



# The Price is Right: Promoting Greater Transparency in Healthcare

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## Introduction

Price transparency is consistently the single most popular polled healthcare reform, regularly garnering 90 percent public support.<sup>1</sup> Focusing on price transparency also makes sense from a policy perspective, as underlying price increases have accounted for upwards of two-thirds of total health-care spending growth, which leads to higher health insurance premiums each year.<sup>2</sup>

Florida can be the national leader in price transparency. The state has a solid foundation upon which to build, but more is needed to help patients afford needed care, and to help Florida companies remain competitive.

As an analogy for price transparency, Florida patients are like high-performance cars. Without the right fuel they can't move quickly, and without a gas pedal, a steering wheel, and roads that are easy to navigate they can't drive in the right direction.

Pricing data is fuel for that car. System-wide price transparency is required to allow pricing tools to be the steering wheel for a patient, and the right financial incentives for patients allow them to push down the gas pedal.

Patients also need lots of roads to get where they need to go, which in healthcare is access to high-quality but *lower-cost* providers regardless of network status. You need all these elements to move the car and start to save money in healthcare.

Right now, Florida law has different kinds of cans of fuel sitting around the car, with an optional gas pedal, limited and mostly expensive roads for those with insurance, and information is not available from all providers to ensure patients can access a good steering wheel/price transparency tools (see Current Florida Law section below).

## Price Transparency Principles to Create a Real Market in Health Care:

- Price transparency is automatic, so a patient doesn't have to know to request it.
- Prices are easily available for all care locations.
- Patients are rewarded directly when they save money. This includes less-expensive, high-value providers without network barriers.

If these are followed, incentives are aligned so that third-party, consumer-friendly tools can make the shopping process seamless for patients. Tools already on the market offered by price transparency companies such as Healthcare Bluebook, HealthSparq, TALON, Turquoise Health, and Zelis' Sapphire Digital, just to name a few, are all posed to be most helpful to patients with more pricing information. Additionally, cash-based health care marketplaces like Medibid and Sesame can expand their offerings to patients with the right information. These companies, and many others, will help find deals for patients, make appointments, and handle any paperwork with the insurer on the backend. Patients, employers, and insurers save money, and high-value providers and hospitals are rewarded with more business.

## Price Transparency Menu

The following 12 policy reforms comprise an effective toolkit to improve the environment of price transparency in the healthcare arena. Patients make care decisions with their providers based on several factors. Price is an important factor as more and more Floridians struggle to pay for needed care. Without clear pricing, there is no market for care, care is more expensive, and outcomes suffer as prices are not tied to quality. Sadly, too often patients and Florida employers are overpaying for lower-quality care. Price transparency jump starts an overdue conversation of how best to ensure more patients receive the best care at an affordable rate.

### 1. Codify Federal Price Transparency Rules

Updating price transparency rules for hospitals and insurers in current Florida law to match the Trump administration rules avoids conflicting, confusing, or duplicative rules, and strengthens the state standards as the federal rules are more robust.<sup>3</sup>

### 2. Apply Price Transparency to All Providers and Health Facilities

Florida should be a national leader by applying this same standard to any care setting for non-emergency care, including cash rate disclosure to help both the insured and uninsured with price certainty.

### 3. End Discrimination Against Patients Picking Cost-Effective Providers, Even Out of Network

Many high-quality, lower-cost providers have been pushed out of insurer networks, often by large hospital systems that have pressured insurers. As a result, patients and small companies are overpaying for services.

If a patient picks a cash-priced provider below the lowest negotiated rate for their insurance plan, the patient should get credit toward their in-network, out-of-pocket responsibility because they have saved money, which can lead to lower health premiums in the future.

### 4. Protect Patients' Right to Pick Cost-Effective Prescription Drugs

Allow patients to purchase a covered drug anywhere they like from a U.S. seller, and if it is below the lowest negotiated rate for their insurance plan, receive credit toward their in-network drug's out-of-pocket cost because they have saved the "system" money.

## 5. Reward Patients Who Seek High-Value Care After Paying Their Deductible

Patients who have exceeded their deductible have very little incentive to remain engaged in seeking lower-priced care and have no incentive when they exceed their out-of-pocket maximum. If they seek care from a cash provider that is less expensive than their insurer's rates, they should get paid a savings incentive for doing so. They can share a piece of that savings with a third party if they help the patient save money.

