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<https://www.wsj.com/articles/trump-administration-delays-rule-forcing-hospital-cost-transparency-11572639300>

POLITICS | HEALTH POLICY

## Trump Administration Delays Rule Forcing Hospital-Cost Transparency

Officials want to compel insurers to disclose negotiated prices as well



Seema Verma, head of the Centers for Medicare and Medicaid Services, said the Trump administration was working to release a combined plan including insurers. PHOTO: MICHAEL BROCHSTEIN/ZUMA PRESS

*By Stephanie Armour*

Nov. 1, 2019 4:15 pm ET

WASHINGTON—The Trump administration is delaying a rule that would require hospitals to share secret, negotiated rates because officials said they are working to expand the plan to include insurers.

The delay is a reprieve for hospital groups that have said they were prepared to sue to block the rule. But it portends a bigger legal tussle over how far the federal government can go in mandating disclosure of rates that the hospital industry considers contractual trade secrets.

Seema Verma, head of the Centers for Medicare and Medicaid Services, said on Friday that the administration preferred a less disjointed approach and would act swiftly to release a combined plan this year.

“The entire administration is super aligned,” she said. “The president has been very active on this.”

The Centers for Medicare and Medicaid Services had proposed making hospitals next year share the rates they negotiate with insurers, with a possible fine of up to \$300 a day for failing to comply. The mandate would have covered all the more than 6,000 hospitals that accept Medicare, as well as some others.

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The rates would have to be reported in a machine-readable format, allowing them to be aggregated and used by third-party technology companies. Hospitals would also have to post online the negotiated charges for about 300 specific services that patients typically shop around for—or else provide them in a written form upon request.

Administration officials said Friday that the final requirements could be tweaked based on the more than 1,500 public comments it received on the proposal.

The White House has made price disclosure a cornerstone of its health policy initiative and part of President Trump’s 2020 campaign message. Supporters say that requiring disclosure could fundamentally alter economic forces in the industry, potentially driving down costs if hospitals and doctors lower prices to match competitors.

The impact for patients and employers who provide health-care coverage is uncertain. Rules requiring hospitals and insurers to disclose rates could get bogged down in a protracted legal battle, and data on the success of price transparency show mixed results.

Researchers surveyed 31 health plans, covering more than 140 million members, which provided tools to access price transparency information. Only 19% of plans that evaluated the tools found they resulted in consumers using more lower-cost providers, based on the results published in 2016 in the American Journal of Managed Care.

Consumer advocates have nonetheless pressed for relief from increasing deductibles, which leave them on the hook for more of their health-care costs. Polls show Americans are more interested in what can be done to lower their own spending.

The administration has previously said it wants insurers to also disclose the rates they negotiate with hospitals, doctors and other providers. The decision to move ahead with that aspect of their price transparency push is likely to meet with stiff industry resistance.

America's Health Insurance Plans, a trade group representing insurers, has said such a requirement could backfire by driving up prices. Industry officials argue that costs could climb if some hospitals or doctors learn competitors are getting bigger discounts from insurers and demand the same. They also say consumers are chiefly interested in their own out-of-pocket costs and won't benefit from full disclosure of negotiated prices.

White House officials have countered that information about rates would infuse more free-market competition and lower prices into the health system.

Industry groups have also questioned the White House's legal authority to compel disclosure, saying it violates the First Amendment and harms negotiation.

"We don't believe they have the statutory authority to do this," said Tom Nickels, executive vice president for public relations at the American Hospital Association. "It raises significant First Amendment issues, and issues with trade secrets."

Administration officials believe they are empowered under a variety of tools, including the 21st Century Cures Act and the Affordable Care Act. Insurers could be compelled to disclose prices under the Health Insurance Portability and Accountability Act and Employee Retirement Income Security Act.

Write to Stephanie Armour at [stephanie.armour@wsj.com](mailto:stephanie.armour@wsj.com)

