29 March 2023

House Energy and Commerce Committee Hearing on Transparency and Competition in Health Care

On Tuesday (March 28), the House Committee on Energy and Commerce held a hearing entitled, "Lowering Unaffordable Costs: Examining Transparency and Competition in Health Care." During the hearing, discussion largely centered on ways to increase transparency and competition in the U.S. health care market to address high health care costs.

Lawmakers heard testimony from a panel of five witnesses who all expressed support for the Committee's efforts to improve health care affordability and the need to strengthen and enforce the price transparency rules, with many also providing more specific policy solutions.

Specifically, lawmakers and witnesses discussed ways to improve compliance with the hospital price transparency rule and the usability of available data; policies, such as site neutral payments, to address discrepancies in costs of services by location; and the need to increase transparency among pharmacy benefit managers (PBMs) and understand their role in high drug prices.

- *For more information*: https://energycommerce.house.gov/events/health-subcommittee-hearing-lowering-unaffordable-costs-examining-transparency-and-competition-in-health-care

Opening statements

Subcommittee Chairman Brett Guthrie (R-KY): The subcommittee Chairman described rising health care costs as, "one of the single greatest threats to the overall economic security of Americans" and pointed to market inefficiencies, such as consolidation of pharmacy benefit managers (PMB), as being a primary cause. The subcommittee Chairman concluded by pointing to next steps on this issue, including improvements to the Centers for Medicare and Medicaid Services (CMS) and the 2019 price transparency rules, by suggesting Congress should, "codify and strengthen these important … rules … [and] also consider solutions to make other parts of the health care system more transparent." He highlighted PBMs as a critical area for increased transparency. He also called on the Biden administration to conduct "greater enforcement efforts." Full statement.

Subcommittee Ranking Member Anna Eshoo (D-CA): Subcommittee ranking member Eshoo expressed similar concerns as the subcommittee Chairman, acknowledging their "same opinion" of PBMs as "middlemen … that drive up prices." She spoke critically of the fact that only 70% of hospitals were in compliance with the hospital price transparency rule. Eshoo also compared the U.S health care industry to other countries, saying, "we spend more but we get much less." She expressed being "fully supportive" of efforts to "shine the light on fraud" but that the Committee shouldn't stop there. Full statement.

Committee Chair Cathy McMorris Rodgers (R-WA): Chair McMorris Rodgers lamented that many Americans were "one doctor visit away from not being able to pay their rent" and that the "U.S. spends more on health care as a percentage of our economy than any other developed nation." She noted the importance of improving transparency as "one of the ways we can drive down costs" and suggested that "patients shouldn't be in the dark till after they receive care." Similarly to Guthrie and Eshoo, McMorris Rodgers called for stronger enforcement of

the price transparency rules and criticized the trend of vertical integration in the health care market by questioning whether such arrangements were in the "best interests of patients." Full statement.

Committee Ranking Member Frank Pallone (D-NJ): The Ranking Member began by praising both the Affordable Care Act (ACA) for providing "more health coverage today than ever before" as well as the subsequent enhancements to the ACA, including in the Inflation Reduction Act (IRA). However, Pallone suggested that despite "significant progress … high health care costs … continue to be a burden" and in particular criticized the "wide price variations" that exist. He also noted the ways in which many hospitals were not complying with the transparency rule and called such actions "inexcusable." Finally, Pallone added that "transparency alone will not help lower out-of-pocket costs for families" and that it was "critical" to make ACA expansions permanent. Full statement.

Witness testimony

Chris Severn, Co-Founder & Chief Executive Officer, Turquoise Health: Severn said he launched Turquoise Health as a direct response to the "infusion of health care data" that resulted from the transparency rules enacted in 2019. Severn suggested that these laws "mandate essential data and system changes" and that any "significant modifications … could lead to the overall dilution of the intended dual aims of creating competition and empowering savvy consumers of health care." He suggested there was "existing literature" to suggest that these rules will lower prices. However, he also pointed to the opportunity these laws present to "reduce the administrative cost of health care" and called for "continued government intervention to carry out price transparency's potential." In particular, he argued for holding hospitals and payers accountable by setting enforcement dates for certain No Surprises Act provisions and requiring hospitals to publish data in a standard format that enables cleaner data sets. Full testimony.

