

July 15, 2018

TO: Members, Subcommittee on Oversight and Investigations

FROM: Committee Majority Staff

RE: Hearing entitled “Examining State Efforts to Improve Transparency of Health Care Costs for Consumers.”

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The Subcommittee on Oversight and Investigations will hold a hearing on Tuesday, July 17, 2018, at 10:15 a.m. in 2322 Rayburn House Office Building, entitled “Examining State Efforts to Improve Transparency of Health Care Costs for Consumers.” The purpose of the hearing is to examine state laws and policies that improve transparency of health care costs for consumers and the impact that they had on consumers.

## **I. WITNESSES**

- Jaime King, Professor, UC Hastings College of the Law, Associate Dean and Co-Director, UCSF/UC Hastings Consortium on Law, Science, and Health Policy;
- Michael Chernew, Leonard D. Schaeffer Professor of Health Care Policy, Director, Healthcare Markets and Regulation Lab, Department of Health Care Policy, Harvard Medical School; and
- Kavita Patel, Associate Chief Medical Officer, Johns Hopkins Medicine.

## **II. BACKGROUND**

### **A. Health Care Expenditures**

In 2016, U.S health care spending was estimated to be about \$3.3 trillion, and the overall share of gross domestic product (GDP) related to health care spending was 17.9 percent (up from 17.7 percent in 2015).<sup>1</sup> According to the Centers for Medicare and Medicaid Services (CMS), 32 percent of the \$3.3 trillion in expenditures was spent on hospital care, 20 percent was spent on physician and clinical services, 14 percent was spent on other (including, but not limited to home health care and durable medical equipment), 10 percent was spent on prescription drugs, 8 percent was spent on government administration and net cost of health insurance, 5 percent was spent on nursing care facilities and continuing care retirement communities, 5 percent was spent

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<sup>1</sup> U.S. Dep’t of Health and Human Services, Centers for Medicare & Medicaid Services, *National Health Expenditures 2016 Highlights* (Dec. 2017), available at <https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/Downloads/highlights.pdf>.

on investment, and 4 percent was spent on dental services.<sup>2</sup> The majority—75 percent—of the \$3.3 trillion in expenditures was paid for by health insurance (34 percent by private health insurance, 20 percent by Medicare, 17 percent by Medicaid, and 4 percent by the U.S. Department of Veterans Affairs (VA), the U.S. Department of Defense (DOD), and the Children’s Health Insurance Program (CHIP)).<sup>3</sup>

According to a Kaiser Family Foundation analysis of National Health Expenditure data released by CMS, total health expenditures have increased substantially over the past several decades.<sup>4</sup> Indeed, data released by CMS indicates that total health expenditures in the U.S. were about \$721 billion in 1990, \$1.4 trillion in 2000, \$2.4 trillion in 2008, and \$3.3 trillion in 2016.<sup>5</sup> Moreover, on a per capita basis, health spending has also grown—increasing from \$8,412 in 2010 to \$10,348 in 2016.<sup>6</sup> Although health care expenditures have continued to increase at a rapid pace, U.S. health care spending increased in 2016 at a slower rate than in previous years (in 2016, spending on health care increased by 4.3 percent compared to 5.1 percent in 2014 and 5.8 percent in 2015).<sup>7</sup>

Many different factors may influence health care spending, including, but not limited to, population aging, prices, policy changes, consolidation, and public and private initiatives.<sup>8</sup> Moreover, some research has shown that there may be significant variation in the cost of health care services in one geographic region, and that more expensive health care services are not always associated with a higher quality of care.<sup>9</sup> For example, a 2014 study by the U.S. Government Accountability Office (GAO), found that “the estimated total cost of maternity care at selected acute care hospitals in the Boston area that rated more highly on several quality indicators ranged between \$6,834 and \$21,554 (consumers would pay between \$2,967 and

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<sup>2</sup> U.S. Dep’t of Health and Human Services, Centers for Medicare & Medicaid Services, *The Nation’s Health Dollar (\$3.3 Trillion), Calendar Year 2016: Where it Came From, Where it Went* (Dec. 2017), available at <https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/Downloads/PieChartSourcesExpenditures.pdf>.

<sup>3</sup> *Id.*

<sup>4</sup> Rabah Kamal and Cynthia Cox, Peterson-Kaiser Health System Tracker, *How has U.S. spending on health care changed over time?* (Dec. 20, 2017), available at [https://www.healthsystemtracker.org/chart-collection/u-s-spending-healthcare-changed-time/#item-total-health-expenditures-increased-substantially-past-several-decades\\_2017](https://www.healthsystemtracker.org/chart-collection/u-s-spending-healthcare-changed-time/#item-total-health-expenditures-increased-substantially-past-several-decades_2017).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Micah Hartman, et al., *National Health Care Spending in 2016: Spending and Enrollment Growth Slow After Initial Coverage Expansions*, HEALTH AFFAIRS, Vol. 37, No. 1 (Dec. 6, 2017), available at <https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2017.1299>.

