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POLICY BRIEF

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HEALTHCARE PRICE TRANSPARENCY

By Aaron Hedlund

KEY TAKEAWAYS

- Missourians are suffering from an acute cost of living crisis, with rapidly rising healthcare prices long predating the current national inflationary episode.
- Healthcare prices are not just high—they are unpredictable and hidden; patients often don't learn the cost of treatment until after the fact when they get the bill. This lack of clarity undermines patient choice, destroys competition, and causes people to receive less value for what they pay.
- Missouri can pursue healthcare price transparency reforms that build on recent efforts at the federal level, such as codifying regulations into state law, strengthening noncompliance penalties, and shielding patients from debt collections by noncompliant hospitals.

BACKGROUND

Missourians—and Americans, broadly—are contending with a crippling cost of living crisis. The consumer price index has increased by 17% since just the beginning of 2021. While much of the blame for the current inflationary episode can be laid at the feet of reckless fiscal policy, families have grappled with rising costs in healthcare for far longer. Over the past decade, the price of hospital services has skyrocketed by over 45%.

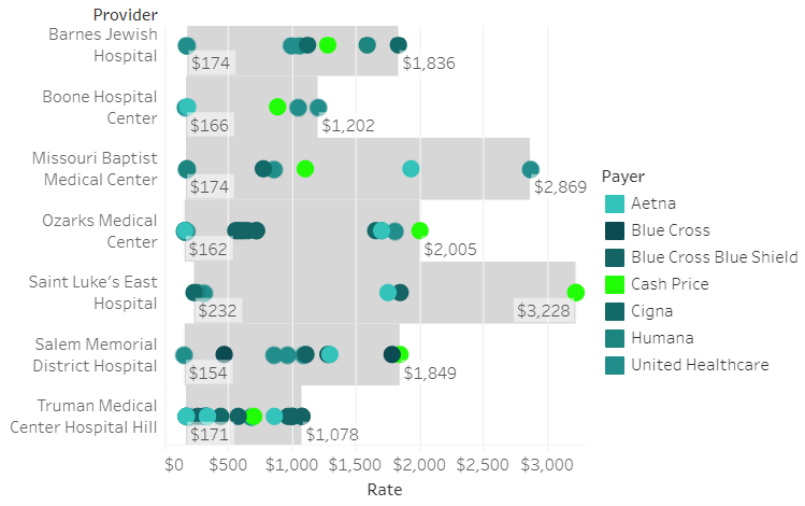
Dysfunction in healthcare pricing runs deeper than just this topline inflation figure. Healthcare prices also vary widely by geography, hospital, and insurance or payment method.[1] For example, a 2014 report from the Government Accountability Office found that the cost for maternity care at selected acute care hospitals in Boston—all rated high quality—varied from $6,834 to $21,554.[2] In Missouri, data from 2021 indicate that the price of a pelvic CT scan within the same hospital can vary by a factor of 20 depending on a patient's insurance, with prices ranging from under $200 to multiple thousands of dollars, as shown in Figure 1.

This state of affairs would be bad enough if patients knew what they were getting into before deciding on a course of treatment. Unfortunately, the pricing information is so confusing that patients—along with their doctors—are making financial decisions in the dark, often only learning the cost after the fact when the bill arrives. This backward sequence makes a mockery of patient choice and leads to an inefficient allocation of healthcare resources. In human terms, this lower bang for the healthcare buck means worse outcomes for patients, both medically and financially. Consumer choice is a fundamental tenet of a functioning free market, just as voter choice is the very essence of democracy. But choice that people can only exercise without the information they need to choose wisely is hollow. In Texas, a recent study found that prices for services like vaginal childbirth or a brain MRI can sometimes vary by over 50% *at the same hospital* depending on whether the patient calls ahead of time to receive a price quote over the phone versus relying just on the internet. "Comparison shopping" is not tenable in such an information void.[3]

A common refrain from progressives is that the answer to weak market forces is to abandon the market entirely by imposing a centralized, single-payer structure. Beneath the false advertising of "free healthcare," the reality of single payer entails sacrificing what patient choice currently exists—like the ability to choose from among providers and insurers—and placing healthcare payment decisions at

Price Variation for a Pelvic CT Scan Among Select Missouri Hospitals

Prices for the same procedure—even in the same hospital—can vary by thousands of dollars depending on the type (if any) of insurance the patient has.



