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BY MIRANDA SPINDT & WILL FLANDERS, PHD

# EMPOWERING PATIENTS

How Price Transparency Will  
Lower Healthcare Costs



# Executive Summary



**MIRANDA SPINDT**

POLICY ASSOCIATE

✉ [Miranda@will-law.org](mailto:Miranda@will-law.org)



**WILL FLANDERS, PHD**

RESEARCH DIRECTOR

✉ [Flanders@will-law.org](mailto:Flanders@will-law.org)



The Wisconsin Institute for Law & Liberty (“WILL”) exists to advance the public interest in the rule of law, individual liberty, constitutional government, and a robust civil society.

Healthcare costs have skyrocketed around the country in recent years. Wisconsin is no exception to this trend, with recent research finding that the state has the fourth highest hospital costs in the country. Coupled with inflation across the economy at large, many Wisconsin families worry about being able to pay their medical bills. Under the Trump administration, there was an attempt to introduce more market forces to the healthcare industry by requiring that the prices for common procedures be posted publicly, but compliance remains low with this measure.

Healthcare is one of the only sectors of our economy where consumers are expected to purchase a good or service without knowing the ultimate price. Price transparency works under the theory that pricing information is a vital component of the free market. Just as we can compare the costs of gasoline at various stations or cars at various dealerships, consumers ought to be able to compare the cost of common medical procedures at providers in their area. In this report, we explore the possibility of bringing healthcare price transparency to Wisconsin.

Among the key takeaways:

- **Prices on shoppable services vary extensively.** For example, A CT scan ranges from about \$858 to \$2,803 within Wisconsin. This price variation means that better information on prices could lead to

real savings for patients and businesses that provide insurance to employees.

- **28% of workers are on High Deductible Health Plans (HDHP) that incentivize shopping around.** High Deductible Plans, often coupled with Health Savings Accounts, require patients to cover a larger share of the actual cost of their care. This means that consumers have more potential to gain from seeking out lower cost options.
- **Research suggests transparency can work.** Studies of insurance companies and states that have implemented transparency measures have found significant savings for consumers.

Policy makers should consider:

- **Implementing full price transparency.** Require that healthcare providers and insurance companies work together to create a website where consumers can see the “out-the-door” price at every provider in the state for a list of common shoppable procedures under their insurance.
- **Creating incentives for shopping.** Some states have implemented systems that require insurers to share savings with consumers when a lower cost option is chosen. This gives consumers additional incentive to weigh the cost versus quality of every potential provider.



# Introduction

With healthcare costs consuming almost 20% of our national GDP,<sup>1</sup> these spiraling costs have become a considerable concern for individuals and families all over the country. One in five American households are in healthcare debt,<sup>2</sup> and about half of those report that it came from unexpected medical bills.<sup>3</sup> A Kaiser Family Foundation poll found that 67% of people worry about unexpected medical bills which is more than the percentage who worry about basic necessities such as rent, food and gas.<sup>4</sup> Even 25% of Americans have reported delaying treatment for a serious medical condition because of cost.<sup>5</sup> This is likely even more true in Wisconsin, which recent research has found has the fourth highest hospital prices in the nation.<sup>6</sup> With the crippling costs of healthcare leading hardworking people into debt or to avoid getting treatment in the first place, it is clear that solutions are desperately needed across the country and in Wisconsin.

Perhaps the most efficient way to address these rising healthcare costs is to introduce free-market mechanisms into the healthcare sector. Competition and consumer choice are the best ways to incentivize high-quality care at lower prices. If consumers are given clear pricing information about their medical goods and services before ever getting treatment, they would be empowered to make better decisions about where they receive their healthcare. When consumers are equipped to respond to healthcare prices, there will be a meaningful effect in reducing the cost of healthcare.

**Wisconsin has the 4th highest hospital prices in the nation.**

# The Problem

When a patient seeks medical treatment, they are often unaware of what their cost of care will be at the end of the day. Hospitals, insurance companies, and other third-party negotiators create deals, mostly in secret, to determine the cost of a service and how much of that cost will be paid for by the consumer. As a result, the same procedure can have vastly different costs from hospital to hospital and even from patient to patient. For example, a CT scan of the head can range in price from about \$858 to \$2,803 in the state of Wisconsin.<sup>7</sup> This difference in cost might make sense if the treatment were better quality, but there is often no correlation between higher costs and higher quality of care or outcomes.<sup>8</sup> Instead, what consumers pay is determined by what the insurance company and hospital agreed upon.