## 6. Make Price Transparency Automatic Without a Request

Half of Americans report avoiding care over concerns of their ability to pay. Considering that 59 percent of individuals report they have been unable to pay a medical bill, this is concerning for providers.<sup>4</sup> Most providers would like to ensure their patients receive the care they recommend as needed, and for providers to get paid for those services. Without real pricing, patients and providers are unable to talk about the best options for care, which results in patients not getting the care they need.

Upon making an appointment, within 48 hours—or if the appointment is within 48 hours, as soon as possible—a patient should be provided with a good faith estimate of what the provider or health facility expects to be paid for services rendered, and an estimated out-of-pocket cost if available, or at least information to the patient on how to obtain the estimated out-of-pocket information.

## 7. Grant Claims Transparency to Small- to Medium-Sized Business

Large companies have the clout and resources to see how their healthcare dollars are spent. By contrast, small companies are in the dark. As a result, most small companies have no idea if they are getting a good deal, if they should change their plan designs to better serve their employees, or if they should buy coverage another way.

Texas passed a law that allows any sized employee welfare benefit plan, plan sponsor, or plan administrator to request 36 months of claims that must be shared within 30 days.<sup>5</sup>

## 8. Educate Patients When They Have Overspent

Insurers should alert a patient when they have received care at a facility or provider that is in the top third most expensive in their area. The notification shall inform the patient of how they can find higher value care the next time they need to interact with the medical system.

## 9. End Anti-Patient/Anti-Market Contract Provisions

Agreements among health care providers and insurers often feature anti-competitive/anti-patient clauses without accountability or transparency. This plays a role in high costs for Floridians. For example:

- Pricing “blackouts”: Some contracts explicitly allow hospital operators to block their pricing information on insurers’ online shopping platforms, preventing transparency for patients and limiting competition. In light of recent federal regulatory actions, these should be eliminated.<sup>6-7</sup>
- Gag clauses: Certain contracts prohibit or severely limit providers from disclosing prices or costs to patients or others. These can be broader than just pharmacy gag clauses, which Florida has already addressed through law in 2018.<sup>8</sup>
- “All-or-nothing” clauses: Well-known, dominant, and high-cost healthcare systems often require insurance companies to include all their affiliated providers in network regardless of the criteria used to evaluate the cost or quality of care to set a network. Some systems will take this a step further and require all affiliated providers to be included in the preferred tier or cost-sharing arrangement, regardless of price or quality. This leads to inflated premiums and lowered quality of care.
- “Most-favored-nation” clauses: Dominant insurance companies prohibit providers from giving other insurance companies more favorable rates and conditions, locking in high rates and creating an anti-competitive cartel.
- Group boycotts: Groups of healthcare providers who should normally compete with one another sometimes refuse to individually contract with insurers on a basis other than jointly agreed-upon terms—a classic example of anti-competitive behavior that leaves the public worse off.

- Exclusive contracting provisions: These provisions prevent an insurer from contracting with other competitive providers. They force either the purchaser to buy a product only from one seller or the seller to sell only to one purchaser. By shielding providers from competition, these provisions foster cronyism and misaligned incentives in the healthcare sector and should be prohibited.

## 10. Pair Reference-Based Pricing with Current Public Employee Shared-Savings Program

Florida passed a law to have public employees be rewarded for shopping for lower-cost care.<sup>9</sup> This was a great first step. The next step is to pair this with reference-based pricing.

Reference-based pricing for public employee programs allows the state to steward public resources well by benchmarking prices to put competitive pressure on the highest-cost options to lower their prices. Patients are rewarded for using high-value providers, paying less out of pocket, and experiencing lower premiums the next year. One state using reference-based pricing saw the average cost of hip and knee replacements drop from \$42,000 to \$27,148 in the first nine months.<sup>10</sup> Reference-based pricing has been shown to save significant amounts of money for public employees, taxpayers, and somewhat surprisingly, significant savings can accrue for those on commercial insurance plans.<sup>11</sup>

Florida would be the first state to combine these powerful policies that would not only shift prices downward by using reference-based pricing, but also keep downward pressure on prices for those below the reference-based price when pairing with the shared-savings program.

