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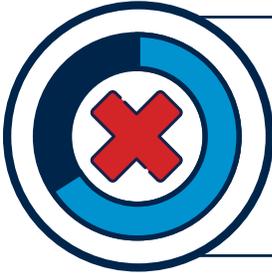


How America's Hospitals Are Hiding the Cost of Health Care

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KEY FINDINGS



NEARLY TWO-THIRDS OF HOSPITALS
ARE NOT COMPLYING WITH PRICE
TRANSPARENCY REQUIREMENTS.



SEVERAL LARGE HOSPITALS AND
HOSPITAL SYSTEMS ARE
KEY VIOLATORS.



THE BIDEN ADMINISTRATION HAS DONE
LITTLE TO ENFORCE THE HOSPITAL
PRICE TRANSPARENCY RULE.

THE BOTTOM LINE:

POLICYMAKERS MUST TAKE PRICE
TRANSPARENCY INTO THEIR OWN HANDS.

Overview

America's health care system is built upon a lack of transparency.¹ In most states, it is nearly impossible for individuals and families to compare the cost of health care services and procedures like they would when shopping for gas, groceries, or housing. This intentional lack of transparency confuses consumers, hides true costs, and drives up prices.²

Building on successes at the state level, the Trump administration issued a new rule in 2019 focused on transparency for hospital services, designed to introduce accountability into America's health care system.³ The rule has two basic requirements for hospitals: (1) to provide an easy-to-access file with both the charges and costs of all items and services, including gross charges, discounted cash prices, and charges negotiated with insurance companies, and (2) to display shoppable services in a consumer-friendly format.⁴⁻⁵ The American Hospital Association challenged the new rule in federal court, losing both its initial challenge and then again on appeal.⁶⁻⁷ The final rule took effect on January 1, 2021, in the final days of the Trump presidency.⁸



**AMERICA'S HEALTH CARE SYSTEM IS BUILT
UPON A LACK OF TRANSPARENCY.**

Although the rule has been in place for more than 18 months, **many hospitals are ignoring these commonsense transparency requirements and keeping patients in the dark about their prices.** A 2021 review of more than 3,500 hospitals found that 55 percent of hospitals were not compliant with the new rule and had not posted price information for commercial plans or had not posted any prices at all.⁹ Similarly, an August 2022 review of 2,000 hospitals found that just 16 percent were in compliance with all the new transparency requirements.¹⁰ The recent review revealed that nearly 84 percent of hospitals failed to post machine-readable files containing standard charges, and roughly 78 percent of hospitals did not provide a consumer-friendly shoppable services display.¹¹ Other reviews have found similar levels of non-compliance.¹²⁻²¹

Meanwhile, even when data is technically provided, hospitals have tried to hide their pricing from search engine results through embedded coding on their websites.²² In some cases, hospitals have even intentionally removed pricing data after the rule was implemented.²³

By all standards, hospitals have been slow to comply with these requirements. New data obtained by the Foundation for Government Accountability (FGA) shines further light on hospitals' widespread non-compliance.

Nearly two-thirds of hospitals are not complying with price transparency requirements

FGA's independent review of more than 6,400 hospitals reveals widespread non-compliance with federal transparency requirements.²⁴ **Altogether, more than 63 percent of hospitals are not complying with the transparency rule.**²⁵ Some of these hospitals have refused to disclose cash prices, negotiated rates with private insurance plans, prices for some services, or even any prices at all.²⁶

Nearly two-thirds of hospitals are not complying with price transparency requirements.



37%
complying



63%
not complying

Source: Authors' Calculations

Most hospitals are not complying with federal transparency requirements in 40 states and Washington, D.C., while no state has more than 65 percent compliance among its hospitals.²⁷ In some states, the lack of transparency is even more pronounced. In Maryland, for example, just five percent of reviewed hospitals are complying.²⁸

HOSPITALS IN MOST STATES ARE NOT COMPLYING WITH PRICE TRANSPARENCY REQUIREMENTS

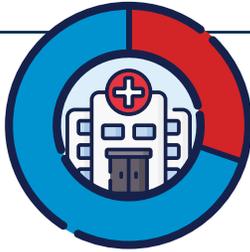
Percent of hospitals in compliance with federal transparency requirements, by state