<sup>8</sup> Aaron C. Catlin and Cathy A. Cowan, *History of Health Spending in the United States, 1960-2013* (Nov. 19, 2015), available at <https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/Downloads/HistoricalNHEPaper.pdf>; Sean P. Keehan, et al., *National Health Expenditure Projections, 2016-25: Price Increases, Aging Push Sector to 20 Percent of Economy*, HEALTH AFFAIRS (Mar. 2017), available at [https://www.ssc.wisc.edu/~gwallace/Papers/Health%20Aff-2017-Keehan-hlthaff.2016.1627%20\(1\).pdf](https://www.ssc.wisc.edu/~gwallace/Papers/Health%20Aff-2017-Keehan-hlthaff.2016.1627%20(1).pdf); Medicare Payment Advisory Commission (MedPAC), *Report to the Congress: Medicare and the Health Care Delivery System, Chapter 10: Provider Consolidation: The Role of Medicare Policy* (June 2017).

<sup>9</sup> U.S. Government Accountability Office (GAO), *Health Care Transparency: Actions Needed to Improve Cost and Quality Information for Consumers*, GAO-15-11, at 11 (Oct. 20, 2014).

\$5,000 in estimated out-of-pocket costs).”<sup>10</sup> Similarly, in Massachusetts, the median price of magnetic resonance imaging (MRI) of the spine ranges from \$500 to \$1,670.<sup>11</sup>

Consumers are increasingly responsible for more of their health care costs. According to CMS, in 2016, consumers directly paid for about 11 percent of the \$3.3 trillion spent on health care and out-of-pocket spending grew at the fastest rate of growth in 2016 since 2007.<sup>12</sup> In an April 2018 report, America’s Health Insurance Plans (AHIP) indicated that the number of individuals enrolled in Health Savings Account (HSA)-Qualified High Deductible Health Plans (HDHPs) has been increasing, and that as of January 2017, 52 health insurance providers reported that over 21.8 million people were enrolled in an HSA-Qualified HDHP.<sup>13</sup> This is a significant increase over the approximately 10 million individuals enrolled in an HSA-Qualified HDHP in 2010.

## **B. Health Care Price Transparency Efforts**

### **i. Overview**

As consumers pay more for their health care, there has been an increasing amount of discussion about the role of health care price transparency for consumers and the importance of providing consumers with information that enables them to make informed health care decisions.<sup>14</sup> Some experts have reasoned that providing patients with information about health care costs may help reduce spending and improve care by empowering patients to make informed health care decisions.<sup>15</sup> Other experts, however, have questioned whether some of the

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<sup>10</sup> *Id.* at 12

<sup>11</sup> Ateev Mehrotra, M.D., M.P.H., Michael E. Chernew, Ph.D., and Anna D. Sinaiko, Ph.D., *Promise and Reality of Price Transparency*, THE NEW ENGLAND JOURNAL OF MEDICINE, at 1348 (Apr. 8, 2018); *See also* Zack Cooper, et al., *The Price Ain’t Right? Hospital Prices and Health Spending on the Privately Insured*, HEALTH CARE PRICING PROJECT, at 21 (May 8, 2018), available at [http://www.healthcarepricingproject.org/sites/default/files/20180507\\_variationmanuscript\\_0.pdf](http://www.healthcarepricingproject.org/sites/default/files/20180507_variationmanuscript_0.pdf).

<sup>12</sup> U.S. Dep’t of Health and Human Services, Centers for Medicare & Medicaid Services, *National Health Expenditures 2016 Highlights* (Dec. 2017), available at <https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/Downloads/highlights.pdf>; U.S. Dep’t of Health and Human Services, Centers for Medicare & Medicaid Services, *The Nation’s Health Dollar (\$3.3 Trillion), Calendar Year 2016: Where it Came From, Where it Went* (Dec. 2017), available at <https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/Downloads/PieChartSourcesExpenditures.pdf>.

<sup>13</sup> America’s Health Insurance Plans (AHIP), *Health Savings Accounts and High Deductible Health Plans Grow as Valuable Financial Planning Tools*, at 3 (Apr. 2018), available at [https://www.ahip.org/wp-content/uploads/2018/04/HSA\\_Report\\_4.12.18.pdf](https://www.ahip.org/wp-content/uploads/2018/04/HSA_Report_4.12.18.pdf).

<sup>14</sup> *See, e.g.*, U.S. Government Accountability Office (GAO), *Health Care Transparency: Actions Needed to Improve Cost and Quality Information for Consumers*, GAO-15-11, at 1 (Oct. 20, 2014).