Source: Turquoise Health

the mercy of government bureaucrats whose judgment cannot be appealed or challenged by a competitor. In reality, the solution to impaired choice is repaired choice, and healthcare price transparency lies at the heart of the matter. This issue brief discusses the need for healthcare price transparency along with recent achievements and roadblocks encountered along the way, and outlines steps Missouri can take to empower patients and other stakeholders with the price information they desperately need.

A HEALTHCARE MARKET BROKEN BY HIDDEN AND OPAQUE PRICING

According to a 2019 Harvard-Harris poll, 88% of Americans favor requiring insurers, hospitals, doctors, and other providers to disclose the costs of their services.[4] The public's support for price transparency is well founded. A growing body of evidence suggests that the U.S. healthcare system suffers from a lack of competition, which enables hospitals in concentrated markets to charge prices that are incommensurate with the quality of care.

One recent study that examines the relationship between prices and the quality of care in hospitals finds that, in less concentrated markets with more abundant provider choice, being admitted to a hospital that charges higher prices lowers mortality by 37%, but being admitted to a more expensive hospital in an area with high market concentration—that is, low competition—does not lower mortality.[5] What accounts for the superior performance of higher-priced hospitals in the areas with greater competition? In general, they do *not* deliver higher-intensity care or exhibit a greater tendency to engage in surgical interventions on patients admitted to the ER. Nor do these hospitals have higher overhead. Instead, they have a larger share of physicians who graduated from top-25 medical schools. By contrast, expensive hospitals in more concentrated markets are able to charge higher prices because of greater market power—market power that is exacerbated by a lack of price transparency.

Other studies concur, finding that monopoly hospitals charge notably higher prices than do hospitals with several nearby competitors. In a similar vein, prices rise when nearby hospitals merge.[6] Specialty hospitals, such as children's hospitals, also frequently charge a price premium, which might seem intuitive at first. However, this price premium even applies in the case of routine procedures where there is no demonstrated quality advantage of one hospital type over another. Instead, because of the information void that prevents patients from accurately comparing providers, specialty hospitals are able to trade off of their broader reputation in such a way that inoculates them from competition in areas where they lack a comparative advantage.[7]

Making provider decisions based off of vague notions of reputation divorced from measures of true quality is just one way that patients compensate for the lack of information available to them. Patients also, quite understandably, rely on provider referrals from their physicians. The dilemma is that this reliance is often times an *overreliance*. While it is comforting to assume one's physician thoroughly surveys the provider landscape when referring out, it may simply be the case that the physician happens to be part of a network or has become acquainted with one provider instead of another. Research sheds light on this issue as well. A recent analysis finds that a typical patient will bypass six lower-priced, equally good providers on the drive from their home to where they obtain treatment. This behavior is driven by the referral behavior of physicians, and the pattern persists because neither patients nor their physicians possess systematic information to guide them in a different direction.[8]

THE CASE FOR HEALTHCARE PRICE TRANSPARENCY

As alluded to earlier, the progressive fallacy that market forces cannot drive value in healthcare is just that: a fallacy. There is abundant evidence that higher-quality hospitals outperform their low-quality counterparts in the competition for patients. Even in the hobbled information environment that patients find themselves

in, market forces are still able to shift healthcare utilization and resources from worse to better providers. As confirmation, one leading study finds that higher-quality hospitals are able to grow their market share over time and that this relationship is driven by patients who have greater scope for hospital choice.[9] In other words, patient empowerment leads to better resource allocation and outcomes. The idea that the benefits of informed patient choice would ever come into question is a testament to how deeply rooted the false narrative about inherent and pervasive market failures in healthcare has become. The true culprit is *not enough* market forces.

