at changing behavior by patients, providers, and payers, and whether there will be any impact on population-wide healthcare costs.

<sup>13</sup> Transparency in Coverage, op cit., p. 65492.



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