<sup>15</sup> *See, e.g.*, Robert Wood Johnson Foundation, *How Price Transparency Can Control the Cost of Health Care*, Health Policy Snapshot Series (Mar. 1, 2016), available at <https://www.rwjf.org/en/library/research/2016/03/how-price-transparency-controls-health-care-cost.html>; Health Care Cost Institute, *Issue Brief: Spending on Shoppable Services in Health Care* (Mar. 2016), available at [http://www.healthcostinstitute.org/files/Shoppable%20Services%20IB%203.2.16\\_0.pdf](http://www.healthcostinstitute.org/files/Shoppable%20Services%20IB%203.2.16_0.pdf); Chapin White, et al., *Policy Analysis: Healthcare Price Transparency: Policy Approaches and Estimated Impacts on Spending* (May 2014), available at <http://www.westhealth.org/wp-content/uploads/2015/05/Price-Transparency-Policy-Analysis-FINAL-5-2-14.pdf>; Bobbi Coluni, *White Paper: Save \$36 Billion in U.S. Healthcare Spending Through Price Transparency*, Thomson Reuters (Feb. 2012), available at [http://64.64.16.103/wp-content/uploads/2012/09/thomsonreuters\\_savings\\_from\\_price\\_transparency.pdf](http://64.64.16.103/wp-content/uploads/2012/09/thomsonreuters_savings_from_price_transparency.pdf).

current efforts to engage patients and provide them with information about the costs of health care services have successfully lowered health care expenditures and encouraged price shopping.<sup>16</sup> Recently, the Secretary of the Department of Health and Human Services (HHS), Alex Azar, highlighted the potential value of price transparency.<sup>17</sup> Azar said that “if we want to move to a system where we put patients more in charge of their own healthcare dollars, providers and insurers have to become more transparent about their pricing. There is no more powerful force than an informed consumer.”<sup>18</sup>

Many states have taken steps to improve price transparency in the health care market and lower health care costs. These transparency efforts have generally attempted to provide consumers with information about different types of health care costs, including, but not limited to, information about the cost of health care services and/or the cost of prescription drugs. The state initiatives encouraging more transparency on prescription drug costs have taken a variety of different approaches, including, but not limited to, requiring drug manufacturers to submit information about price increases, requiring drug manufacturers to report information regarding the prices of prescription drugs and the costs associated with developing and marketing them, and prohibiting “gag clauses” that restrict pharmacists from disclosing price options to customers.<sup>19</sup> According to the National Conference of State Legislatures (NCSL), 22 states enacted laws between 2016 and May 31, 2018, prohibiting “gag clauses” in contracts that prohibit pharmacies from telling consumers about alternative pricing options for prescription drugs.<sup>20</sup>

Similarly, state efforts to promote price transparency for the cost of health care services have also have varied in approach. For instance, some state efforts have required that providers report certain pricing information to the state or the patient while other efforts have required that insurers submit certain pricing information.<sup>21</sup> Likewise, some state initiatives have required that pricing information be publicly posted while other initiatives have required that the information be given to the individual patient before they receive medical care.<sup>22</sup> Sections II.B.ii and II.B.iii of this memorandum provide a non-exhaustive list of examples of health care transparency tools

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<sup>16</sup> See, e.g., Sunita Desai, et al., *Association Between Availability of a Price Transparency Tool and Outpatient Spending*, JAMA (May 3, 2016), available at <https://jamanetwork.com/journals/jama/fullarticle/2518264>.

<sup>17</sup> Alex M. Azar II, *Remarks on Value-Based Transformation to the Federation of American Hospitals* (Mar. 5, 2018), available at <https://www.hhs.gov/about/leadership/secretary/speeches/2018-speeches/remarks-on-value-based-transformation-to-the-federation-of-american-hospitals.html>.

<sup>18</sup> *Id.*

<sup>19</sup> National Conference of State Legislatures, Prescription Drug Resource Center, *Recent Approaches in State Prescription Drug Laws* (Apr. 4, 2018), available at <https://kaiserhealthnews.files.wordpress.com/2018/04/recent-approaches-in-state-prescription-drug-laws-discussion-march-2018-002.pdf>; National Conference of State Legislatures, Prescription Drug Resource Center, *Prohibiting PBM “Gag Clauses” that Restrict Pharmacists from Disclosing Price Options: Recent State Legislation 2016-2018* (Jun. 1, 2018), available at [http://www.ncsl.org/Portals/1/Documents/Health/Pharmacist\\_Gag\\_clauses-2018-14523.pdf](http://www.ncsl.org/Portals/1/Documents/Health/Pharmacist_Gag_clauses-2018-14523.pdf).

<sup>20</sup> National Conference of State Legislatures, Prescription Drug Resource Center, *Prohibiting PBM “Gag Clauses” that Restrict Pharmacists from Disclosing Price Options: Recent State Legislation 2016-2018* (Jun. 1, 2018), available at [http://www.ncsl.org/Portals/1/Documents/Health/Pharmacist\\_Gag\\_clauses-2018-14523.pdf](http://www.ncsl.org/Portals/1/Documents/Health/Pharmacist_Gag_clauses-2018-14523.pdf).

