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Centers for Medicare and Medicaid Services
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Proposed Rule - Requirements for group health plans and health insurance issuers in the individual and group markets to disclose cost-sharing information.

Background

Citizens Against Government Waste (CAGW) is a private, nonpartisan, nonprofit organization representing more than one million members and supporters nationwide. Founded in 1984 by the late industrialist J. Peter Grace and syndicated columnist Jack Anderson to implement the recommendations of President Ronald Reagan's Private Sector Survey on Cost Control, also known as the Grace Commission, CAGW's mission is to eliminate waste, mismanagement, and inefficiency in government.

Comment

CAGW has long advocated for more market forces to be used in the U.S. healthcare system. We have supported greater use of Health Savings Accounts (HSAs), Flexible Spending Accounts (FSAs), and Health Reimbursement Accounts (HRAs), not only as opportunities to utilize funds tax-free for the purchase of healthcare services, but also as valuable tools to drive down healthcare costs.

Usage of HSAs increased significantly between 2006 to 2018 and continues on a growth track. According to Devenir Research, an HSA investment solutions firm, the number of HSA accounts reached 25 million in 2018, while assets have also grown from \$1.7 billion in 2006 to \$53.8 billion in 2018, with estimated total assets of \$75 billion in 2020.¹ Much more could be done to expand and encourage the use of HSAs that would help create a free market in healthcare from the bottom up, instead of heavy-handed government regulation.

CAGW urges the administration to aggressively advocate for allowing HSAs to be used to pay for health insurance premiums; allow senior citizens over 65 to contribute to an HSA; let them be used for fitness services and products; and, allow an HSA to be used with any healthcare plan. Allowing HSAs to cover these expenses will help reduce the cost of healthcare because patients shopping for elective healthcare procedures will demand more transparency and information, be able to weigh options, and choose the best value for themselves.

The stated purpose of the Trump administration's November 15, 2019 proposed transparency rule is to make prices available for patients when they are considering a medical procedure or need to purchase a medical product. The proposal would require most group plans, like those provided by an employer or organization, and self-insured plans, to publicly disclose upfront prices and cost-sharing information, including co-pays and co-insurance costs, with plan participants, beneficiaries, and enrollees.

The administration wants "to give consumers real-time, personalized access to cost-sharing information, including an estimate of their cost-sharing liability for all covered health care items and services through an online tool that most group health plans and health insurance issuers would be required to make available to all of their members, and in paper form, at the consumer's request. This would empower consumers to shop and enable them to compare costs between specific providers before receiving care."

CAGW has many concerns with this rule. The Trump administration has made great strides in reducing regulatory oversight but is taking the opposite approach in mandating that health plans design online tools and make cost information for thousands of procedures, many of which are complex, rarely used, and need personal interaction, available to the public.

This complexity is one of the reasons why CAGW opposed mandating that pharmaceutical companies post the list price of their drugs in television commercials because most people do not pay the list price and could be confused, even though the drug manufacturer is allowed to state, "if you have health insurance that covers drugs, your cost may be different." CAGW preferred the industry's voluntary approach that directed consumers to more "medicine-specific cost and affordability information."ⁱⁱ

Many health insurance companies have created and continually improve their online tools for customers that can provide information in a meaningful way. Accessing pricing information for all procedures with an online tool may not be the most practical way to get accurate information. Forcing duplication of these tools or requiring massive changes will be an expensive administrative burden, expending resources that could be better spent elsewhere.

A May 19, 2017 study conducted by researchers at Harvard Medical School, "Who Uses a Price Transparency Tool? Implications for Increasing Consumer Engagement," found that, "Despite the recent proliferation of price transparency tools, consumer use and awareness of these tools is low" and that, "Offering price transparency tools is not associated with lower overall spending primarily because few people with access to such tools use them to shop for lower priced providers." The study found that among 70,408 families offered the tool within two large companies, 11 percent used the tool at least once and only 1 percent used it at least 3 times in the study period. The people most likely to use the tools were younger, living in a higher income community, and had a high deductible.ⁱⁱⁱ

A better approach would be for the administration to educate consumers about the online tools that are currently available and assisting employers to encourage their use. Furthermore, insurers should not be forced to disclose out-of-network costs, as this would be difficult and costly since the insurer does not have a relationship with the provider. All that should be required is for the

insurer to let the patient know is whether the out-of-network provider is not covered, or will be paid as if in-network, or if a certain amount, such as a percentage of the charge, will be reimbursed.

