

# Making health care prices more transparent in North Dakota



## STATE POLICYMAKERS SHOULD:

- Build off federal price transparency rules and enact a higher level of transparency

## Hidden pricing allows higher health care prices

The high and rising cost of health care remains a persistent problem across America, and North Dakota is no exception. Health care costs consistently rise faster than the overall inflation rate. From 2000 to 2019, inflation rose at an average annual rate of 2.1 percent. By comparison, personal health care spending grew at a much higher 5.5 percent average annual rate nationally, according to Centers for Medicare & Medicaid Services (CMS) national health expenditure data. North Dakota personal health care spending grew at an even higher

5.7 percent average annual rate from 2000 to 2019. In 2019, personal health care spending accounted for 18.3 percent of state annual personal income in North Dakota compared to 17.1 percent nationally.

Hidden health care pricing is a key contributor to this escalating cost problem.

Upfront pricing information is essential to an efficient and competitive market. In any market for goods and services, consumers need pricing information to make sound, cost-conscious decisions. It would be truly bizarre to walk into a grocery store, load up your cart, and pay without knowing the price of anything in the cart. If everyone went grocery shopping this way,



competition to deliver lower prices for better quality food would disappear. Yet that is exactly what patients do every time they walk into a clinic or hospital.

Prices are hidden from patients because health care is largely financed through third party health plans. They negotiate prices with hospitals and doctors and keep the price secret, claiming it is proprietary and confidential business information. This means patients and often employers who pay their employees' health care do not have the information they need to make fully informed health care decisions. Moreover, providers don't have to compete for individual patients on price, which substantially lessens the competitive pressure to keep prices down.

## Wide variations in pricing

Hidden pricing leads to wide variations in pricing with little relationship to the cost of care. Prices vary widely both by geography and between providers in the same market for the same service. A recent study from the North Dakota Insurance Department found wide price variations across seven hospitals using a secret shopper. The ratio between the lowest and highest price was 310 percent for a colonoscopy, 347 percent for a normal vaginal delivery, and 613 percent for a Cesarean section. Similarly, research by the Kaiser Family

Foundation comparing prices across the 20 largest metro areas in the country shows the allowed charges for an office-based lower back MRI covered by a large employer range from \$550 to \$900 between the 25th percentile and 75th percentile of prices. Among these metro areas, average prices for this MRI ranged from \$349 in Orlando, Florida to \$853 in Oakland, California.

Patients need more pricing information to make the best care decision with their provider. As health plans increase deductibles and cost sharing requirements, knowing the upfront price is becoming even more critical.

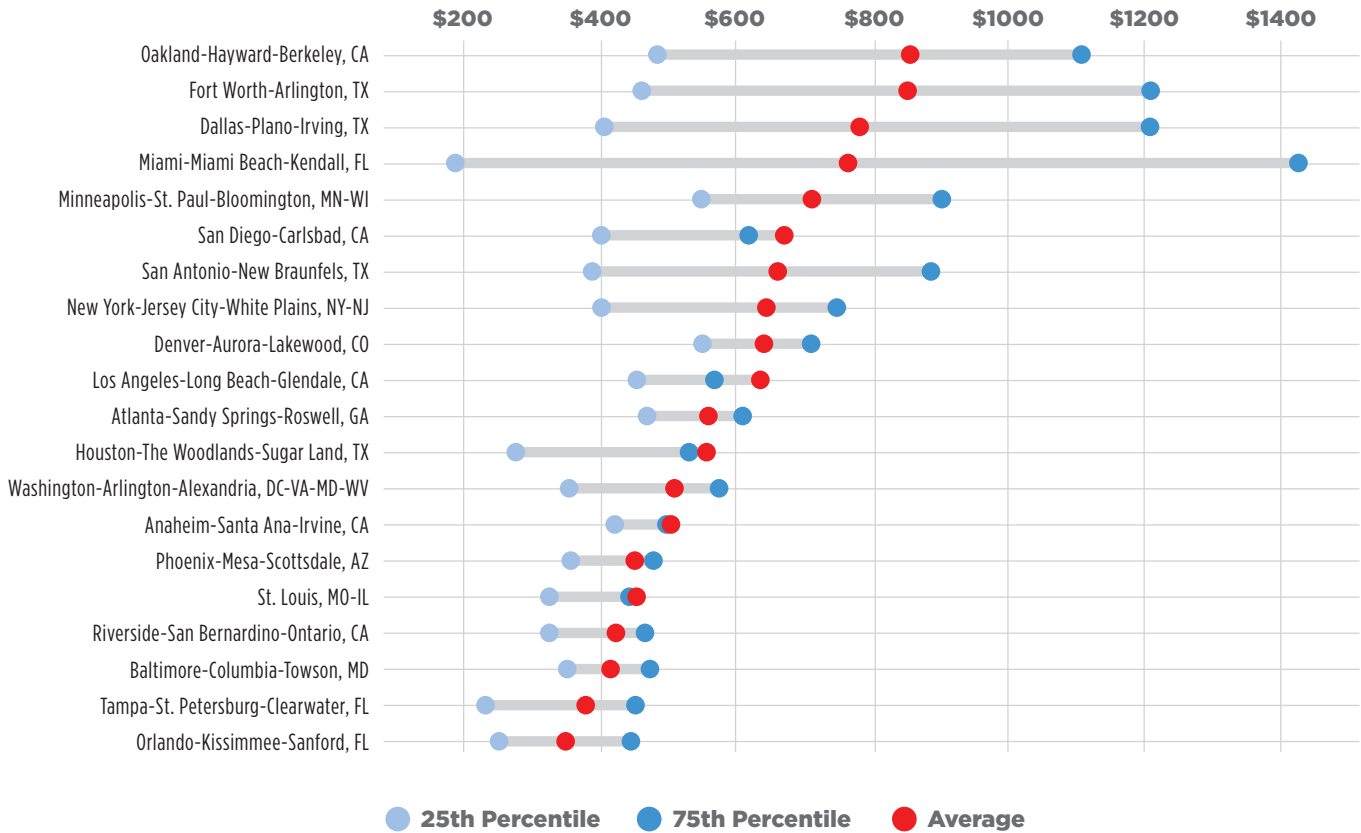
## New federal rules require price transparency