<sup>21</sup> National Conference of State Legislatures, *Transparency and Disclosure of Health Costs and Provider Statements: State Actions* (last updated Mar. 2017), available at <http://www.ncsl.org/research/health/transparency-and-disclosure-health-costs.aspx>.

<sup>22</sup> Ateev Mehrotra, M.D., M.P.H., Michael E. Chernew, Ph.D., and Anna D. Sinaiko, Ph.D., *Promise and Reality of Price Transparency*, THE NEW ENGLAND JOURNAL OF MEDICINE, at 1348-49 (Apr. 8, 2018).

adopted by the states and other stakeholders that help inform patients about the costs of health care services.

As some of these transparency initiatives have been discussed and implemented, many stakeholders have highlighted the importance of considering several factors to ensure that, when a transparency tool is adopted, it conveys health care cost information to consumers in a meaningful way. For example, in 2014, the Healthcare Financial Management Association (HFMA) issued a report entitled “Price Transparency in Health Care” outlining five principles for the development of price transparency tools.<sup>23</sup> These principles include, among other things, that “price transparency should empower patients and other care purchasers to make meaningful price comparisons prior to receiving care,” and “that price transparency should ultimately provide patients with the information they need to understand the total price of their care and what is included in that price.”<sup>24</sup> Similarly, in an October 2014 report, GAO noted that “[t]ransparency tools are most effective if they provide information relevant to consumers and convey information in a way that consumers can readily understand” and identified 15 characteristics of effective transparency tools.<sup>25</sup> Moreover, one economist at the Kellogg School of Management at Northwestern University recently found that health care consumers will price shop, but only if the information is conveyed in a simple, and understandable manner.<sup>26</sup>

Some of the factors that make it difficult to convey price information to consumers in a meaningful way includes, but is not limited to, the fact that: (1) price information is oftentimes most useful for insured customers if it includes specific information about their particular insurance coverage;<sup>27</sup> (2) each patient has unique circumstances that may change the cost of their care;<sup>28</sup> (3) billing for health care services is complex;<sup>29</sup> (4) price information may be more useful to consumers if it also provides them with information about quality;<sup>30</sup> (5) according to one study, less than seven percent of out-of-pocket spending was spent on shoppable health care services;<sup>31</sup> and (6) transparency might be most effective if it is combined with other incentives or benefit designs that encourage consumers to price shop.<sup>32</sup> Section II.B.iv of this memorandum

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<sup>23</sup> Healthcare Financial Management Association (HFMA), *Price Transparency in Health Care, Report from the HFMA Price Transparency Task Force* (2014), available at <https://www.hfma.org/transparency/>.

<sup>24</sup> *Id.*

<sup>25</sup> U.S. Government Accountability Office (GAO), *Health Care Transparency: Actions Needed to Improve Cost and Quality Information for Consumers*, GAO-15-11, at 11 (Oct. 20, 2014).

<sup>26</sup> Kellogg Insight, *Will People Price Shop for Healthcare?* (Jan. 4, 2018), available at <https://insight.kellogg.northwestern.edu/article/will-people-price-shop-for-healthcare>.

<sup>27</sup> U.S. Government Accountability Office (GAO), *Health Care Transparency: Actions Needed to Improve Cost and Quality Information for Consumers*, GAO-15-11, at 11 (Oct. 20, 2014).

<sup>28</sup> Public Agenda, *Still Searching: How People Use Health Care Price Information in the United States, New York State, Florida, Texas, and New Hampshire* (2017), available at [https://www.publicagenda.org/files/PublicAgenda\\_StillSearching\\_2017.pdf](https://www.publicagenda.org/files/PublicAgenda_StillSearching_2017.pdf).

<sup>29</sup> Matt Kuhrt, *Report: This is the biggest barrier to consumer price shopping in healthcare*, FIERCEHEALTHCARE (Apr. 11, 2018), available at <https://www.fiercehealthcare.com/hospitals-health-systems/report-finds-barriers-to-use-price-transparency-tools>.

<sup>30</sup> Francois de Brantes, et al., *Price Transparency & Physician Quality Report Card 2017*, ALTARUM AND CATALYST FOR PAYMENT REFORM (2017).

<sup>31</sup> Health Care Cost Institute (HCCI), *Issue Brief: Spending on Shoppable Services in Health Care* (Mar. 2016), available at [http://www.healthcostinstitute.org/files/Shoppable%20Services%20IB%203.2.16\\_0.pdf](http://www.healthcostinstitute.org/files/Shoppable%20Services%20IB%203.2.16_0.pdf).

