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Federal government may have to wrest pricing information from hospitals

By Yamil Berard - The Atlanta Journal-Constitution
Ariel Hart - The Atlanta Journal-Constitution
Eric Fan - The Atlanta Journal-Constitution

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Hospitals balk at new rule aimed at injecting more competition to health care

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Deborah Smith is at wits' end about a medical bill from Northside Hospital-Forsyth she wasn't expecting.

The Dahlonega woman and her spouse expected to lean on Medicare and a supplemental health insurance plan to cover the bulk of their medical expenses. But now the hospital was demanding the couple pay tens of thousands of dollars to cover the cost of wound care for Hank, her diabetic spouse.

"We kind of just, you know, sat there staring at each other, going $33,000?" Smith said. "How do they think people are going to pay this kind of thing?"

The Smiths have joined the unfortunate ranks of millions of Americans who at some point in their lives have been stunned by hospital bills they don't understand and may struggle to pay.

Policymakers for years have taken aim at health care costs as they've continued to soar. Now, the federal government is taking another crack at it. Under a new rule that took effect Jan. 1, hospitals are required to post prices they charge to insurers and to cash-paying patients.

Price transparency advocates say the new rule can inject more competition into the health care marketplace. Before choosing a hospital, patients would be able to see what it charges for tonsil removal, joint replacement or gall bladder surgery and shop around. Employers could see prices negotiated by insurance companies — their insurers and others — and make them and hospitals more accountable for health care costs.

"These are great developments,'' said James Gelfand, senior vice president of health policy for the ERISA industry committee, a Washington-D.C.-based nonprofit that represents some of the largest U.S. employers. "It will be transformative. It will make a huge difference. The only question is how long will that take."

Success of the rule will largely depend on how effective the federal government can be in wresting the information from health care providers. Hospitals had sued to try to block the rule, which also was opposed by insurance companies. While that effort failed, many health care providers, including some in Georgia, haven't met even the most basic requirements of the rule more than six months after it took effect.

An Atlanta Journal-Constitution examination of 14 Georgia hospitals found none had fully complied.

Nationwide, some hospitals appear openly defiant, and one criticism so far has been weak enforcement by the U.S. Centers for Medicare and Medicaid Services. At issue also are minimal fines that are associated with a failure to publicize pricing information. As it stands, a violation of the rule carries a maximum fine of $300 a day.

“It’s not substantial, not big enough to get on a large system’s radar,” said Chris Plance, a healthcare expert at the London-based PA Consulting, which provides an analytics platform that can gauge compliance with the rule.

That may soon change, as CMS has proposed increasing the maximum fine. If the proposal is adopted, annual fines could range from $110,000 to more than $2 million, depending on hospital size.

The next few weeks will be key in learning whether the regulator will act to crack down on noncompliant hospitals all over the U.S., said Mark Polston, former associate general counsel for litigation for CMS under the U.S. Department of Health and Human Services. CMS in the spring sent warning letters to hospitals with obvious violations, such as not posting anything or having large gaps in information, he said.

Those hospitals are now pushing against a 90-day deadline to submit corrective action plans.

“What we’re interested in and focused upon is what’s going to happen next,” said Polston, now a member of the health care industry team at the King & Spalding law firm. “Inevitably, there are going to be providers that may not necessarily meet their corrective action plans. Will CMS take a more aggressive pathway with that group?”

The AJC on June 3 filed a Freedom of Information Act request with CMS for warning letters sent to any Georgia hospitals but has not received any of the notices. While the agency has threatened to post online the names of hospitals found to be violating the regulations, it has said it wants to first give hospitals time to comply.

Jim Boswell, a health care attorney with King & Spalding, said many hospitals will not want to be singled out for being in violation of a landmark, pro-consumer health care policy that addresses a well-publicized problem.

“No hospital wants to be the public face of this and seen in public as willingly non-compliant,'' Boswell said.

Cracking the code

Under the rule, hospitals must prominently post in a consumer-friendly format prices for at least 300 services they provide. In addition, they must post their standard charges, called a chargemaster, in a machine-readable format that will allow researchers to analyze the information.

Health economists believe the rule is a first step toward shedding light on the complex pricing structures of a sector of the marketplace that for years has kept consumers in the dark.

"Patients have a right to know how much they will be asked to pay, so the general idea of transparency is a good one," said Michal Horny, a health economist who specializes in hospital pricing strategies and serves an assistant professor at Emory University School of Medicine.