## 11. Release APCD Claims Data/ Improvements to Florida Health Price Finder Website

Following the spirit of full price transparency contained in the Trump administration hospital and insurer price transparency rules, Florida should update its All-Payer Claims Database (APCD) law to allow for the release all de-identified claims information it collects as soon as it is in a standard format.

If the state is looking for more incremental improvements, the state could look to New Hampshire and Washington state, as their efforts allow patients to see prices that more closely reflect an enrollee's specific health plan.<sup>12,13</sup>

## 12. Prevent Collection Without Price Transparency, Which Prevents Credit Impairment

These days, patients say that every medical bill feels like a surprise. Building off Florida's previous surprise billing law, the state should protect patients further by putting in guardrails on credit impairments that have long-term detrimental financial impacts on patients, which can hurt economic recovery.<sup>14</sup> Colorado passed a bipartisan bill that prevents a hospital from attempting to collect a debt by referring it to a debt collector, collections agency or reporting to a consumer reporting agency if they are not disclosed their prices ahead of time.<sup>15</sup>

## Current Florida Price Transparency Laws

Under Florida law, a patient, *upon request* to a hospital and ambulatory surgery center or some other standalone facilities, can obtain both a non-personalized estimate of charges for anticipated services, and a personalized estimate as well, within seven business days of such request.<sup>16</sup> It is unclear if the "charges" are real prices or chargemaster numbers. They do not have to be adjusted for the patient's insurance. For inpatient services, estimates can be provided upon the scheduling of an appointment or at admission. For outpatient services, it must be given before the services.

The hospital must also advise patient requestors in writing that they should contact their health insurer or health management organization (HMO) for anticipated cost-sharing responsibilities.<sup>17</sup> Hospitals must make available a website regarding the availability of cost estimates.

In 2019, Florida passed the Patient Savings Act, which is an optional shared-savings incentive program for insurance carriers.<sup>18</sup> When used by carriers, this program offers a direct incentive for an insured consumer who chooses certain lower-cost shoppable health care services in non-emergent cases.

Florida also has a state-run website called the Florida Health Price Finder, which allows consumers to view the range and average costs for different procedures and to see how costs compare to national averages.<sup>19</sup> Similar to other states, utilization has been low for such websites.<sup>20</sup> But improvements can be made to increase its utility.

Under the Florida Patient's Bill of Rights and Responsibilities, if a primary care provider publishes a schedule of charges, that schedule must include the "price charged to an uninsured person paying for such services by cash, check, credit card, or debit card."<sup>21</sup>

Florida law does not require price transparency for many providers, and while hospitals are required to point patients to insurers to obtain out-of-pocket estimates, insurers are not required to

provide that information.

Put another way, there is ample opportunity to expand and improve Florida's patchwork price transparency laws, by applying full price transparency to more care locations, requiring it without a request, improving insurer price transparency, and requiring insurers to reward competition in the market.

## Florida's Best Opportunities on Price Transparency

Among the above-mentioned policy proposals, Florida currently has made progress. Nevertheless, healthcare will always be a dynamic policy area requiring vigilance in matching innovation in the market with the needs of consumers and providers. The following four specific recommendations are the most pressing and practical reforms policymakers could enact to continue Florida's positive momentum:

### I. Ensure the Right Fuel:

Florida needs to update its uncoordinated set of price transparency laws and codify the federal price transparency rules to ensure patients have the pricing information ahead of seeking treatment. This includes the cash rate that providers or systems would take for services.

**Policy update needed:** Items 1, 2 and 7 would ensure that both insurers and hospitals are disclosing pricing information (1), at all care settings (2), and small companies could request the same information that large companies already see to offer the best coverage for employees at small businesses (7).

### II. Build More Affordable Roads:

End the discrimination that patients face if they seek care from providers that are less expensive but are out of an insurer's network. Allow a patient to jump the wall of their insurer's network if they find a lower-cost cash provider for medically necessary covered services and reward the patient with in-network credit towards their deductible.

This reform builds off the same principles that were included in the federal No Surprises Act for surprise balance billing—which holds the patient harmless and treats the out-of-network service as if it was in network from the patient's cost perspective and allows that same standard for any kind of care, allowing a patient to seek out less expensive care options.

**Policy update needed:** Items 3 and 4 would allow patients to sidestep insurer network discrimination when they are blocked from accessing the most affordable care (3), and the same would be true if a patient finds a better deal for prescription drugs (4).