<sup>32</sup> See, e.g., Sunita Desai, et al., *Offering A Price Transparency Tool Did Not Reduce Overall Spending Among California Public Employees and Retirees*, HEALTH AFFAIRS 36:8 (Aug. 2017).

discusses some of these barriers to effective price transparency tools in more detail and highlights some of the recent evidence suggesting that many price transparency initiatives have not been associated with decreased spending.<sup>33</sup>

## ii. State Efforts to Promote Transparency of the Cost of Health Care Services for Consumers

As previously mentioned, there are a lot of initiatives at the state level to make the price of health care services available to consumers. For illustrative purposes, below is a non-exhaustive list of some of these efforts.

- **New Hampshire:** New Hampshire has adopted robust price transparency policies. New Hampshire created an All-Payer Claims Database (APCD)<sup>34</sup> in 2003 to collect and disseminate information about health care prices.<sup>35</sup> Four years later, in 2007, New Hampshire launched a public website, NHHealthCost.org, that originally provided the median bundled prices for about thirty of the most common health care services.<sup>36</sup> Today, NHHealthCost.org has been expanded to provide consumers with information for over 100 services and provides information about specific providers that can be customized to include information about the individual's specific health plan.<sup>37</sup> The website also includes certain quality information.<sup>38</sup> Additional information about New Hampshire's website and the methodology used for health costs is available on NHHealthCost.org.<sup>39</sup> On July 12, the New Hampshire Insurance Department announced that it was partnering with Harvard Medical School to help New Hampshire residents find medical cost estimates.<sup>40</sup> In the press release, the President and CEO of the Greater Manchester Chamber of Commerce commented that "NHHealthCost.org gives employers a way to share information on the differences in healthcare costs and quality. It also offers resources for large and small employers to help them evaluate the value of their

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<sup>33</sup> Ateev Mehrotra, M.D., M.P.H., Michael E. Chernew, Ph.D., and Anna D. Sinaiko, Ph.D., *Promise and Reality of Price Transparency*, THE NEW ENGLAND JOURNAL OF MEDICINE (Apr. 8, 2018).

<sup>34</sup> Additional information about All-Payer Claims Databases (APCDs) and how they are used to provide consumers with price information is available on a website created by the APCD Council. See APCD Council, *APCD Showcase* (last visited Jul. 12, 2018), available at <https://www.apcdshowcase.org>.

<sup>35</sup> The Source on Healthcare Price & Competition, New Hampshire (last visited Jul. 12, 2018), available at <http://sourceonhealthcare.org/new-hampshire/>.

<sup>36</sup> *Id.*

<sup>37</sup> Ateev Mehrotra, M.D., M.P.H., Michael E. Chernew, Ph.D., and Anna D. Sinaiko, Ph.D., *Promise and Reality of Price Transparency*, THE NEW ENGLAND JOURNAL OF MEDICINE (Apr. 8, 2018); New Hampshire Insurance Department, *NH HealthCost* (last visited Jul. 12, 2018), available at <https://nhhealthcost.nh.gov/costs/medical/step-2/?carrier=uninsured#filter-control>.

<sup>38</sup> New Hampshire Insurance Department, *NH HealthCost* (last visited Jul. 12, 2018), available at <https://nhhealthcost.nh.gov/costs/medical/step-2/?carrier=uninsured#filter-control>.

<sup>39</sup> See New Hampshire Insurance Department, *Methodology for Health Costs for Consumers* (Jul. 12, 2018), available at <https://nhhealthcost.nh.gov/methodology-health-costs-consumers>.

<sup>40</sup> New Hampshire Insurance Department, *NH Insurance Department Partners with Harvard Medical School to Help NH Residents Find Medical Cost Estimates* (Jul. 12, 2018), available at <https://www.nh.gov/insurance/media/pr/2018/documents/07-12-18-nh-healthcost-updates-harvard-press-release.pdf>.

investments in health benefits.”<sup>41</sup> New Hampshire also requires that health insurers provide their members with price information.<sup>42</sup>

- **Massachusetts:** Massachusetts has introduced several bills to improve transparency.<sup>43</sup> One of the price transparency initiatives in Massachusetts was the development of a website that provides consumers with certain information about pricing of different health care services, quality information, and other resources such as suggested questions to ask about health care.<sup>44</sup> The website, [MassCompareCare.gov](http://MassCompareCare.gov), provides information about the total amount that was paid to the provider for certain services, and allows consumers to compare the costs of medical procedures in different health care facilities.<sup>45</sup> It provides information about the cost of nearly 300 common medical services and procedures.<sup>46</sup> The website also directs consumers to their insurance plan to learn what the procedure will cost them.<sup>47</sup> Under the Massachusetts Healthcare Cost Containment and Quality Improvement law, passed in 2012, all health insurers in Massachusetts are required to provide members with cost estimates online.<sup>48</sup> Recently, Massachusetts announced that it plans to release all of the data it uses to support its website as a single dataset on July 20, 2018, and, at that time, will also launch a transparency data challenge to promote innovative uses of the data.<sup>49</sup>
- **Ohio:** In 2015, Ohio passed a law requiring providers to give patients a “good faith” estimate of how much non-emergency, elective health care services would cost individuals after accounting for insurance.<sup>50</sup> Due to ongoing litigation, the law has not yet been implemented.<sup>51</sup>

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<sup>41</sup> *Id.*

<sup>42</sup> National Conference of State Legislatures, *Transparency and Disclosure of Health Costs and Provider Payments: State Actions* (last updated Mar. 2017), available at <http://www.ncsl.org/research/health/transparency-and-disclosure-health-costs.aspx>.