Costs can get especially out of control when a patient receives a surprise bill for out-of-network care. While this usually happens in emergency situations, it is possible for shoppable procedures as well when a patient gets care from a facility or provider that does not have an agreement with their insurance company. If the insurance company and the out-of-network hospital or provider cannot reach an agreement on cost, they will pass on the entirety of the bill to the patient. It is important to note that this doesn't just happen when a consumer chooses to go to out-of-network facilities. Instead, sometimes out-of-network services are provided at in-network facilities,<sup>9</sup> making it nearly impossible for consumers to make decisions about what healthcare provider will result in the lowest cost. About 57% of Americans have received a surprise medical bill, and it is the most common reason for medical debt.<sup>10</sup>

**A CT scan can range from  
\$858 to \$2,803 in Wisconsin.**



# Price Transparency and the Free Market

To address the issue of rising costs and surprise billing, many states across the nation have passed price transparency laws, which make information on pricing more readily available to consumers. This enables the consumer to know what they will pay for their healthcare before they receive it, not after, giving consumers the opportunity to shop for their scheduled treatments and procedures. Not only will this help consumers save money, but hospitals, providers, and insurance companies will be incentivized to compete to provide the best quality care at the lowest price possible. Consistent with the free-market principles we see as being effective in most other areas of the economy, this competition should work to drive down overall healthcare costs.

Typically, healthcare is considered an inelastic good, meaning that a consumer will seek out medical care regardless of the cost. This is in contrast to most other consumer markets where we may decide to buy less or seek alternatives due to price increases. While High Deductible Health Plans (HDHP) have become more common, for many, third-party payers like insurance still cover a large portion of our healthcare costs, meaning there is a reduced incentive to know what we will be paying for services before receiving them. When hospitals and insurance companies are able to keep patients in the dark, incentives change. They can negotiate prices that are higher than the cash price of the service, and the price for the same service can vary widely depending on the hospital, the provider, and the insurance company a patient uses.<sup>11</sup>


## **80% of healthcare goods and services are shoppable.**

In situations such as sudden illness or accident, a patient will seek out medical care no matter what it costs. Insurance is meant to financially protect us from the cost of this type of catastrophic care. However, about 80% of healthcare goods and services are “shoppable” meaning that the decision of where to get treatment does not have to be made immediately.<sup>12</sup> This includes services such as CT scans, blood tests, and psychotherapy. It is these non-emergency procedures where out-of-pocket price information can be available for the consumer to decide where to be treated for the best price.

As alluded to earlier, changing trends in employer-sponsored health-insurance plans also provide a strong incentive for greater transparency. In an effort to control healthcare costs, many employers have begun transitioning their employees to HDHP paired with a supplemental Health Savings Account (HSA).<sup>\*</sup> Since their inception in 2004, high deductible plans have grown in popularity, covering about 28% of workers in 2021.<sup>13</sup> A 2020 study<sup>14</sup> found that the average deductible for an individual was now more than \$4,000 and more than \$8,000 for a family. Under these plans, individuals often bear a greater share of health-care costs, and consequently ought to be more incentivized to shop for services.

\* For 2022, the IRS defines a high deductible health plan as any plan with a deductible of at least \$1,400 for an individual or \$2,800 for a family. An HDHP's total yearly out-of-pocket expenses (including deductibles, copayments, and coinsurance) can't be more than \$7,050 for an individual or \$14,100 for a family. (This limit doesn't apply to out-of-network services.)

Source: <https://www.healthcare.gov/glossary/high-deductible-health-plan/>



# **Are Transparency Measures Effective?**


While the benefits of price transparency seem clear in free-market theory, it is important to consider whether they work in practice before creating new requirements for the healthcare industry. Of course, it is difficult to know whether measures will be effective before they have been tried. Outside of a few examples that will be noted below, private sector compliance remains low with federal requirements put in place under the Trump administration requiring price transparency.<sup>15</sup> Despite a lack of nationwide implementation, a small body of research has examined more localized efforts at price transparency.

Some research has been conducted by examining price transparency within the private sector. One such study of the employees of a national restaurant chain found that employees who sought pricing information were able to lower their costs by about 1.6%.<sup>16</sup> However, these price-lowering effects were mitigated by insurance. Of course, such tools are only effective to the extent that consumers utilize them. One study of AETNA's private online pricing tool found that only about 3.5% of consumers utilized the tool, but those consumers that did saved more

than 12% on average for the same procedure.<sup>17</sup> The low utilization rate may be due to lack of awareness<sup>18</sup> and difficulty using the available tools,<sup>19</sup> which we believe can be remedied through legislative and market-driven action.

Moving to studies of state-implemented transparency programs, a 2019 policy report from the Wisconsin Institute for Law and Liberty (WILL)<sup>20</sup> brought together data on the cost to consumers of healthcare in each state with data on whether the state had a solid price transparency law. The results suggested that having poor transparency laws was correlated with more residents reporting that they went without care in the past year because of the cost. A peer-reviewed study<sup>21</sup> of New Hampshire's price transparency system reached similar conclusions. Looking at the time frame immediately before and after the creation of a price-transparency website, the author found that transparency led to a significant shift toward lower-cost providers, and a lowering of overall costs for both consumers and insurers. The study estimated that savings were about \$7.9 million for patients and \$36 million for insurers over the time period of study.



