

Transparency in Pricing Trend Continues with New Federal Rule that Applies to Health Plans

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On October 29, 2020, the Department of Health and Human Services (HHS), the Department of Treasury, and the Department of Labor issued a new “transparency in coverage” final rule that is focused on insurance companies and health plans (Final Rule). This Final Rule requires that health plans and insurers provide unprecedented information about the pricing and cost data that health plans have negotiated with health care providers and the expected cost of certain health care procedures to the consumer.

The policy behind this 556-page Final Rule stems from the June 24, 2019 Executive Order from President Trump on Improving Price and Quality Transparency in American Healthcare to Put Patients First. The Final Rule is in part designed to provide health care consumers with more information that will assist them in making their health care decisions and to help solve the “surprise billing” phenomenon where patients receive large unanticipated bills for health care visits which have been a major focus for Congress and the Trump Administration.

The goal of the Final Rule is to allow health care consumers to have access to the cost of certain health care procedures under their insurance policies before they receive the health care and to encourage health care consumers to compare pricing of health care services. The hope is that if health care consumers have access to this pricing information, it will encourage competition amongst providers, increase innovation within the payor/provider relationship and increase and improve price-centric decision-making by health care consumers. The Final Rule is based on legal authority under the Affordable Care Act (ACA) which included several provisions dealing with transparency as a means of regulating private health insurance. Ironically, the Trump Administration is relying on the legal authority created by the ACA to issue this Final Rule while it is simultaneously attacking the ACA in the courts as being invalid.

There are three primary aspects of the Final Rule:

1. Cost Sharing Information - In health care, cost sharing occurs when patients pay for a portion of health care costs not covered by insurance.

The Final Rule requires health plans and insurance companies operating in the individual and group plan markets to provide cost-sharing through an online tool on the health plan and insurance company website and in paper form (if requested). This requirement will apply to 500 shoppable health care services, and is to be provided as a “user friendly” model similar to the current explanation of benefits (EOB) format used by health plans. This part of the Final Rule will be phased in over time and will be fully in effect in 2024.

2. Pricing Information - The Final Rule requires health plans and insurance companies to disclose specific pricing information in three machine readable files for (a) rates paid to in-network health care providers, (b) billed charges and allowed amounts for out-of-network health care providers for a certain period, and (c) prices for prescription drugs. This part of the Final Rule will go into effect beginning in January 2022.
3. Medical Loss Ratio Credit - The ACA requires health insurance companies to submit data to the federal government on the proportion of premium revenues spent on clinical services and quality improvement. This is known as the Medical Loss Ratio. Under the ACA, insurance companies are required to spend between 80-85% of health insurance premium dollars on medical care and if they do not, insurers are required to issue rebates to enrollees if this Medical Loss Ratio does not meet certain minimum standards. The Final Rule allows insurers to claim credits toward that Medical Loss Ratio calculations for “shared savings” when an enrollee chooses a lower-cost, higher-value health care provider. This part of the Final Rule goes into effect in July 2021.

The Final Rule continues a focus by the Trump Administration on transparency in pricing of health care services. The Trump Administration issued a similar rule that imposed price transparency requirements on hospitals which goes into effect on January 1, 2021. The hospital industry challenged that rule in court and to date has lost in their attempts to overturn the hospital based transparency rule in court. The insurance industry has objected to the Final Rule and has indicated that it will actually increase the cost of health care as the cost of complying with the Final Rule will be passed on to consumers. It is anticipated that the insurance industry will challenge the Final Rule in court, but ACA appears to provide clearer support for price transparency with respect to insurance companies and health plans than it does for hospitals.

There has been bipartisan support for increased transparency in pricing of health care services so at this stage, it appears unlikely that the Final Rule will be repealed by the new Biden Administration.

The takeaway from the Final Rule and the previous hospital pricing transparency rule is that price transparency in health care seems to be here to stay and the Centers for Medicare & Medicaid Services (CMS) and Congress want to encourage the health care consumers to educate themselves on the cost of health care and to be smart shoppers when it comes to choosing health care providers and insurers’ policies and plans. We should also expect the health care market to develop new technology that will allow health care consumers to more easily use and understand this new pricing data.