<sup>43</sup> The Source on Healthcare Price & Competition, *Massachusetts* (last visited Jul. 12, 2018), available at <http://sourceonhealthcare.org/massachusetts/>.

<sup>44</sup> Commonwealth of Massachusetts, *CompareCare* (last visited Jul. 12, 2017), available at <https://masscomparecare.gov/>.

<sup>45</sup> Commonwealth of Massachusetts, *About CompareCare* (last visited Jul. 12, 2017), <https://masscomparecare.gov/about>.

<sup>46</sup> Priyanka Dayal McCulskey, *What consumers need to know about the state’s new health care website*, THE BOSTON GLOBE (May 16, 2018), available at <https://www.bostonglobe.com/metro/2018/05/15/what-consumers-need-know-about-state-new-health-care-website/n9XGrgu1VtN4mhJQqc8PFL/story.html>.

<sup>47</sup> Commonwealth of Massachusetts, *CompareCare* (last visited Jul. 12, 2017), available at <https://masscomparecare.gov/>.

<sup>48</sup> Mass.gov, Mass Consumer Affairs Blog, *Massachusetts Health Insurers Now Required to Provide Prices in Real-Time* (Oct. 1, 2014), available at <https://blog.mass.gov/consumer/massconsumer/massachusetts-health-insurers-now-required-to-provide-prices-in-real-time/>.

<sup>49</sup> Center for Health Information and Analysis (CHIA), *Strategy for Releasing Procedure Price Data* (Jun. 2018), available at <http://www.chiamass.gov/assets/Uploads/Strategy-for-Releasing-Procedure-Pricing-Data.pdf>.

<sup>50</sup> The Source on Healthcare Price & Competition, *Ohio* (last visited Jul. 12, 2018), available at <http://sourceonhealthcare.org/ohio/>.

<sup>51</sup> *Id.*

- **Colorado:** Colorado has passed many proposals to promote price transparency.<sup>52</sup> One of the recent initiatives passed by Colorado requires that hospitals and certain other provider groups to post their private-pay, non-discounted fees on their websites, or make them available upon request, for the most common health care services that they provide.<sup>53</sup>
- **Illinois:** Illinois has implemented several policies to promote price transparency.<sup>54</sup> One of the laws passed in Illinois requires that hospitals give prospective patients estimated costs of services before treatment.<sup>55</sup>

Again, the above list is just a sampling of some of the state initiatives. For example, other states with health care price transparency websites include, but are not limited to, Oregon,<sup>56</sup> Maine,<sup>57</sup> Maryland,<sup>58</sup> and Washington.<sup>59</sup> While there have been several state initiatives targeted at price transparency, an annual report card released by the Catalyst for Payment Reform and Altarum's Center for Payment Innovation still gives most states a failing grade.<sup>60</sup> Indeed, in the 2017 report card, only two states—Maine and New Hampshire—received an “A” for transparency, only two states—Maryland and Oregon—received a “B” for transparency, and only three states—Colorado, Vermont, and Virginia—received a “C” for transparency. The other 43 states received an “F” for transparency.<sup>61</sup> According to the organizations, “states with high price transparency grades have rich data sources and supply meaningful price information on a wide range of procedures and services that is presented on an accessible, publicly available website.”<sup>62</sup>

States have encountered a lot of different barriers while trying to adopt some of these transparency initiatives. For example, many of the state transparency websites utilize information from the state's All-Payer Claims Databases (APCDs) to help facilitate price shopping, and there have been a number of implementation challenges for APCDs including

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<sup>52</sup> The Source on Healthcare Price & Competition, *Colorado* (last visited Jul. 12, 2018), available at <http://sourceonhealthcare.org/legislation-regulation/colorado/>.

<sup>53</sup> Colorado General Assembly, *SB17-065: Transparency in Direct Pay Health Care Prices* (2017), available at <https://leg.colorado.gov/bills/sb17-065>; See also Richard Mark Kirkner, *If You Make Them Build It, They Still May Not Come*, MANAGED CARE (Jun. 3, 2018), available at <https://www.managedcaremag.com/archives/2018/6/if-you-make-them-build-it-they-still-may-not-come>.

<sup>54</sup> The Source on Healthcare Price & Competition, *Illinois* (last visited Jul. 12, 2018), available at <http://sourceonhealthcare.org/illinois/>.

