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## Two-thirds of largest hospitals aren't complying with price transparency rule

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Around two-thirds of the country's largest hospitals are not complying with the new price transparency regulations, a new study found.

CMS compelled hospitals Jan. 1 to publish "a machine-readable file" of rates they negotiated with payers, which the agency hoped would exert downward pressure on higher-than-average prices. But 65 of 100 of the largest U.S. hospitals did not meet the criteria as of early February, according to [research](#) published Tuesday in Health Affairs.

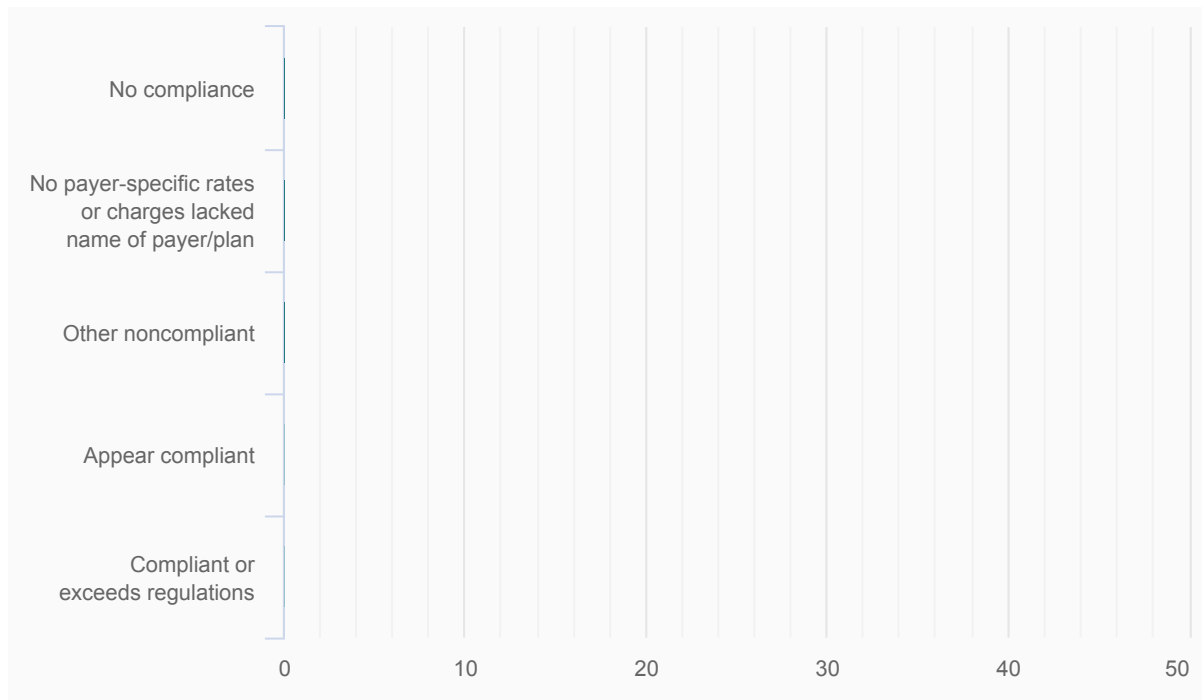
More than 50 hospitals either did not include the payer-specific negotiated rates with the name of the payer and plan, or were [noncompliant](#) in some other way. A dozen did not post any files or provided links to searchable databases that were not downloadable.

Morgan Henderson, an economist at the Hilltop Institute, and his co-author Morgane Mouslim, a policy analyst at Hilltop, set out to parse and analyze pricing data from the nation's largest hospitals. But they soon learned that the more pressing question was if the data was available, Henderson said.

"I was surprised; I was looking forward to digging into the data and writing a paper," he said. "There are always lumps and bumps with new regulations—some posted files that were empty, some were password-protected. Is this accidental; is this intentional? I have no idea, but it was surprising how much variation there was in what actually got posted."