CAGW agrees that there is a considerable amount of information found in Explanation of Benefits (EOB) forms provided to consumers after the service has been supplied, which could also be provided prior to their customer receiving the care. Since thousands of EOBs are provided to patients daily, competitors are likely aware of the charges for some of the most common or “shoppable” procedures.

While CAGW agrees that a free-market approach is the preferred solution to drive down healthcare costs, the U.S. does not have a true free market. In our private health system, 49 percent of the population receives health insurance through employers, according to the Kaiser Family Foundation. These employers make confidential contracts with insurers as do 6 percent of the population that receives health insurance from a non-group (individual) plan. The rest of the population receive their care through government programs, such as Medicare, Medicaid or the military, and 9 percent are uninsured.^{iv}

More importantly, health plans greatly vary in design. Health Maintenance Organizations (HMO) offer a limited choice of providers at a lower cost while Preferred Provider Organizations (PPO) offer a greater choice of doctors and service suppliers, but at a higher cost. Prices may be higher or lower depending on local market conditions. Negotiations based on the number of individuals the insurer can bring to the table and what a provider can demand based on the number of patients it currently serves will ultimately influence rates. Similarly, insurers offer a range of premiums and corresponding deductibles and co-pays or co-insurance. These factors influence out-of-pocket costs for consumers, so developing online tools to provide useful, publicly available information will be complex, confusing, and provide incomplete and misleading information for those who are trying to compare prices.

Even if consumers, or anyone like third-party software developers, could access online tools of all insurers, perhaps as a temporary guest, the information would likely be unclear or inaccurate for many because of the wide variety of plans that can be offered, and the pricing information may not be relevant to the person accessing the online tool.

Furthermore, allowing this kind of access raises privacy alarms. If a third-party software developer accesses the information and then develops and offers an application to help people shop for pricing information for “free,” they would be gathering private healthcare information on the type of products the consumer was interested in, like the drugs they are taking or procedures they utilize. That data could be sold to others, including data brokers, where it could be used to market more items. Consumers would need to be made aware upfront that by accessing these types of applications, they could be giving away their health information.

CAGW is concerned that some information mandated to be exposed may not be necessary and if made public, could harm negotiations and drive up costs, including exposing the negotiations among insurers and their clients and revealing proprietary information like drug rebates and

discounts among pharmaceutical companies, pharmacy benefit managers, pharmacists, and employers.

In true markets where people daily shop for items, prices are prominently displayed. When an individual goes to purchase a product, like a large screen, smart TV at Best Buy, and have a coupon for free installation or a 20 percent discount, they want to know what their out-of-pocket costs will be. They do not know the cost Best Buy negotiated for the TV from the manufacturer. They do not know what the manufacturer paid for the electronics contained in the TV or how much an employee was paid to assemble the TV. In spite of this “lack of transparency,” there is robust competition and a variety of choices.

Suppose governments mandated the private negotiations among retail stores, like Amazon, Best Buy, Target, and WalMart and the manufacturers from which they purchased their products be made public? Would it benefit the customer to know that Best Buy bought the smart TV for 20 percent less than the retail price or that WalMart paid 18 percent less? Would the customer attempt to negotiate a lower price? Would smaller retailers that only got a 15 percent discount demand a 20 percent discount? Or would it be more likely that the manufacturer, knowing a certain amount of money must be made to stay in business, raises the price to all retailers to make sure it receives the necessary profit margin?

Studies have been shown that too much transparency can be problematic. A July 2, 2015 Federal Trade Commission paper, “Price transparency or TMI?” states, “transparency is not universally good. When it goes too far, it can actually harm competition and consumers. Some types of information are not particularly useful to consumers, but are of great interest to competitors. We are especially concerned when information disclosures allow competitors to figure out what their rivals are charging, which dampens each competitor’s incentive to offer a low price, or increases the likelihood that they can coordinate on higher prices.”^v

The FTC issue paper went on to state, “Too much transparency can harm competition in any industry, including health care. Typically, health care providers (hospitals, outpatient facilities, physician groups, or solo practitioners) compete against each other to be included on a health plan’s list of preferred providers. When networks are selective, providers are more likely to bid aggressively, offering lower prices to ensure their inclusion in the network. But when providers know who the other bidders are and what they have bid in the past, they may bid less aggressively, leading to higher overall prices.”^{vi}

CAGW agrees with the FTC assessment that “it is possible to give consumers the specific kinds of information they need to make better health care choices, while avoiding broad disclosures of bids, prices, costs, and other sensitive information that may chill competition among health care providers. Striking the right balance, and mitigating the risk of harm to the competitive process, requires careful fine-tuning of transparency laws and regulations. As with all things, details matter.”^{vii}

Additional studies concerning price transparency and the problems that occurred were also reported in the June 24, 2019 New York Times.^{viii} The Times discussed how scholars have scrutinized transparency requirements that have been utilized in other countries, like Chilean

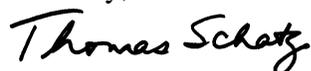
gasoline, Israeli supermarkets, and Danish ready-mix concrete, and what may happen if similar plans were implemented in healthcare.