The primary beneficiaries of healthcare price transparency are patients themselves, but they are not the only ones who win from such a transformation. Doctors would be able to act as more effective advocates for those under their care, allowing for more open and frank conversations about the tradeoffs between different treatment plans. Notably, the benefits of price transparency also extend to employers, enabling them to negotiate from a stronger position with insurers and providers and to offer superior healthcare packages to their workers. Lastly, and most importantly, transparency is not just about revealing current prices; it is about *lowering* these prices and enabling the emergence of more innovative payment models through greater competition.

The rationale for pursuing healthcare price transparency is not merely theoretical. Besides the undeniable fact that prices are key to the efficiency of every other market, there is also recent precedent specifically with healthcare. Back in 2007, New Hampshire launched a website, NH HealthCost, that allows individuals considering medical treatment to enter the procedure as well as their insurance information, postal code, and a search radius to obtain information on the expected out-of-pocket price, insurer price, and total price charged by providers in that radius (supplemented also by some quality metrics). One recent study examined the effects of the website and found that, just in the area of medical imaging, patients have saved 5% in out-of-pocket costs, and insurers saved 4% (which ultimately benefits patients through lower premiums). The total savings come out to about $44 million on x-rays, CT scans, and MRI scans over five years.[10] Even so, awareness of the website is not universal. The author estimates in another study that medical imaging prices would fall by 22% if patients had full price transparency.[11]

PROGRESS AND OBSTACLES ON THE ROAD TO HEALTHCARE PRICE TRANSPARENCY

In July 2019, the Trump administration issued an executive order requiring hospital price transparency, and the Centers for Medicare and Medicaid Services (CMS) finalized the rule later that year in November. The rule required hospitals to make pricing information available to the public through two methods: a comprehensive machine-readable file with five types of charges—the gross charge, discounted cash price, payer-specific negotiated charge, and deidentified minimum and maximum negotiated prices—as well as a consumer-friendly list covering 300 shoppable services. The Trump administration also separately issued a "Transparency in Coverage" rule requiring health plans and issuers in the individual and group markets to release their negotiated rates with providers both as a machine-readable file and subsequently as a consumer-facing price comparison tool. Both executive orders contain staggered compliance deadlines, with the hospital price transparency rule kicking in first at the beginning of 2021.

Compliance has been spotty. Right out of the gate, the American Hospital Association sued to stop price transparency from going into effect, but the courts rejected the challenge and upheld the rule. When the Biden administration took office, speculation abounded about which Trump-era executive orders would survive and which would be rescinded, but the new administration opted to keep—and eventually even strengthen—the price transparency rules, making them a bipartisan priority. Nevertheless, multiple studies found that fewer than 6% of hospitals were in full compliance with the transparency requirements after the first six months of implementation.[12] Several factors likely contributed to this outcome, but the extremely modest noncompliance penalties of only $300 per

day—amounting to at most $109,500 per year—surely played a role. Another study of early compliance patterns found that a hospital's compliance status was influenced positively by whether its peers in the same market were complying.[13] *The Wall Street Journal* also reported early in the implementation that hundreds of hospitals were embedding code in their price transparency websites that blocked search engines from displaying pages with price lists.[14] Since then, *The Wall Street Journal* has written several exposés on questionable hospital pricing practices based on an analysis of data that only came to light because of the price transparency rule—including that cash payers are often charged more than insurance companies for the same service in the same hospital.[15]

In late 2021, the Biden administration announced that it was hiking noncompliance penalties for larger hospitals to $10 per bed per day, capped at $5,500 per day, leading to a maximum annual fine in excess of $2 million. According to a report in summer 2023, compliance with price transparency requirements now stands at 36%—a considerable jump from under 6%, but still woefully inadequate.[16] CMS has sent out over 700 warning notices and nearly 300 requests for corrective action plans, but it has demonstrated a reluctance to actually levy fines—having penalized only four hospitals as of April 2023.[17] In summer 2023, CMS announced plans to increase enforcement by, among other things, tightening deadlines for noncompliant hospitals and publishing a list of noncompliant hospitals on the CMS website. It is as of yet unclear whether CMS will also ramp up its enforcement of sanctions if hospitals still fail to comply. Separate from the issue of penalties, CMS is also issuing data standardization guidance to simplify the process for hospitals and to enhance the user-friendliness of the data. Congress has also shown an interest in taking legislative action to increase price transparency.

