

ONE HUNDRED FIFTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
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**MEMORANDUM**

**July 15, 2018**

**To: Subcommittee on Oversight and Investigations Democratic Members and Staff**

**Fr: Committee on Energy and Commerce Democratic Staff**

**Re: Hearing on “Examining State Efforts to Improve Transparency of Health Care Costs for Consumers”**

On **Tuesday, July 17, 2018, at 10:15 a.m. in room 2322 of the Rayburn House Office Building**, the Subcommittee on Oversight and Investigations will hold a hearing entitled “Examining State Efforts to Improve Transparency of Health Care Costs for Consumers.” This hearing will examine recent laws and policies enacted by states to provide consumers with more information, and those efforts’ impacts on costs.

**I. BACKGROUND**

Health care spending, as a share of the nation’s gross domestic product, reached nearly 18 percent in 2016.<sup>1</sup> Despite these significant expenses, health care consumers often lack visibility into the prices of services they receive before being billed. Even in cases when prices are available to consumers, the “list” prices often do not reflect the actual amount consumers eventually pay.<sup>2</sup> In addition, prices can vary greatly in different parts of the country, and across different providers within the same area.<sup>3</sup>

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<sup>1</sup> Centers for Medicaid and Medicare Services, *National Health Expenditures 2016 Highlights* ([www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/Downloads/highlights.pdf](http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/Downloads/highlights.pdf)).

<sup>2</sup> *Price transparency is sound health care policy*, The Hill (June 5, 2018).

<sup>3</sup> *Achieving transparency in healthcare*, Modern Healthcare ([www.modernhealthcare.com/reports/achieving-transparency-in-healthcare/](http://www.modernhealthcare.com/reports/achieving-transparency-in-healthcare/)).

Some advocates for increased transparency into health care prices argue that improved transparency will better enable consumers to make informed decisions, bringing down costs for those individuals and the health care system as a whole.<sup>4</sup> According to some, transparency may also reduce losses and inefficiencies stemming from uncompensated care, as patients may more likely pay bills if costs are clearly explained up front.<sup>5</sup>

However, the research is inconclusive on the ability of price transparency initiatives to lower health care costs on their own, and some research suggests they can even raise costs. For example, a study on price transparency tools available to insured individuals found no association with lowered spending, as few individuals took advantage of the tools, and those who did were unable to secure lower prices.<sup>6</sup> Another study found these types of transparency tools were actually associated with an increase in costs, possibly because patients may equate higher prices with higher quality and thus opt to select a more expensive care option *because* it is more expensive.<sup>7</sup>

## II. RECENT STATE EFFORTS TO IMPROVE COST TRANSPARENCY

Over the past decade, states have enacted a number of legislative requirements and initiated programs to provide consumers with additional information about how much they are being charged for health care. At least five states have architected websites that disclose certain hospital and surgical price information in their states.<sup>8</sup> The State of Florida, for instance, established FloridaHealthFinder.gov, which allows consumers to search for health care prices at both hospitals and outpatient surgery centers.<sup>9</sup>

States have also taken steps to improve the transparency of pharmaceutical prices for consumers. For instance, at least 24 states have enacted legislation that prevents “gag clauses” in pharmacy benefit contracts. These clauses prohibit pharmacists from telling patients that by

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<sup>4</sup> *Price transparency is sound health care policy*, The Hill (June 5, 2018).

<sup>5</sup> *Achieving transparency in healthcare*, Modern Healthcare (www.modernhealthcare.com/reports/achieving-transparency-in-healthcare/).

<sup>6</sup> Sunita Desai et al., *Offering A Price Transparency Tool Did Not Reduce Overall Spending Among California Public Employees And Retirees*, Health Affairs (Aug. 2017).

<sup>7</sup> Sunita Desai et al., *Association Between Availability of a Price Transparency Tool and Outpatient Spending*, JAMA (May 3, 2016).

<sup>8</sup> National Conference of State Legislatures, *Transparency and Disclosure of Health Costs and Provider Payments: State Actions* (www.ncsl.org/research/health/transparency-and-disclosure-health-costs.aspx#Examples).

<sup>9</sup> Florida Agency for Health Care Administration, *Hospitals and Ambulatory Surgery Centers* (www.floridahealthfinder.gov/CompareCare/SelectChoice.aspx).

paying out-of-pocket, they may end up paying less for a prescription rather than going through their insurance, or by buying less expensive generic versions of the drug.<sup>10</sup>

Along these same lines, some states have also passed legislation aimed at preventing consumers from receiving surprise bills for services. For example, New Jersey passed a law in June 2018 that, among other things, will require doctors and hospitals to tell patients if they are part of their insurance network before any treatment occurs, and to provide patients a fee estimate upon request.<sup>11</sup> Other states have previously passed similar legislation protecting patients from surprise emergency department bills.<sup>12</sup>

### **III. WITNESSES**

**Dr. Michael Chernew**

Professor of Health Care Policy  
Director, Healthcare Markets and Regulation Lab  
Department of Health Care Policy  
Harvard University

**Dr. Jaime King**

Associate Dean and Professor of Law  
University of California - San Francisco / University of California - Hastings Consortium  
on Science, Law, and Health Policy

**Dr. Kavita Patel**

Associate Chief Medical Officer  
Johns Hopkins Medicine

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<sup>10</sup> National Conference of State Legislatures, *PBM State Legislation* (June 28, 2018) ([www.ncsl.org/research/health/pbm-state-legislation.aspx](http://www.ncsl.org/research/health/pbm-state-legislation.aspx)).

<sup>11</sup> Governor of New Jersey, *Governor Murphy Signs Legislation to Protect Consumers From Out-of-Network Health Services*, ([www.nj.gov/governor/news/news/562018/approved/20180601a\\_health.shtml](http://www.nj.gov/governor/news/news/562018/approved/20180601a_health.shtml)) (press release).

<sup>12</sup> Kevin Lucia et al., *Balance Billing by Health Care Providers: Assessing Consumer Protections Across States*, The Commonwealth Fund (June 2017).