Are APCDs the Solution to Price Transparency in Healthcare?

As health care costs continue to rise, voters have identified "health care" as the top issue for the 2018 elections. In response, in March 2018, a group of bipartisan Senators asked thirty stakeholders for feedback as they develop legislation to increase price transparency in the healthcare market in order to increase competition and drive down prices for healthcare services. A lack of price transparency for health care prevents patients from shopping for medical care the way they can for other services, thereby driving up costs. There are no consistent or uniform cost data accessible to consumers. Consumers can often get information on out-of-pocket costs of their medical care from their current insurer, but they do not typically have access to that data at the time they choose their insurance plan.

Many organizations responded to the Senators' request, including the New York State Health Foundation (NYSHF), which, among other suggestions, expressed a need for consumer-centric information. The Source on Healthcare Price and Competition shares the conviction that increased price transparency is a crucial part of promoting competition in healthcare. We contributed to the 2016 report cards issued by the Catalyst for Payment Reform and the Health Care Incentives Improvement Initiative that reviewed the strength and quality of health care price transparency laws and regulations of all 50 states and gave 43 states a failing grade. As of March 2018, 28 states have passed price transparency legislation and 20 states have enacted all-payer claims databases (APCD), of which 16 are operational.

The Potential of Price Transparency and Limitations of Current Efforts: A recent report showed that the U.S. paid nearly twice as much for health care than other high-income nations, primarily because the prices Americans paid for each medical service were higher.[1] Price transparency offers the promise of allowing competitive forces to drive down prices as consumers can choose lower cost providers that offer high quality care.[2] As many Americans face rising deductibles,[3] they have an added incentive to shop for cheaper care when possible. Perhaps more importantly, price transparency helps policy makers, regulators, and health services researchers identify consolidated health care markets with high prices. Currently, policy makers often only have access to "Chargemaster" or list prices that have limited correlation with the actual amounts paid. Policy makers need transparent pricing, including provider-, plan-, and procedure-specific rates, to accurately assess health care markets and to understand variation in prices.

An article by researchers at Harvard University highlights how price transparency tools have so far failed to encourage price shopping by patients and increase competition among providers.[4] They cite, among the reasons for the failure, a lack of knowledge among consumers about available price comparison tools, a lack of consistent information available on price comparison websites, insurance plans with weak incentives for choosing lower cost care, and patients who do not want to disrupt the relationship with their providers. The authors suggest ways to encourage price shopping by patients and consideration of costs by providers,[5] among which a single, state-wide all-payer claims database would directly target the first two factors that limit the impact of price transparency.

All-Payer Claims Databases: APCDs are electronic collections of claims paid by public and private payers for healthcare services. APCDs are the cornerstone of price and quality transparency tools and can provide information to allow consumers to shop for lower price providers and to allow policy makers to assess more global measures of healthcare prices and markets. An APCD would maximize the impact of other possible solutions to price transparency by providing a place where physicians can learn pricing information for medical procedures they order and insurance companies can design benefit packages that incentivize use of lower cost providers.

States should establish and maintain APCDs that provide different kinds of information to both patients and policy makers. Since much of the data that APCDs collect are confidential and proprietary (prices can be considered trade secrets), different information should be available to different users. Patients should be able to log in with their insurance information and access procedure-specific and provider-specific out-of-pockets costs coupled with quality information. Meaningful measures of quality are important as APCDs risk driving up costs as patients assume the most expensive provider is the highest quality. All health care costs, including inpatient services, outpatient services, and pharmaceutical prices, should be included. Patients do not need to know the negotiated rates that their insurer pays to each provider, but health services researchers, regulators, and policy makers need that information to understand what influences the cost of healthcare and how policy changes affect prices. APCDs, therefore, should collect total paid amounts, but institute review panels that release the data only to policy makers and researchers and ensure compliance with state and federal privacy laws, including the Health Information Portability and Accountability Act (HIPAA).

ERISA Law Preempts States from Establishing Comprehensive APCDs: As one of the most effective ways to provide both the public and policy makers with the information they require to make effective choices, why haven't more states adopted APCDs and why haven't APCDs successfully brought down prices for health care? The Supreme Court ruling in Gobeille v. Liberty Mutual Insurance Co., Inc. effectively crippled state attempts to implement comprehensive APCDs by finding that the Employee Retirement Income Security Act (ERISA) prevented states from requiring all payers to submit information to APCDs. Congress passed ERISA in 1974 to set minimum and uniform standards for employee pensions and benefit programs. While the "savings clause"[6] exempts laws that regulate insurance from ERISA preemption, the "deemer clause"[7] deems any self-funded employer plan not to be insurance. As a result, states cannot regulate self-funded employer health insurance – insurance in which the employer assumes direct responsibility for the cost of medical expenses. About a third of the non-elderly population, and over 60% of Americans with employer-based coverage, are enrolled in these self-funded ERISA plans.[8] Following the Supreme Court ruling in Gobeille v. Liberty Mutual Insurance Co., Inc., state APCDs cannot demand data from self-insured employers. As individuals in self-funded employer plans tend to be healthier than those covered by Medicare or Medicaid, excluding their claims data would likely skew the data in APCDs.[9] Therefore, one of the most important things Congress could do to increase price transparency would be to allow state APCDs to collect data from ERISA plans.

Next Steps for Price Transparency with APCDs: What is necessary to capitalize on the promise of APCDs? While requiring providers

to provide procedure-specific and patient-specific pricing information would likely be an enormous reporting burden, insurance companies, on the other hand, are used to providing that kind of information. The common data layout, created by the National Academy for State Health Policy, the National Association of Health Data Organizations, and the APCD Council, also helps to ensure that states require consistent data to minimize the reporting burden. In addition, states that have already implemented APCDs addressed the issues of data protection and privacy, so they do not remain a significant barrier for states that wish to create APCDs.

As discussed earlier, the primary barrier to global implementation of APCDs remains ERISA preemption. As Erin Fuse Brown and The Source's Jaime King assert in their Health Affairs Blog, "the scope of ERISA preemption has gone far beyond the statute's original intent to the point of dramatically hindering fundamental state functions…[S]tates need health care utilization, price, and quality data to inform their health care cost containment policies."[10] APCDs represent the greatest tool a state has to increase price transparency for healthcare services, but ERISA preemption is crippling the system. In order to get the kind of meaningful price transparency that the group of bipartisan Senators is seeking, Congress must act to untie the hands of state lawmakers by revising ERISA law.

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[1]Papanicolas I, Woskie LR, Jha AK. Health Care Spending in the United States and Other High-Income Countries. *JAMA.*2018;319(10):1024–1039. doi:10.1001/jama.2018.1150.

[2]Mehrotra A, Chernew ME, Sinaiko AD. Promise and Reality of Price Transparency. New England Journal of Medicine.

2018;378(14):1348-54.

[3]Altman D. The Missing Debate Over Rising Health-Care Deductibles. Sept. 18, 2016.

https://www.kff.org/health-costs/perspective/the-missing-debate-over-rising-health-care-deductibles/.

[4]Mehrotra 2018

[5]Id.

[6]§ 514(b)(2)(A)

[7]§ 514(b)(2)(B)

[8]Fuse Brown EC, Sarpatwari A. Removing ERISA's Impediment to State Health Reform. N Engl J Med. 2018;378(1):5-7.

[9]Fuse Brown EC, King J. The Consequences of *Gobeille v. Liberty Mutual*for Health Care Cost Control. Health Affairs Blog. March 10, 2016. Available from: https://www.healthaffairs.org/do/10.1377/hblog20160310.053837/full/.

[10]Fuse Brown and King 2016.