## III. Fix the Gas Pedal:

Florida should update the voluntary Patient Savings Act<sup>22</sup> with the Patient's Right to Save Act that rewards patients and high-value providers when they offer cash prices below insurer rates and pay patients an incentive if they continue to see less-expensive options post deductible. This reform will help those with chronic and pre-existing conditions as they often exceed their deductible.

The update of allowing patients to access less-expensive cash providers significantly reduces insurer opposition to making the current Patient Savings Act mandatory, as the insurer will never pay more money under the Patient's Right to Save.

In addition, any update should make it clear that a third party can share in some of the savings if they save patients money. Opening this market to patient-friendly tools will reduce friction to shop. This third-party option could be added for state employees to increase public employee and taxpayer savings.

Finally, an update on shared-savings incentives fixes an unlevel playing field that exists now, as public employees can earn shared-savings rewards in Florida, but many struggling small business employees and those buying insurance on their own in the state can't.

**Policy update needed:** Item 5 would align incentives for patients to keep seeking more affordable care even after they have exceeded their deductible by paying them a savings incentive when they save money for everyone.

## IV. Increase Access to a Good Steering Wheel:

Florida should update its current law for hospitals and ambulatory surgery centers that require a patient to request pricing information. Make the price disclosure automatic when an appointment is made, which is more in line with the new federal law.<sup>23</sup>

Florida should update state law to match its definition of "charge" to the one used by the federal government: standard charge. Standard charge includes a number of different helpful price disclosures, such as gross charges and payer-specific negotiated charges, plus the discounted cash price, the de-identified minimum negotiated charge, and the deidentified maximum negotiated charge. This information is helpful to different patients at different times.

Finally, Florida should update the "Florida Patient's Bill of Rights and Responsibilities" to have all care providers (not just primary care) publish a schedule of prices. Currently, the disclosure is just for largely unhelpful charge rates and is vol-

untary. Have the disclosure mirror the federal definition for standard charge, which will include payer-specific negotiated charges, and the discounted cash price.<sup>24</sup> This information is helpful to third parties trying to help patients seek high-value care.

**Policy update needed:** Items 1 and 2 would ensure that both insurers and hospitals are disclosing pricing information (1), at all care settings (2) so that patients have access to third-party tools that help them navigate their care options with their providers.

Greater price transparency can align market incentives to reward high-value providers and improve the quality of care due to more competition. The end result will be lower costs for more patients and lower plan premiums for individuals and small employers paying for health coverage. A final benefit can be realized in the state budget, as the public employee plan is overpaying for health care.

## Endnotes

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- 1 FGA, “Voters Support Health Care Price Transparency,” (2020) <https://thefga.org/poll/voters-support-health-care-price-transparency/>
- 2 Health Care Cost Institute. 2018 Health Care Cost and Utilization Report, State Spending Trends. Available at: <https://healthcostinstitute.org/annual-reports/2020-02-13-18-20-19>
- 3 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates. Price Transparency Requirements for Hospitals to Make Standard Charges Public, 84 Fed. Reg. 65524 (proposed November 27, 2019) (to be codified at 45 C.F.R. pt. 180). <https://www.hhs.gov/sites/default/files/cms-1717-f2.pdf>; and Transparency in Coverage, CMS-9915-F,” U.S. Department of Treasury, 26 C.F.R. § 4, U.S. Department of Labor, 29 C.F.R. § 2590, U.S. Department of Health and Human Services, 45 C.F.R. § 147 and 158. (October 29, 2020), <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/CMS-Transparency-in-Coverage-9915F.pdf>
- 4 Health Insurance Insights, “The State of Medical Debt in The United States,” Health Pocket (2019), <https://www.healthpocket.com/health-insurance-insights/medical-debt-in-us-2019#.X43VgtBKiuI>
- 5 Tex. Rev. Civ. Stat. 1215
- 6 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates. Price Transparency Requirements for Hospitals to Make Standard Charges Public, 84 Fed. Reg. 65524 (proposed November 27, 2019) (to be codified at 45 C.F.R. pt. 180).
- 7 Transparency in Coverage, 84 Fed. Reg. 65464 (proposed November 27, 2019) (to be codified at 45 C.F.R. pts. 147 and 158).
- 8 Chapter 2018-91, <http://laws.frules.org/2018/91>
- 9 Shared Savings Program, Department of Management Services, [https://www.mybenefits.myflorida.com/health/shared\\_savings\\_program#:~:text=Beginning%20Jan.,State%20Group%20Insurance%20health%20plan.](https://www.mybenefits.myflorida.com/health/shared_savings_program#:~:text=Beginning%20Jan.,State%20Group%20Insurance%20health%20plan.)
- 10 Greg Goth, “CalPERS Reference Pricing Policy Yields Big ROI,” Health Data Management (2014), <https://www.healthdatamanagement.com/news/calpers-reference-pricing-policy-yields-big-roi>
- 11 Brian Blase, “Leading by Example: State Employee Health Plan Reform,” Cicero Institute (2020), Available at: <https://ciceroinstitute.org/research/leading-by-example-state-employee-health-plan-reform/>