Matthew Forge, Chief Executive Office, Pullman Regional Hospital: Forge has been a leader in rural health care for the past eight years and was proud to note that the regional hospital he leads has been compliant with the new transparency rule for hospitals since 2019. He suggested that there were many positive consequences of this rule, including allowing for a greater understanding of a "really complex environment," allowing "conversations about how to lower costs" while also allowing for a consideration of how to improve quality of service. However, he also noted the challenge in sharing such data in a way that is "accurate and meaningful." He further noted the additional challenges of being able to manage constant changes to such data while still prioritizing patient health care needs. Overall, this witness suggested that getting the programs to be "operational … is extremely challenging." Full testimony.

Marilyn Bartlett, Senior Policy Fellow, National Association of State Health Policy: Bartlett described her role in reforming Montana's State Employee Health Plan by: individually negotiating hospital contracts; terminating their traditional PBM contract; removing CVS from their network after they didn't accept pricing demands; and investing in primary care. This led to "tremendous savings" which Bartlett credits to increased data and access to transparent pricing information. When commenting on the broader health care market, she suggested that the industry benefits from "opacity and information asymmetry" and that "we can and must do better … but we must have price and cost transparency from the industry." Full testimony.

Sophia Tripoli, Director of Health Care Innovation, Families USA: Tripoli began by noting that, "our health care system is in a crisis" which she suggested was "driven by misalignment." Specifically, Tripoli pointed at industry consolidation and monopolistic pricing as driving "irrational" prices and characterized health care as one of the only sectors in the economy where consumers are "blinded to the price of a service until they receive a bill after the service." She echoed the prior witnesses in urging the Committee to strengthening the transparency rules and eliminating anticompetitive behaviour. Full testimony.

Benedic Ippolito, Senior Fellow in Economic Policy Studies, American Enterprise Institute: Ippolito highlighted the basic economics of efficient markets, arguing that such markets require "informed consumers" to be able to make a meaningful choice. He argued that the lack of transparency in health care means that "high prices" are persisting "for reasons divorced from value" and that it's necessary to "increase pressure" on firms to deliver more affordable healthcare by improving competition and "redesigning incentives." Full testimony.

Q&A

Rep. Brett Guthrie (R-KY) questioned Ms. Bartlett on her success in Montana, enquiring after where she found the most excessive spending and what information was critical to know. Ms. Bartlett suggested that the biggest spend of the State Employee Health Plan was in hospitals where prices varied considerably across different hospitals. Regarding critical information, Ms. Bartlett told the subcommittee Chairman that knowing both the plan price and cash price was necessary.

Rep. Anna Eshoo (D-CA) noted that patients don't just base their choice on price, but also on what is covered by their insurance network. She called for bringing insurers and PBMs into the conversation and suggested that insurers also needed to negotiate prices to achieve lower hospital costs. Eshoo asked Dr. Ippolito what PBMs gain by keeping costs high and how to prevent PBMs from manipulating costs. The witnessed suggested that they were incentivised by getting paid on the rebates and that anything the Committee could do to align the incentives with price would help. Eshoo also criticized the practice of favouring the privately insured over publicly insured.

Rep. Cathy McMorris Rodgers (R-WA) asked Mr. Forge whether his hospital's experience providing data could be replicated nationwide, to which he suggested yes it could be scaled but that this would require prioritizing. The Chair also asked Mr. Severn about the biggest challenges hospitals face. This witness suggested that there was no standard format for hospitals to use which creates uncertainty. He noted that there was now a suggested format and that this should be enforced.