State	%	State	%	State	%
Alabama	31%	Louisiana	23%	Oregon	35%
Alaska	38%	Maine	53%	Pennsylvania	40%
Arizona	40%	Maryland	5%	Rhode Island	64%
Arkansas	31%	Massachusetts	52%	South Carolina	42%
California	29%	Michigan	52%	South Dakota	58%
Colorado	32%	Minnesota	52%	Tennessee	43%
Connecticut	51%	Mississippi	33%	Texas	35%
Delaware	29%	Missouri	29%	Utah	53%
District of Columbia	29%	Montana	34%	Vermont	50%
Florida	38%	Nebraska	45%	Virginia	42%
Georgia	36%	Nevada	47%	Washington	19%
Hawaii	52%	New Hampshire	37%	West Virginia	29%
Idaho	30%	New Jersey	20%	Wisconsin	58%
Illinois	37%	New Mexico	33%	Wyoming	25%
Indiana	47%	New York	28%		
Iowa	50%	North Carolina	41%	TOTAL	37%
Kansas	43%	North Dakota	47%		
Kentucky	45%	Ohio	25%		
		Oklahoma	24%		

Source: Authors' Calculations

Several large hospitals and hospital systems are key violators

Some of the worst violators of the transparency rule are large hospitals and hospital systems. The largest reviewed hospitals were non-compliant with transparency requirements in a third of states.²⁹ In California, for example, four of the state's five largest hospitals are not complying with transparency requirements, with at least one of those hospitals ignoring virtually every aspect of the rule.³⁰ Likewise, four of the five largest hospitals in Georgia, New Jersey, and Washington are not complying with these requirements.³¹ Worse yet, none of the five largest hospitals in Colorado or Maryland are in compliance with the transparency rule.³²



**THE LARGEST REVIEWED HOSPITALS WERE
NON-COMPLIANT WITH TRANSPARENCY
REQUIREMENTS IN A THIRD OF STATES.**

Indeed, some of the worst violators are among the largest health systems in America. Just eight percent of 193 reviewed hospitals owned by HCA Healthcare—the nation's largest health system—are complying with transparency requirements.³³ Likewise, just seven percent of 58 reviewed hospitals owned by TrinityHealth are complying with the rule.³⁴ And just one of Providence Saint Joseph Health's 53 reviewed hospitals are meeting these federal requirements.³⁵

The Biden administration has done little to enforce the hospital price transparency rule

Although the Biden administration nominally increased potential penalties for non-compliance, it has done little to actually enforce the rule or impose those penalties. Shortly after the 2020 elections, the American Hospital Association asked Chiquita Brooks-LaSure—a top Biden transition team member who was later appointed to serve as the administrator of the Centers for Medicare and Medicaid Services (CMS)—to use her “enforcement discretion” and not penalize hospitals who refused to comply with the rule.³⁶

Several months after the rule went into effect, CMS—which is charged with enforcing the federal rule—finally issued an initial set of “warning letters”—only to be followed by additional warnings.³⁷

It took nearly a year and a half after the rule became effective for CMS to issue the first fines.³⁸⁻³⁹ But even these actions were little more than a minor slap on the wrist. The only fines issued so far have gone to two hospitals in Georgia's Northside Hospital System.⁴⁰ **However, the fine amounts levied after nearly 18 months of non-compliance totaled less than 0.1 percent of the hospital system's annual gross revenue.**⁴¹⁻⁴⁷ Put another way, these fines represented just 40 minutes of the hospital system's annual revenue.⁴⁸

Worse yet, the Biden administration is stonewalling efforts to shine light on its lack of enforcement. In March 2022, FGA filed a Freedom of Information Act (FOIA) request with CMS seeking information on warnings, corrective action plans, fines, and other penalties issued in relation to the hospital price transparency rule. Although federal law gives agencies just 20 business days to respond to FOIA requests, the Biden administration has refused to produce any records associated with the rule more than five months later, despite repeated follow-up attempts.⁴⁹

Unfortunately, **FGA was forced to file a lawsuit against the Biden administration on August 30, 2022 to obtain these critical documents.** CMS has an obligation to be transparent in its enforcement against hospitals and has failed to live up to that responsibility. Now, it is in the hands of the courts to decide.

THE BOTTOM LINE: Policymakers must take price transparency into their own hands

Given the Biden administration's slow and opaque approach to this important issue, Congress should hold CMS officials accountable and scrutinize the agency to ensure they are upholding the transparency rule. CMS should also further increase penalties for violations of the rule in order for the penalties to actually be meaningful to violators.

In the absence of federal action, state officials should work to pass their own price transparency laws that sanction hospitals in the event of non-compliance. States have the tools to act without waiting for Washington, D.C. to take the first step.

It is long past time for America's hospitals to step up—and for CMS to follow suit—in ensuring the cost of health care services are transparent and accessible to all consumers.



Congress should hold CMS officials accountable and scrutinize the agency to ensure they are upholding the transparency rule.



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