The battle over price transparency

President Trump issued an executive order in June 2019 requiring price transparency, a move that had bipartisan support in Congress. That prompted various health care providers to sue the U.S. Department of Health and Human Services, arguing the government had no authority to order the publication of prices hospitals negotiated with private insurers. They also argued the move could backfire and increase prices. The American Hospital Association, as well as other trade groups, lost an appeal just days before the rule came into effect this year. Early this month, President Biden said he supported the rule and would crack down on violations.

But the regulations fall short of allowing consumers to shop for the best deal. That's because the pricing structures of hospitals are rife with complications, Horny and other experts say. Prices can constantly change, reflecting different services each patient receives and are not necessarily based on the actual cost of health care. Instead, they reflect a strategy used to negotiate deals with private insurers.

A Georgia court has compared the chargemaster rates to the sticker price of a new car. Very few patients actually pay the hospital sticker price. In a case before the court, little more than 1% of patients paid it, while the hospital in question collected an average of a third of the chargemaster rate.

"Price means nothing," said Chuck Salvo, a former senior vice president of a safety-net system in Brooklyn who is now a managing director for the management and advisory firm ToneyKorf Partners.

What's more, the rule doesn't address prices that are not part of a hospital's billing structure, such as bills for services provided by independent providers. These providers can include doctors and other specialists who are not employed by the hospital and who bill separately. They also can include an emergency transport arm of a hospital.

Just prior to the pandemic, Jeremy Taylor, of East Point, was caught up on this murky side of healthcare billing.

The IT specialist with the University System of Georgia had a seizure at a southside Walmart and had to be rushed to Grady Memorial Hospital. Later, he got a bill for $1,947 from Grady Emergency Medical Services. The bill itemized only one charge, which he was notified had to be paid at once.

When he called to have the bill explained, he said a Grady representative was more interested on how much he could pay, rather than trying to explain the charges. After some negotiating, she put an offer on the table: Get 40% off the bill if he paid immediately. She did not explain why there was a discount or who qualifies for it, and he didn't ask.

"At that point, I'm just raging inside because it's just ridiculous what I do to get information, the inconsistency and the lack of transparency," he said. "But what bothers me the most at the end of the day is that it's set up to take advantage of the vulnerable."

Push for greater transparency

Despite such limitations, Gelfand, with the organization representing the nation's largest employers, said his membership has already gleaned good information from the hospitals that have made public the rates they negotiate with insurers.

That will put increasing pressure on insurance carriers to negotiate a good deal for those employers, he said.

"This is what the employer will want to say to the insurance company, 'What are you doing? You either go back and negotiate a better deal or you're fired." And when we see these things start happening, the markets will start moving and that should hopefully mean lower prices for patients," Gelfand said.

That is one reason, experts say, compliance with the rule has not been swift. Even if few consumers try to shop for the best prices, employers could use the pricing information to gain an upper hand.

Insurers and others in the health care industry, though, say the rule may have the opposite effect than the one the government intends. Disclosing negotiated prices, they say, may reduce competition and push prices higher.

"Transparency should be achieved in a way that encourages — not undermines — competitive negotiations to lower patients' and consumers' costs and premiums,'' Matt Eyles, president and CEO of America's Health Insurance Plans, said in a November 2019 statement after release of the rules.

An AHIP spokesman did not respond to an AJC request for comment.

Meanwhile, more avenues for clarity on hospital prices are opening up.

Under the No Surprises Act, effective Jan. 1, 2022, private insurers must cover surprise medical bills for emergency services, including air ambulance services, as well as out-of-network provider bills for services rendered at in-network hospitals and facilities.

On that same date, another provision of the Hospital Price Transparency Rule takes effect. It will require health plans to provide information on pricing, including price comparison tools.

Patient advocates hope a combination of those rules will help relieve at least some sticker shock for those patients unable to shop around before they land in the hospital. They include patients with acute conditions, such as stroke sufferers who need emergency care, or patients, such as hemophiliacs, who have blood disorders.

Hemophiliacs depend on specialty drugs or infusions to stay alive but are terrified to seek care in the hospital, where their treatments are often 10 times higher, said Kollet Koulianos, senior director for payer-relations at the National Hemophilia Foundation, in New York.

It would be valuable for these patients to know which hospitals offer better rates for their life-saving treatments.

"They don't usually shop around,'' Koulianos said.

None of that right now helps Deborah Smith, who is still waiting to hear back from Northside Hospital-Forsyth on whether she might be able to lower her husband's medical bill. She discovered only recently that Medicare had not been automatically deducting payments like she had agreed to last year.

On a recent day, in the midst of her negotiations with the Forsyth hospital, she hopped on its website to try to cross-check prices.

"I'm no online wiz," she said, "but I do know how to do research pretty well."

But after more than a dozen clicks, she gave up.