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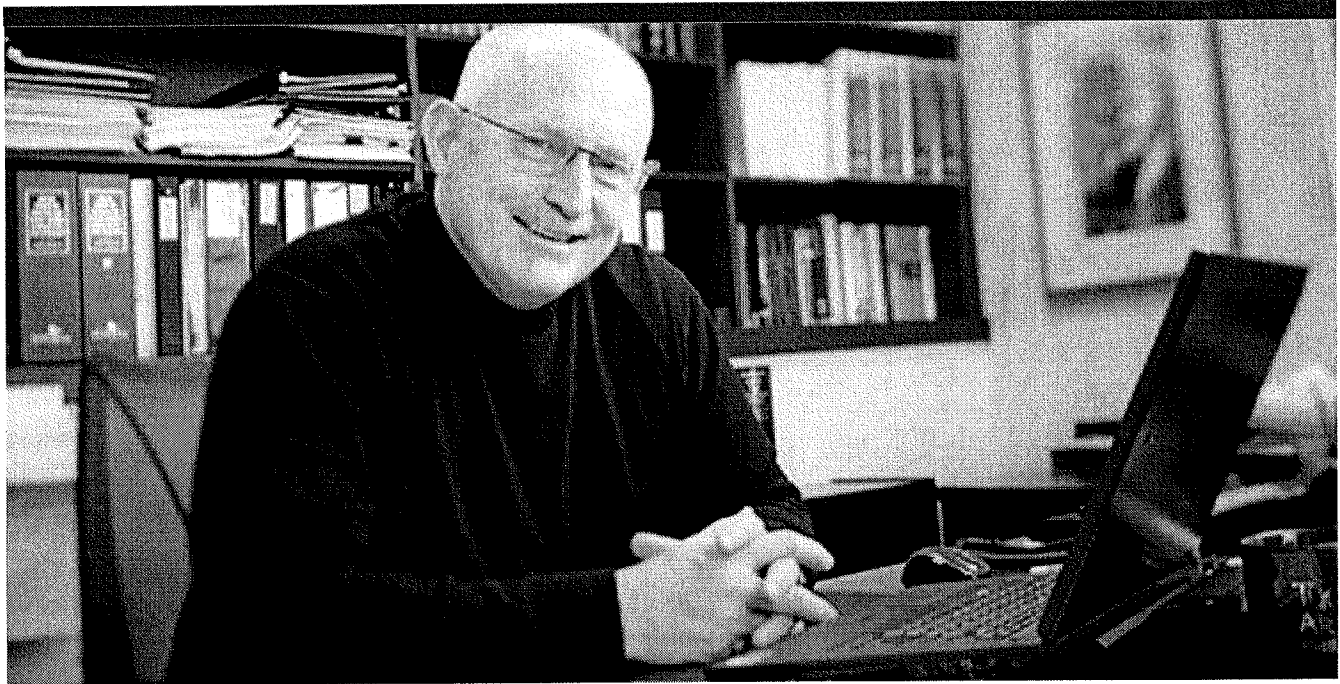
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## CMS Issues Hospital Price Transparency Rules

*By Michael Cassidy on January 10, 2019*

*Posted in Medicare & Reimbursement*

As part of the 2019 Medicare annual inpatient prospective payment system (PPS) fee schedule update, CMS has added a “rule” requiring hospitals to publish a list of standard charges beginning January 2019.

CMS explained this initiative under the “Transparency” and “Request for Information” topics in the following link: <https://www.cms.gov/newsroom/fact-sheets/fiscal-year-fy-2019-medicare-hospital-inpatient-prospective-payment-system-ipp-and-long-term-acute-0>

CMS subsequently issued two sets of Frequently Asked Questions (FAQs) regarding this rule.

Essentially, the guidance states as follows:

- Hospitals are free to choose whatever format they prefer as long as the information represents the hospitals' current standard charges as reflected in their charge masters in a machine readable format.
- The transparency requirements apply to all items and services provided by the hospitals, including medical services, drugs, biologicals, etc.
- The transparency requirements do not transplant, replace or restrict hospitals from posting any other quality information or additional price transparency information on their websites.
- Although CMS is fully supportive of all state online price transparency initiatives, those initiatives do not satisfy the federal requirement and do not exempt hospitals from the CMS requirements.

It is not difficult to envision why just a list of the charges might not be all that helpful. The "charge master" is just a collection of the hospital's list prices or fee schedule, which is what is charged for any service or product and has little relation to what the hospital actually collects from insured individuals. Any person who has received an explanation of benefits (EOB) from a health insurance carrier indicating that the hospital or physician charges were some astronomical amount but the payment was just a fraction thereof, knows the difference between the list prices and the actual prices. This has traditionally been a significant problem for self-pay or uninsured individuals, since the hospitals' standard position has been that the charges, or the list price, is the appropriate fee.

One step that will make this more meaningful is disclosure of the typical Medicare payments for those services. CMS has released an online tool called "Procedure Price Lookup" which may provide some useful price comparisons. <https://www.cms.gov/newsroom/press-releases/new-online-tool-displays-cost-differences-certain-surgical-procedures>

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Tucker Arensberg, P. C.  
1500 One PPG Place | Pittsburgh, PA  
15222-5401

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