Rep. Tony Cardenas (D-CA) asked what efforts were being made to ensure cost disclosures were comprehensible and accessible. Dr. Ippolito suggested that consumer reports could be a useful way to digest information, analogizing that it isn't necessary to know all the mechanics about a car to decide which is a better purchase. Cardenas also queried the availability of information in languages other than English. The member also asked Dr. Ippolito about the lack of transparency amongst PBMs, to which Dr. Ippolito suggested they have "extraordinarily complicated contractual relationships," and that simplifying information would make it easier for employers to compare one PBM to another.

Rep. Michael Burgess (R-TX) referenced a bill he was sponsoring to repeal the ACA ban on physician-owned hospitals and asked Dr. Ippolito about the value of such hospitals. The witness suggested that we "ought to take competition where can get it" and that while there is a risk of "cream skimming" with physician-owned hospitals, this risk isn't necessarily "more acute" in those settings. Regarding supporting smaller practices, Dr. Ippolito suggested removing barriers to entry. When questioned on the possibility of removing PBM activity, Dr. Ippolito suggested that in big name drug markets that would be challenging but that there's an effort to move in that direction which makes it "a reasonable goal."

Rep. Paul Ruiz (D-CA) queried how the failure of hospitals to comply with the price transparency rule was complicating patient access to data. Ms. Tripoli suggested that information was being published in a format that was useless for consumers, arguing for the importance of enforcing more standards which require a "dollar and cents" amount and increasing the fine for non-compliance, which at its current level is not efficient to incentivise change. Ruiz also asked about the ACA subsidy expansions in the IRA, to which Ms. Tripoli suggested that these extensions should absolutely be extended while also addressing the root problem of unchecked consolidation. Ruiz concluded that it was imperative the enhanced credits were made permanent.

Rep. Morgan Griffith (R-VA) asked Mr. Forge about cash prices being unavailable at certain hospitals, to which he replied that "there's a lot of challenges … we're talking about lists of thousands." Mr. Forge added that there wasn't enough discussion of transparency around payer strategies which hospitals find difficult to manage and share. When questioned about how the Department of Health and Human Services (HHS) could strengthen the transparency rules, Mr. Severn suggested first enforcing the hospital rule standard and second, "course correction" for the coverage rule which he suggested was necessary because the data is "so much bigger." Though, he noted that CMS had a good process which should be continued. Griffith also queried Mr. Forge on the impact of a system which automatically rejects patient insurance claims, he answered that they have to train to make "denials management a priority" and described it as a "distraction."

Rep. Lisa Blunt Rochester (D-DE) suggested "more must be done" to help Americans suffering high costs of health care. She asked Ms. Tripoli for specific examples about how transparency can help. This witness suggested that better visibility of negotiated rates would help as well as being able to understand out-of-pocket costs.Rochester also asked Mr. Forge how his hospital ensured data was comprehensive across a range of medical literacy levels. Mr. Forge suggested they were trying to use multiple methods, including their website and in person financial counsellors who were helping patients make decisions. Rochester expressed concern that these websites were difficult to understand. Ms. Tripoli suggested that more standardization across required services would help as well as cleaning the data files.

Rep. Larry Bucshon (R-IN) expressed his general support for the 340B drug pricing program and that he wanted federal resources to be put to good use. However, he acknowledged that this program was also being exploited and seen as a revenue generator for shareholders. He called for more transparency of this program and asked Mr. Forge to confirm whether annual amounts of charity care and payer shortfall were required to be disclosed to CMS. Mr. Forge suggested that it was feasible to share information but that 340B was "a challenging program to manage."

Rep. Debbie Dingell (D-MI) queried Ms. Tripoli on the obstacles for hospitals complying with the transparency rule. Ms. Tripoli t raised concerns about whether industry business practices created an incentive to keep prices hidden. When asked what the Committee could specifically do to encourage compliance, Ms. Tripoli suggested strengthening and codifying the rule into statue, prohibiting hospitals from posting prices as a percentage of Medicare and instead requiring more standardization. She also suggested quality information was needed, not just price transparency.