## Transparency problems

65 of 100 hospitals surveyed in Jan./Feb. were not complying with CMS' Hospital Price Transparency Rule



Source: "Low Compliance From Big Hospitals On CMS's Hospital Price Transparency Rule," *Health Affairs Blog*, March 16, 2021. DOI: 10.1377/hblog20210311.899634

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About 22 hospitals in their sample seemed to be compliant, with 13 clearly exceeding the regulations, the researchers added, noting that "hospitals are under strain (with COVID-19) and that complying with this regulation may be especially costly in this challenging period."

The **transparency** rule bolsters prior regulations that only required hospitals to publish their chargemasters, which list gross charges for services that have **little bearing on the actual price** or quality of care. The final rule was delayed about a year as hospitals pushed back, with the American Hospital Association suing to block the regulation on the grounds that HHS lacks the authority, negotiated rates aren't helpful to consumers and the rule would increase administrative burden.

The AHA said in a statement that the "subjective, oversimplified analysis" does not reflect hospitals' transparency efforts nor their role in battling the pandemic.

"The same staff who would be needed to develop the lengthy machine-readable files required by HHS are also the staff who helped hospitals quickly reorient operations to care for patients in new ways," the AHA said.

The hope is that publishing payer-specific negotiated rates along with the chargemaster, discounted cash prices, and de-identified minimum and maximum negotiated rates will allow consumers to be better healthcare shoppers, incentivizing providers to lower prices. Hospitals that don't comply also face a \$300 daily fine if they don't disclose the rates for 300 "shoppable services" in a consumer-friendly form, 70 of which were chosen by CMS.

Although research on the link between price transparency and lower healthcare costs isn't conclusive, disclosing realistic pricing data is generally viewed as a step in the right direction. While price estimators aren't widely used yet, transparency has a **modest downward pressure on prices**, Henderson said.

Hospitals argue that consumers **largely don't use existing price estimators**, high-deductible health plans haven't spurred more healthcare "shopping" and that disclosing payer-specific rates could ultimately raise prices as the lowest-cost providers adjust to the average. Meanwhile, economists and policy experts contend that the tools or data haven't been readily available to facilitate price comparison and that high-cost providers would be forced to justify steep price variation.

Dr. John Cherf, an orthopedic surgeon and chief medical officer at Lumere, a GHX company, has found a 300% variation in price for total joint replacements performed by the highest- and lowest-cost Illinois hospitals.

"We function in an opaque world," said Cherf, noting that doctors are often **in the dark about pricing**. "Do I want to admit or refer my patient to someone not knowing what the cost is? No, that is why there is a big appetite for this."

Hospitals may have taken a wait-and-see approach with the new administration to see how closely it would enforce the transparency rule. But the Biden administration is expected to push the transparency agenda.

During his confirmation hearing, nominee for HHS Secretary Xavier Becerra committed to "robust enforcement" of disclosing pricing data.

"If consumers knew what they were paying, they would really push to make sure prices go down," he said. "That's why our effort was supported up and down the state of California

when we went after the largest healthcare provider in Northern California because people just had an instinctive feeling that the prices they were paying were way too high."

While there hasn't been adequate economic incentive to change consumer behavior, that seems to be evolving, experts said.

Even if Americans don't price shop for hospital services more frequently, third-party organizations and researchers might leverage the data to create incentives for greater transparency, Henderson said.

"That could have a tickle-down effect for consumers," he said. "Right now the world doesn't look that different for the healthcare consumer, but give it some time and there should be a greater sense of competition, which would have a downward pressure on prices."

Cherf is hopeful that broad adoption of the new regulations will lead to more consumer engagement and improve the system for everyone, he said. While he's sympathetic to hospitals battling the COVID-19 pandemic as well as the smaller facilities with less administrative staff, hospitals must manage pricing data more rigorously, Cherf said.

"Every aspect of variation across healthcare should decrease over time, and cost and price variation I bet will never be as great as it is today," he said. "The new price transparency rule should push the bookends closer together."

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