WHAT MISSOURI CAN DO TO ADVANCE HEALTHCARE PRICE TRANSPARENCY

Missouri need not passively wait for action by the federal government. Other states have stepped forward to reinforce the federal price transparency efforts. Most prominently, Texas Senate Bill 1137 in 2021 codified the federal price transparency executive orders into state law, creating noncompliance penalties that stack on top of federal penalties and making compliance a consideration when hospitals apply for renewal of their license or certification. Colorado House Bill 1285 in 2022 also took bold steps to induce hospital compliance by barring noncompliant hospitals from pursuing collections or legal action against parties with unpaid bills. In 2023, Missouri HB 1161 was an attempt to do something similar to Colorado.

Missouri can combine all of these efforts. The Hospital Price Transparency Act (HPTA), which is draft language hosted on the website of the American Legislative Exchange Council, provides one avenue to accomplish these goals. Below is a summary of the major reforms.

Reform: Codify Enhanced Federal Price Transparency Requirements into State Law

This section of the HPTA emulates federal price transparency rules by defining into state statute the categories of charges that hospitals must disclose, the comprehensive list of items and services that price disclosure must encompass, and the manner in which it must be made accessible. Important criteria that the price lists (both the machine-readable file and the consumer-friendly list) must satisfy include requirements that the specified information must:

- Be available free of charge.
- Be prominently displayed on the home page of the facility.
- Be accessible without any requirement to establish a user account or password, enter an access code, or submit personal information.
- Be digitally searchable and able to be indexed by a search engine.
- Follow a standardized format as specified by CMS.

Missouri could go further by doing the following:

- Requiring all prices to be in actual dollars, not presented as a formula that references other quantities.
- Requiring hospitals to retain and make available historical price data each year as they update.
- Eliminating the price estimator "loophole" that allows hospitals to not provide actual prices.

Reform: Strengthen Enforcement and Noncompliance Penalties

This portion of the HPTA sets forth the responsibilities of the state health agency to monitor facilities for compliance. This monitoring is *active* in nature, requiring the state to proactively audit facilities in addition to investigating complaints from others about noncompliance. The model policy prescribes the following non-exhaustive list of consequences for noncompliant facilities:

- Inclusion on a list of noncompliant facilities to be posted on the relevant state agency's website.
- Additional scrutiny upon application for renewal of its license, with possible delays or obstacles.
- Imposition of administrative sanctions. The HPTA sets these penalties at $600 per day for hospitals with fewer than 30 beds, $20 per bed per day for hospitals with between 30 and 550 beds, and $11,000 per day for hospitals with more than 550 beds. Each day is a separate violation.

Reform: Prohibit Noncompliant Hospitals from Pursuing Patients for Unpaid Bills

The last pillar of the HPTA bars noncompliant hospitals from pursuing collections and other legal remedies against patients with outstanding bills and offers remedies to patients. Contours of this provision include:

- Protection of patients against direct or *indirect* debt collection activity by noncompliant hospitals themselves or any third party that they contract with on their behalf.
- Prohibiting noncompliant hospitals from reporting patients to a consumer reporting agency.
- Allowing any patient whom a hospital pursues for collections to sue to determine the compliance status of the hospital.
- Requiring noncompliant hospitals that pursue collections against patients to make the patient financially whole, including refunding any amount of the debt paid plus legal and other relevant fees.

Aaron Hedlund is chief economist at the Show-Me Institute.

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