Rep. Gus Bilirakis (R-FL) also referenced the 340B program, saying it allows health centres to meet the "unique needs of their communities." However, he noted that contract pharmacies in some instances don't pass rebates onto patients and raised concerns about the impact of consolidation on the program. In response, Dr. Ippolito said its important to determine whether 340B discounts are going where intended. The member also asked about consolidation incentives and whether the pay Medicare reimburses for physician administered drugs has contributed to the trend in hospitals purchasing local physician practices. Dr. Ippolito suggested that 340B gives hospitals big advantages on acquisition costs and then Medicare reimbursement provides an additional incentive, but he said proposals like site neutral payments could address the problem. Finally, Bilirakis asked about providing patients with data that makes sense to them. Mr. Severn suggested that when a standard is enforced it is easier for everyone while Ms. Bartlett similarly suggested that a template would be the first step.

Rep. Kim Schrier (D-WA) asked Dr. Ippolito about the discrepancy of reimbursement rates at different sites of service and what the Committee should do about it. The witness suggested that there has been a lot of consolidation of facilities. Schrier then asked Mr. Severn about how to give consumers more agency, who responded that there were different mechanisms but that this is not possible without transparency. Finally,

Schrier commented on the role of PBMs in unaffordable prices and said she was "ready to work with members" on combating the perverse incentives.

Rep. Bill Johnson (R-OH) referenced the looming insolvency of the Medicare Trust Fund and noted that health care costs aren't sustainable. He asked Dr. Ippolito about how increased transparency and competition could reduce costs, who answered that it is a "necessity" as otherwise there is no way to put downward pressure on prices. Johnson then asked the witnesses what CMS could do to encourage compliance. Ms. Tripoli suggested that this was "about hospitals showing up and doing their part" while Mr. Severn suggested that price estimates being accurate needs to be enforced.

Rep. Lori Trahan (D-MA) noted the trend of consolidation as threatening community hospitals who "lack negotiating power" and aren't invited to join larger systems. She asked Ms. Tripoli where access to care was consequently most threatened, she answered that there was a direct impact on primary care. Ms. Tripoli further added that one solution is to expand site neutral payments which would eliminate the "perverse incentive" to consolidate as well as closer scrutiny of anti-competitive practices. Trahan suggested she was exploring policy solutions to address the challenges smaller community hospitals face.

Rep. Buddy Carter (R-GA) suggested that the various problems raised during the hearing could be solved if insurance companies weren't allowed to own PBMs and PBMs to own pharmacies as this would increase "competition." Carter asked Ms. Bartlett about the involvement of PBMs prior to her reform, who suggested that the PBM was engaged in spread pricing and had contracted CVS to be the rebate aggregator. Later, Carter praised the FTC's study on the impact of PBMs on retail pharmacies as a result of the low reimbursements they were providing. He also mentioned his bipartisan legislation the Drug Price Transparency and Medicaid Act of 2023 to eliminate the use of spread pricing. Finally, he asked how employers could be helped, Dr. Ippolito suggested that if they are given more information then they'll be able to make a more informed decision.

Rep. Neal Dunn (R-FL) noted that policies such as price caps pervert the market and limit consumer choices. He queried Mr. Severn about whether the data will continue to improve with time or whether tweaks were necessary to assist the process. The witness noted that there was currently a process for the insurance data to be modified through a technical back and forth run by CMS and suggested there could be continued tweaks here. Regarding competition, Dunn asked Mr. Forge how price transparency increased their ability to compete. Mr. Forge suggested that being able to provide a better and improved service will allow their volumes to continue to grow. Finally, he asked about the effects of vertical integration and Dr. Ippolito suggested the effects were less certain.

Rep. Bob Latta (R-OH) asked Mr Forge how to improve transparency, who responded that simplification was needed. Latta also referenced the administrative burden on physicians, to which Mr. Forge suggested that the volume of change in regulations was a part of the challenge. Regarding the 340B program, Dr. Ippolito suggested transparency on the functioning of the program and how hospitals are using the money is necessary.

