



**American Society for
Gastrointestinal Endoscopy**

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200 Independence Ave SW
Washington, DC 20201

The Honorable Eugene Scalia
Secretary
U.S. Department of Labor
200 Constitution Ave NW
Washington, DC 20210

The Honorable Steven Mnuchin
Secretary
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Re: Transparency in Coverage — CMS-9915-P

Dear Secretary Azar, Secretary Scalia and Secretary Mnuchin:

The American Society for Gastrointestinal Endoscopy (ASGE) welcomes the opportunity to comment on the rule “Transparency in Coverage” (CMS-9915-P) as proposed by the Department of Health and Human Services, Department of Labor, and Department of the Treasury and published in the *Federal Register* on November 27, 2019.

The ASGE was founded in 1941 and since that time has been dedicated to advancing patient care and digestive health by promoting excellence in gastrointestinal endoscopy. ASGE, with more than 14,000 members worldwide, promotes the highest standards for endoscopic training and practice, fosters endoscopic research, recognizes distinguished contributions to endoscopy, and is the foremost resource for endoscopic education.

At a fundamental level, consumers deserve and expect information, tools and resources to shop, compare and make decisions regarding the purchase and consumption of goods and services. This is no less true in health care; yet, consumers struggle to obtain complete, accurate, and timely information about the cost of health care services. Insurer payment policies, coverage rules, and cost-sharing

requirements are difficult for consumers to understand, much less for providers to communicate to their patients in an accurate and common manner. With approximately 90 percent of Americans under the age of 65 covered by private or public health insurance, insurance companies control most of the information necessary to help patients understand the costs associated with the health care services they receive and are therefore best positioned to improve the accessibility and quality of that information.

ASGE agrees with the Departments that consumers must be able to effectively shop for coverage that best meets their needs at prices they can afford. Pricing information is becoming more important for the increasing number of consumers who find themselves in high-deductible plans, or those with pre-existing or rare conditions who may need to seek care from out-of-network providers. The Departments also contend the proposed transparency rules will empower the nation's 28.5 million uninsured consumers to make more informed health care decisions. While this is a noble objective, it is first and foremost the basic responsibility of our Congress and this Administration to reject policies that contribute to the loss of health coverage, both public and private, and to support policies that will expand affordable and comprehensive health insurance coverage to more Americans.

Information Disclosure to Participants, Beneficiaries, or Enrollees

The Departments propose seven content elements a plan or issuer must disclose, upon request, to a participant, beneficiary, or enrollee (or his or her authorized representative) for a covered item or service, to the extent relevant to the individual's cost-sharing liability for the item or service.

It is reasonable that a health plan participant, beneficiary or enrollee be able to obtain complete information from an insurer or payer about their out-of-pocket cost obligation for health care services prior to that service being delivered by an in-network or out-of-network provider and be made aware of other plan designs that may affect patient out-of-pocket costs.

The Departments propose plans and issuers would be required to disclose an estimate of the cost-sharing liability for the furnishing of a covered item or service by a particular provider or providers, including facility fees. If a goal is to provide individuals with information so they can consider price when choosing a provider from whom to receive care then it seems consumers must understand cost variables, such as differences in out-of-pocket costs based on site of service. Put simply, if consumers don't know what questions to ask or information to request, how can we expect them to make fully informed decisions? Mechanisms to avoid confusion and improve health literacy should be addressed by health plans developing and providing resources that help patients understand the complexities of health care pricing.

ASGE supports the disclosure by health plans to their enrollees whether a specific covered item or service for which the individual requests cost-sharing information may be subject to a prerequisite for coverage, such as concurrent review, prior authorization, and step-therapy or fail-first protocols. When requested, this information should be specific to the plan and provider rather than a generalized statement that an item or service may be subject to a prerequisite for coverage.

Lastly, ASGE supports plans and issuers be required to convey via notice to the participant, beneficiary or enrollee that actual charges for covered items and services may be different from those described in a cost-sharing liability estimate, depending on the actual items and services received at

the point of care. This is a critical element of disclosure because for many items and services, a consumer will need to understand all the permutations of what a medical service or procedure may entail for the most accurate estimation of cost liability. With this being unlikely, patients should be prepared for out-of-pocket costs that are not described by the cost-sharing liability estimate provided by the health plan.

Public Disclosure of Negotiated Rates and Historical Allowed Amount Data for Covered Items and Services from Out-of-Network Providers

As stated above, ASGE supports the disclosure of information by plans and issuers to their enrollees at their request that will help them better understand expected out-of-pocket costs for health care items and services. The Departments, however, should not dismiss out of hand the potential unintended consequences — including anti-competitive behaviors and further market consolidation — of full public disclosure of negotiated rates with in-network providers and historical allowed amounts for out-of-network providers.

Information about prices for common procedures or services should be made readily available to consumers, but the usefulness of information is diminished if the consumer does not understand the variables that will influence their out-of-pocket costs. For example, with colonoscopy, patient costs can vary significantly depending on where the patient is scheduled for the procedure or whether anesthesia professionals are used. During the procedure, biopsies or polypectomy, in addition to other actions, could alter the procedure code and/or add a pathology charge, and even after the pathology charge, special stains may be required which again may change the patient cost based on their specific plan, deductible, coinsurance and out-of-pocket maximum. Therefore, the question is whether the possibility of unintended consequences of making negotiated rates and historical out-of-network allowed amounts for all covered services publicly available outweighs the utility of providing information that may not be decipherable by the average consumer.

The Departments defend their proposals will not only promote price transparency in the health care market for all consumers, but also payers. There is little question payers will use the information to leverage lower rates. However, disclosure of rates for covered procedures and services do not capture the nuances of rate negotiations between providers and payers. While it is conceivable transparency will improve competition, unfettered disclosure could undermine competition and augment consolidation.

Finally, to make value-based health care choices, consumers need pricing information paired with quality information. Consumers must be able to understand and anticipate costs by knowing the price *and* quality of services before receiving them to be able to choose high quality lower-cost services and providers.

Integrating meaningful cost and quality information in a useable format for the purpose of transparency is challenging and is compounded by the fact that many health care services lack relevant quality metrics. Furthermore, standardization of the methodologies for assessing a provider's quality and/or cost would be necessary and in a manner that does not impose further administrative burden on providers. While we appreciate the Departments are requesting information on quality measurement and the reporting of that information in the private health insurance market, we suggest disclosure of pricing information should be advanced in tandem with some meaningful measures of quality so consumers can choose lower-cost, high-quality care.

Conclusion

When patients have a choice on where they receive their care, empowering them with information about cost is an important objective but made challenging by complexity inherent in the delivery of health care services and procedures. We encourage the Departments to prioritize the clear and accurate availability of information but in a manner that does not undermine marketplace competition. We encourage continued engagement by the Departments with the stakeholder community and suggest a stepwise approach to transparency beginning with the disclosure of information to plan participants, beneficiaries and enrollees as requested and to use that endeavor to inform broader disclosure and transparency initiatives. We thank you for the opportunity to comment on these proposals. Requests for additional information should be directed to Lakitia Mayo, ASGE's Senior Director, Membership and Health Policy at lmayo@asge.org or (630) 570-5641.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Vargo, II', with a stylized flourish at the end.

John. J. Vargo, II, MD, MPH, FASGE
President
American Society for Gastrointestinal Endoscopy