## Endnotes (Cont.)

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- 12 NH Health Cost is New Hampshire’s health care cost estimator tool run by the New Hampshire Department of Insurance. Users are prompted to select their insurance carrier or select the no insurance option. Based on the selection, the estimate provided will reflect actual average prices previously paid by those with the same insurance carrier. More than 120 procedures and services are available for price estimates. The estimates reflect bundled costs, and the search results display every hospital in New Hampshire for which data is available for that procedure or service. The estimated total cost, the precision of the cost-estimate—low, medium, or high—and the typical patient complexity in that procedure are also reported. If, at the beginning of the search, a user selects “uninsured,” it will show the discount each hospital provided for those without health insurance and how much one would pay before and after the discount. Users can also click on a specific provider after searching for a procedure and see the cost of all other services and procedures provided by that provider. There is also a separate, similar search tool available for dental services. NH HealthCost, New Hampshire Insurance Department and Human Services Research Institute, <https://nhhealthcost.nh.gov/costs/medical/step-1/>
- 13 Washington HealthCareCompare is the health care cost estimator tool established by the state’s Office of Financial Management. Once at the website, users are asked to input their zip codes and the procedures for which they would like an estimate. There are more than 85 services and procedures from which to choose. The search displays the typical price of a procedure in Washington, the typical high and low range, and states what is included in the price shown. It also explains the procedure and the corresponding year to which the price information applies. After the initial search, users have the option to input their insurance information to receive a more personal cost estimate. The user inputs the estimated cost of the procedure, his/her deductible, co-insurance, co-pay, and maximum out-of-pocket. Users can compare all the information listed above for providers within the range of the zip code that was provided. Users can also click on a specific provider to learn more about the quality information of that facility in three categories: good treatment results, keeping hospital patients safe, and hospital quality care. Washington Health CareCompare, Washington State Office of Financial Management, <https://www.wahealth-carecompare.com/>
- 14 S. 627.64194, F.S.
- 15 CO HB 1285, 2022.
- 16 Health Facility and Agency Licensing, “Rule 59A-3.256,” Agency for Health Care Administration (2018) <https://www.flrules.org/gateway/ruleNo.asp?id=59A-3.256>
- 17 Ibid.
- 18 Chapter No. 2019-100, <http://laws.flrules.org/2019/100>
- 19 Florida Health Price Finder, Agency for Health Care Administration (2020) <https://pricing.floridahealthfinder.gov/>
- 20 CBS Miami, “Health Price Website Gets Little Public Attention,” CBS Miami (2020) <https://miami.cbslocal.com/2020/10/08/health-price-website-gets-little-public-attention/#:~:text=Rick%20Scott%20to%20help%20people,review%20of%20state%20financial%20records.>
- 21 S. 381.026, F.S.
- 22 Florida passed H. 1113 (Chapter 2019-100), which is a voluntary price transparency program for insurers.
- 23 <https://www.flrules.org/gateway/ruleNo.asp?id=59A-3.256> The patient will get an advanced explanation of benefits from their carrier under the No Surprise Act, but a gap is that patients don’t also get what the provider would accept for a cash payment if insurance were not used.
- 24 [http://www.leg.state.fl.us/Statutes/index.cfm?App\\_mode=Display\\_Statute&URL=0300-0399/0381/Sections/0381.026.html](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=0300-0399/0381/Sections/0381.026.html)



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