Rep. John Joyce (R-PA) suggested the 340B drug pricing program has driven increased costs and referenced a "myriad" of issues with the program. Dr. Ippolito suggested more scrutiny is needed to determine whether the money is actually being used for patients who need that care and that there is no effective oversight. Mr. Forge suggested that some rural hospitals weren't getting all the benefits of 340B and suggested this is an area to examine.

Rep. Diana Harshbarger (R-TN) described PBMs as "the devil" and asked Ms. Bartlett about the transparent PBM she used in her reforms. The member queried Mr. Severn on the prices that labs now report for services such as blood tests, who suggested that the availability of this data will increase competition. She also asked Dr. Ippolito about certificate of need regulations, he suggested that there is 30 to 40 years of evidence against them.

Rep. Ann Kuster (D-NH) also referenced the 340B program, praising its ability to reach patients "in need." Kuster queried the witnesses on how site neutral payments could improve costs. Ms. Tripoli answered that there would be significant savings by realigning incentives. The member also suggested that she would be re-introducing her bipartisan bill, Increasing Transparency in Generic Drug Applications Act of 2022, to make it easier for generic drugs to come to market.

Rep. Jay Obernolte (R-CA) suggested there were not "functional free markets" for health care in the U.S. and suggested without such a market the data's use would be limited. Regarding a question on the applicability of Singapore's approach to pre-funding health care to the U.S., Dr. Ippolito suggested that where the incentives are salient that approach could have potential.

Rep. Greg Pence (R-IN) expressed concern for health care in rural communities, suggesting issues were exacerbated by "unsustainable workforce shortages." He asked Dr. Ippolito about site neutral payment models and asked how patients would be impacted if it applied to more providers. In response, Dr. Ippolito suggested it would benefit patients by reducing incentives to consolidate.

Rep. Dan Crenshaw (R-TX) noted the importance of making direct primary care more accessible to patients. In this regard, Dr. Ippolito suggested that it is difficult to estimate the cost savings of primary care. Crenshaw also asked Mr. Severn about making data more "readable" for consumers, who suggested standardization was needed.

Rep. Mariannette Miller-Meeks (R-IA) spoke to problems related to asymmetric Medicare reimbursements in different states and how the value of price transparency declines with more consolidation. When asked about possible payment reforms, Dr. Ippolito noted site neutral payments, scope of practice reform and ensuring 340B is targeted. Miller-Meeks also raised the issue of PBMs "misappropriating patient system dollars" though ran out of time to finish the point.

Rep. Doris Matsui (R-NC) praised the 340B program and expressed concern for some of the criticism raised during the hearing. Mr. Forge noted that 340B helps not just hospitals but also retail pharmacies which are "lifelines" for rural areas. Matsui further asked about the impact of proposals for greater accountability on 340B, Mr. Forge suggested that some rural hospitals he's worked with in rural areas weren't able to meet the high standards required by 340B and consequently weren't able to access the benefits.

Rep. Rick Allen (R-GA) asked Ms. Tripoli what the most important thing for patients to know about their health care was, she suggested strengthening price transparency. He also asked Mr. Severn about direct contracting, who suggested that the barrier to direct contracting will "go down" with the increased availability of data.

Rep. Troy Balderson (R-OH) asked Mr. Severn about whether patients make informed judgements when they receive more data. The witness suggested patients were only just starting to see the data but that simplifying the data would help here. Balderson then questioned Mr. Forge on how to work with rural hospitals to make price transparency less burdensome. Mr. Forge suggested helping individuals with their medical literacy and providing them with access to the resources that they would have in larger health systems. Finally, the member asked Mr. Severn about insurer compliance with the aspect of the transparency rule requiring the provision of personalized pricing information to their enrolees, to which Mr. Severn suggested Turquoise Health doesn't track this.

If you have questions, please contact Heather Meade or Heather Bell.