<sup>55</sup> National Conference of State Legislatures, *Transparency and Disclosure of Health Costs and Provider Statements: State Actions* (last updated Mar. 2017), available at <http://www.ncsl.org/research/health/transparency-and-disclosure-health-costs.aspx>.

<sup>56</sup> OregonHospitalGuide.org (last visited Jul. 12, 2018), available at <http://oregonhospitalguide.org/>.

<sup>57</sup> CompareMaine.org (last visited Jul. 12, 2018), available at <http://www.comparemaine.org>.

<sup>58</sup> Maryland Health Care Commission, *Wear the Cost* (last visited Jul. 12, 2018), available at <http://wearthecost.org>; See also Robert E. Moffitt, Ph.D, et al., *The Next Chapter In Transparency: Maryland's Wear the Cost*, THE HERITAGE FOUNDATION (Oct. 19, 2017), available at <https://www.heritage.org/health-care-reform/commentary/the-next-chapter-transparency-marylands-wear-the-cost>.

<sup>59</sup> Washington HealthCareCompare (last visited Jul. 12, 2018), available at <https://www.wahealthcarecompare.com>.

<sup>60</sup> In 2017, the Catalyst for Payment Reform and Altarum's Center for Payment Innovation issued a report card that combined price transparency and quality information in one report card. Francois de Brantes, et al., *Price Transparency & Physician Quality Report Card 2017*, ALTARUM AND CATALYST FOR PAYMENT REFORM (2017).

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at 3.



issues relating to: (1) concerns with data privacy and security; (2) concerns with the accuracy and integrity of the data that is submitted and whether the data conveys information in an accurate manner; (3) concerns with the comprehensiveness of the data submitted to the APCD; (4) concerns regarding whether the release of negotiated price information could violate state and federal antitrust laws and lead to collusion; (5) concerns that the requested information is confidential information pursuant to specific contractual provisions or is subject to trade secret protection; and (6) concerns with the administrative cost to comply with some of the requirements.<sup>63</sup>

### **iii. Other Price Transparency Tools that are Available to Promote Transparency of Health Care Services for Consumers**

The private sector has also pursued a lot of different transparency efforts to help inform consumers of the price of health care services. Nearly all insurers provide their members with access to a health care cost transparency tool.<sup>64</sup> Many employers—at least 85 percent of self-insured employers according to one report—also use vendors such as Castlight Health and Truven Health Analytics to provide health care price transparency tools to employees.<sup>65</sup> According to a poll conducted by one of these vendors, Truven, 80 percent of the individuals who used the tool and were surveyed said that the cost transparency tool “helped them understand their financial responsibility up front.”<sup>66</sup> Similarly, some hospitals and other providers have developed health care price transparency tools for patients.<sup>67</sup>

## **C. Role and Impact of Health Care Price Transparency**

As previously mentioned, there has been an increasing amount of interest in the role of price transparency, especially as consumers are directly responsible for more of their health care costs.<sup>68</sup> Patients generally want to know how much health care services will cost. A report released by Public Agenda in 2017 found that about 50 percent of Americans have tried to find health care price information before obtaining care and about 20 percent of individuals have tried to compare provider prices.<sup>69</sup> A report released by the Foundation for Government Accountability (FGA) found that 77 percent of Americans want the “Right to Shop” in health

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<sup>63</sup> The Source on Healthcare Price & Competition, *Healthcare Legislative Topics: All Payer Claims Databases*, MEDIUM (Apr. 3, 2015), available at <https://medium.com/@SourceOnHealth/healthcare-legislative-topics-all-payer-claims-databases-6f87b24c7fcf>.

<sup>64</sup> Shelby Livingston, *Is the price right? Solving healthcare’s transparency problem*, MODERN HEALTHCARE (last visited Jul. 12, 2018), available at <http://www.modernhealthcare.com/reports/achieving-transparency-in-healthcare/#/>.

<sup>65</sup> *Id.*

<sup>66</sup> Truven Health Analytics, *The Value of Price Transparency in Healthcare* (last visited Jul. 14, 2018), available at [http://img.en25.com/Web/TruvenHealthAnalytics/Price\\_Transparency\\_Infographic\\_FINAL.pdf](http://img.en25.com/Web/TruvenHealthAnalytics/Price_Transparency_Infographic_FINAL.pdf).

<sup>67</sup> See, e.g., Harris Meyer, Hospitals roll out online price estimators as CMS presses for transparency, *Modern Healthcare* (Jun. 23, 2018), available at <http://www.modernhealthcare.com/article/20180623/NEWS/180629994>.

<sup>68</sup> See, e.g., U.S. Government Accountability Office (GAO), *Health Care Transparency: Actions Needed to Improve Cost and Quality Information for Consumers*, GAO-15-11, at 1 (Oct. 20, 2014).