This widespread variation in pricing became clearer in recent years as new data sources on pricing from large employers became available, including data from the Health Care Cost Institute and IBM MarketScan, But the data never provided patients with pricing specific to their plan. Fortunately, new federal rules require hospitals and private health plans to finally disclose the prices for each health care item and service they negotiate.

The federal hospital price transparency rule requires hospitals to display online pricing for 300 shoppable services in a consumer-friendly format. It also requires

FIGURE 1

## Average allowed charges for office-based lower back MRIs in large employer plans, by MSA, 2018



Source: Nisha Kurani, et al., *Price transparency and variation in U.S. health services* (Kaiser Family Foundation January 13, 2021), available at <https://www.healthsystemtracker.org/brief/price-transparency-and-variation-in-u-s-health-services/>.

hospitals to post a comprehensive machine-readable data file with pricing for all items and services. This includes pricing for private health plans, as well as Medicare and Medicaid managed care plans. While these files might be challenging for consumers to use, software developers have already developed tools to help patients more easily use this data to shop. The data will also be important for researchers and policy makers. These requirements went into effect on January 1, 2021.

The federal health plan price transparency rule requires most health plans to provide an online consumer tool with real-time estimates of the price and cost-sharing liability to the consumer. Like the hospital rule, health plans must also post a machine-readable data file with pricing for all items and services. The re-

quirement to post the machine-readable data file went into effect on July 1, 2022 and the final requirement on health plans to provide the consumer tool went into effect on January 1, 2023.

### Enact a higher level of transparency

These federal rules are historic steps that will upend the status quo and finally ensure access to pricing information patients need before they receive care. However, there are further steps North Dakota can take to enact a higher level of transparency.

Unfortunately, hospitals have been slow to comply with the federal rule. The Patient Rights Advocate

organization issued a report in August 2022 which reviewed 2,000 hospitals nationally for compliance with the law. Nationally, they found only 16 percent of hospitals were in full compliance. Of the 22 hospitals reviewed in North Dakota, 23 percent were in full compliance with the rule. All of the compliant hospitals are run by CHI St. Alexius Health. Most hospitals did provide the negotiated rate — the most important pricing information — but there were still eight hospitals (35 percent) that failed to provide this basic information.

Even hospitals that may be fully compliant with the federal rule may take advantage of loopholes CMS provided in guidance to avoid being fully transparent. For instance, CMS guidance allows hospitals to post the gross charge as reflected in the hospital chargemaster if they have not determined a discounted cash price. However, this gross charge is an inflated charge which is meaningless to a patient because it almost never reflects what a patient would pay. CMS also allows hospitals to not report a dollar amount for the negotiated rate when the rate is determined by a standardized algorithm.

North Dakota should codify the federal hospital price transparency rule in state statute to avoid special interests from watering down the federal rule in the future. More importantly, this would give the state authority to enforce the federal rule. Currently, federal enforcement activity may be very limited due to resource constraints. To aid enforcement, North Dakota should also add state penalties for non-compliance.

In addition, North Dakota should build off the federal rule with new requirements to make the pricing information more accessible, including:

- Require hospitals to post the machine-readable data file in a standardized format. Today, hospitals post the data in a wide variety of formats making it difficult for developers and researchers to aggregate. The federal government is considering rulemaking to fix this, but federal rulemaking is generally a lengthy process and North Dakota should not wait.
- Require hospitals to disclose negotiated rates that rely on a formula to report the dollar amount that results from the formula in the machine-readable file. This change would align the requirements on hospitals with requirements on health plans.
- Require hospitals to report the lowest cash price they accepted over the past 6 month for self-pay

consumers if they have not determined a discounted cash price.

- Require hospitals to post pricing data from prior years. This allows people with questions about paying and negotiating a bill from a prior year to review the pertinent pricing data. This would also ensure full compliance from hospitals that failed to post 2021 prices.
- Clarify that hospitals must post Medicare Advantage and Medicaid managed care negotiated rates.
- Require links to pricing data to be posted prominently on the home page of a hospital's website.
- Aggregate hospital pricing data to a public website.
- Remove the "loophole" for hospitals to use an existing price estimator tool in lieu of the consumer tool requirement.
- Expand price disclosure requirements beyond hospitals to other major care settings, such as outpatient surgical centers.

## Conclusions

Health care costs in North Dakota continue to rise faster than inflation. Unlike other industries, there is very little competitive pressure among providers to keep costs down because the prices they charge for patient services has always been hidden. Price transparency gives patients the information they need to comparison shop and forces providers to compete for those patients over price. Price transparency also gives employers a new tool to manage the cost of their health plans. Importantly, more information on pricing will lead to more information on quality, allowing patients to find high-value providers rewarding them with their dollars. Long-term, price transparency holds the best promise to finally gain control over the high and rising cost of health care. ★

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