With respect to concrete, in 1993 the Danish government mandated the publishing of “firm-specific transactions prices for two grades of ready-mixed concrete in three regions of Denmark. Following initial publication, average prices of reported grades increased by 15–20 percent within one year.” Svend Albaek, a researcher from the Institute of Economics, University of Copenhagen, and others investigated the price increases and concluded in their March 2003 study, “Government-Assisted Oligopoly Coordination? A Concrete Case,” the reason the price went up was not due to a business upturn or capacity constraints, but that “publication of prices allowed firms to reduce the intensity of oligopoly price competition and, hence, led to increased prices contrary to the aim of the authority.”^{ix}

We urge HHS to work with insurers and employers to educate the population that online pricing tools are available, and that their patients and employees should take advantage of them.

CAGW supports a free market system in healthcare. The way to create one is not through heavy-handed, top-down government mandates on healthcare providers but to fundamentally redesign the Patient Protection and Affordable Care Act (ACA). Adopting the policies found in the Republican Study Committee’s healthcare reform plan and in the Healthcare Choices Plan, which has the support of several Republican senators, moves decision-making power out of Washington, D.C. to the states and individuals.^x Adopting policies like eliminating ACA’s heavy-handed mandates; expanding the use of HSAs; encouraging the use of Direct Primary Care; allowing states to innovate and provide free-market solutions to lower costs that best fit their state’s population; and, implementing tax health benefit equality will do more to create true market forces in healthcare and encourage more transparency and choice. CAGW urges you to reject this burdensome and expensive rule and modify your approach by working with insurers and employers to educate the public on using the online tools already available.

Sincerely,



Thomas A. Schatz

ⁱ Devenir, “The Number of Health Savings Accounts Exceeds 25 Million,” February 27, 2019, <https://www.devenir.com/the-number-of-health-savings-accounts-exceeds-25-million/>

ⁱⁱ PhRMA, “PhRMA Members Take New Approach to DTC Television Advertising,” October 15, 2018, <https://www.phrma.org/press-release/phrma-members-take-new-approach-to-dtc-television-advertising>

ⁱⁱⁱ Rebecca A. Gourevitch, MS, et al., Who Uses a Price Transparency Tool? Implications for Increasing Consumer Engagement, Harvard University, May 19, 2017, <https://journals.sagepub.com/eprint/iaD48MKSX2nyBNb4UiMi/full>

^{iv} Kaiser Family Foundation, “2018- Health Insurance Coverage of the Total Population,” <https://www.kff.org/other/state-indicator/total-population/?currentTimeframe=0>

^v Tara Isa Koslov and Elizabeth Jex, Office of Policy Planning, Federal Trade Commission, “Price transparency or TMI?,” July 2, 2015, <https://www.ftc.gov/news-events/blogs/competition-matters/2015/07/price-transparency-or-tmi>

^{vi} Ibid.

^{vii} Ibid.

^{viii} Margot Sanger-Katz, The New York Times, “Why Transparency on Medical Prices Could Actually Make Them Go Higher,” June 24, 2019, <https://www.nytimes.com/2019/06/24/upshot/transparency-medical-prices-could-backfire.html>

^{ix} Svend Albaek, et al., “Government-Assisted Oligopoly Coordination? A Concrete Case,” *The Journal of Industrial Economics*, March 27, 2003, <https://onlinelibrary.wiley.com/doi/abs/10.1111/1467-6451.00057>

^x Republican Study Committee, U.S. House of Representatives, “A Framework for Personalized, Affordable Care, Part One,” October 2019; <https://rsc-johnson.house.gov/news/press-releases/rsc-releases-health-care-plan>
The Health Care Choices Proposal: Policy Recommendations to Congress, The Health Policy Consensus Group, June 19, 2018, <https://www.healthcarechoices2020.org/wp-content/uploads/2018/06/Proposal-06-19-18.pdf>