<sup>69</sup> Public Agenda, *Still Searching: How People Use Health Care Price Information in the United States*, *New York State, Florida, Texas, and New Hampshire* (Apr. 2017).

care.<sup>70</sup> Having access to price and quality information can help enable patients identify lower cost and high quality care.<sup>71</sup>

While these reports showed that many patients want to know the cost of their health care services, some other studies have raised concerns about how, if at all, consumers use some of the available price transparency tools.<sup>72</sup> In April 2018, the *New England Journal of Medicine* published an article entitled “Promise and Reality of Price Transparency” that described how “[m]any politicians and experts believe that price transparency will increase price shopping and reduce health care spending,” yet concluded that “[t]o date, price transparency has not achieved the promises of facilitating price shopping and decreasing spending.”<sup>73</sup> The article reasoned that price transparency tools may not have encouraged price shopping because many patients do not know about the available tools, the complexity of health care billing makes it difficult for patients to price shop, patients are not given standardized information that they can use to make price comparisons, most health plans do not have benefit designs that encourage price shopping, and patients do not want to disrupt their relationship with their provider.<sup>74</sup> Another article highlighted that there are many different purposes for price transparency, and determining the success of different price transparency efforts depends on the goal trying to be accomplished.<sup>75</sup> Similarly, some experts have questioned whether consumers are the best target of transparency efforts or, alternatively, if transparency targeted at other stakeholders, such as providers, would be more effective.<sup>76</sup>

In addition to concerns about whether consumers are using price transparency tools and whether they decrease spending, some experts have cautioned that it is important to carefully structure price transparency initiatives to avoid unintentional consequences. For example, during a 2014 workshop at the Federal Trade Commission (FTC) examining health care competition and efforts to provide consumers, providers, payers, employers, and other stakeholders with meaningful price transparency, some of the panelists discussed how some forms of price transparency might have unintended consequences such as leading consumers to more expensive

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<sup>70</sup> Foundation for Government Accountability, *Allies of Right to Shop: Paying Patients to Pick High-Value Healthcare* (Dec. 28, 2016), available at <https://thefga.org/research/allies-of-right-to-shop-2/>.

<sup>71</sup> See, e.g., Foundation for Government Accountability, *How a Patient Experiences Right to Shop – Jenny’s Story* (Dec. 28, 2016), available at <https://thefga.org/research/how-a-patient-experiences-right-to-shop-2/>.

<sup>72</sup> Ateev Mehrotra, MD, MPH, et al., *Defining Goals of Health Care Price Transparency: Not Just Shopping Around*, NEJM CATALYST (Jun. 26, 2018), available at <https://catalyst.nejm.org/health-care-price-transparency-goals/>.

<sup>73</sup> Ateev Mehrotra, M.D., M.P.H., Michael E. Chernew, Ph.D., and Anna D. Sinaiko, Ph.D., *Promise and Reality of Price Transparency*, THE NEW ENGLAND JOURNAL OF MEDICINE (Apr. 8, 2018).

<sup>74</sup> *Id.*

<sup>75</sup> Ateev Mehrotra, MD, MPH, et al., *Defining Goals of Health Care Price Transparency: Not Just Shopping Around*, NEJM CATALYST (Jun. 26, 2018), available at <https://catalyst.nejm.org/health-care-price-transparency-goals/>.

<sup>76</sup> See, e.g., *id.*

providers.<sup>77</sup> Similarly, in a July 2015 blog post, the FTC cautioned that “transparency is not universally good,” and if it “goes too far, it can actually harm competition and consumers.”<sup>78</sup>

### III. ISSUES

The following issues may be examined at the hearing:

- Different state efforts to enhance price transparency and provide consumers with information about the cost of medical care and medical products;
- The purposes of different price transparency tools that states have adopted to provide consumers with information about the cost of medical care;
- How to most effectively provide consumers with meaningful price information that they can use to evaluate medical care;
- Concerns with some of the different price transparency efforts that have been pursued at the state level;
- Whether consumers have been using some of the various price transparency tools, and if not, the reasons that consumers have not been using them; and
- Whether there are other forms of transparency, such as transparency directed at providers rather than consumers, that should also be considered.

### IV. STAFF CONTACTS

If you have any questions regarding the hearing, please contact Jen Barblan, Natalie Turner, or Lamar Echols of the Committee staff at (202) 225-2927.

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<sup>77</sup> Federal Trade Commission, *Workshop Transcript: Examining Health Care Competition*, at 85-6 (Mar. 21, 2014), available at [https://www.ftc.gov/system/files/documents/public\\_events/200361/transcriptmar21\\_0.pdf](https://www.ftc.gov/system/files/documents/public_events/200361/transcriptmar21_0.pdf).

<sup>78</sup> Tara Isa Koslov and Elizabeth Jex, Office of Policy Planning, Federal Trade Commission, *Price transparency or TMI?* (Jul. 2, 2015), available at <https://www.ftc.gov/news-events/blogs/competition-matters/2015/07/price-transparency-or-tmi>.