A photograph of a young woman with blonde hair lying in a hospital bed. She is wearing a white hospital gown and is looking upwards with her right hand resting on her head. The bed has a blue and white checkered blanket. Above the bed is a white medical equipment rack with various outlets and a coiled cable. A metal IV stand is positioned next to the bed. To the right, a white telephone is on a small table. A large blue diagonal overlay covers the bottom left portion of the image, containing the title text.

# Price Transparency Around the Nation

Price transparency rules have been enacted at the federal level, but there has not been significant compliance with the rules to yield desired results. In 2019, President Trump signed an executive order directing his administration to implement price transparency regulations which went into effect on January 1, 2021.<sup>22</sup> This specific rule requires hospitals to post list prices and negotiated prices for nearly all goods and services offered. This information must be offered in a machine-readable format and a consumer-friendly display.

There is little guidance on what qualifies as a “consumer friendly” format. As long as it is searchable and on a publicly available website, hospitals have the flexibility to decide what format they use.<sup>23</sup> Unfortunately, this means that understanding how to use the tools available can still be difficult and hard to understand. Some private sector and non-profit organizations have taken on the task of collecting hospital price data and making it more intuitive, in an attempt to overcome these shortcomings. For example, Turquoise Health<sup>24</sup> allows consumers to search hospital prices by procedure and zip code, and Sage Transparency<sup>25</sup> shows a comparison of hospital prices relative to Medicare costs.

Another issue is that the “list prices” that hospitals post may bear little relationship to the final out-of-pocket cost the consumer pays. To know what a consumer will pay, consumers also need to know how much their insurance company will cover for each service. To help address this side of the transparency equation, a second rule went into effect on July 1, 2022<sup>26</sup> to hold most group health plans of issuers of group or individual health insurance to the similar price transparency requirements. In a machine-readable file, they must disclose the rates for

all covered items and services between the plan or issuer and in-network providers. They must also disclose the amounts allowed for, and billed charges from, out-of-network providers. Requirements for an online tool to disclose the prices of 500 items and services will go into effect in 2023, and that will change to include all items and services in 2024.

These are steps in the right direction, but it is difficult for the federal government to police compliance across the nation. For the federal hospital rule, the penalty increased in January of 2022 from \$300 a day to a maximum of \$5,500 a day.<sup>27</sup> However, a February 2022 study found that only 14.3% of hospitals<sup>28</sup> were fully complying with the regulation, and it remains to be seen how the compliance of insurance companies will go. Indeed, the Foundation for Government Accountability recently filed a lawsuit against the Centers for Medicare and Medicaid Services for failing to enforce compliance with the federal rules.<sup>29</sup>

Additionally, Congress passed the “No Surprises Act” which went into effect on January 1, 2022.<sup>30</sup> This law protects patients from surprise billing by requiring insurance companies to cover out-of-network claims the same way they would for in-network claims, and they cannot charge more than in-network claims. It also establishes a dispute resolution plan in the case that provider and insurance company are not able to come to an agreement on their own. This ensures that the best interest of the patient comes first.

A photograph of two surgeons in an operating room. The surgeon on the left is wearing a red bouffant cap, glasses, and a white surgical mask. The surgeon on the right is wearing a blue bouffant cap and a white surgical mask. Both are wearing blue scrubs and white gloves. They are focused on a surgical procedure, with the surgeon on the right holding a long, thin, yellow tube. The background shows vertical blinds and surgical lights.

# What Other States Have Done

## FULL PRICE TRANSPARENCY

States with complete price transparency require cost estimates from all providers and insurance carriers in virtually all instances, most closely resembling the federal rules on price transparency. However, how that information is delivered varies from state to state. For example, providers and insurers must provide price information within two business days upon patient request in Massachusetts,<sup>31</sup> whereas Alaska<sup>32</sup> and Minnesota<sup>33</sup> require it within 10 business days. In Texas, they take it a step further than other states by also requiring user-friendly websites and having stronger enforcement mechanisms.<sup>34</sup>

An example of how a price transparency website could look is included in Figure 1 from New Hampshire. New Hampshire was a pioneer in providing pricing information to consumers, with a website that predates the federal law on the subject. The New Hampshire Department of Insurance runs their state website which uses insurance information to estimate the cost of over

120 procedures. The site allows a consumer to pick between medical or dental care, input their insurance company, and choose a procedure to receive an estimate for the out-of-pocket cost of care.

In Figure 1, we have searched for chiropractic care with Anthem insurance within 20 miles of a ZIP code in Nashua. The website returns the statewide average cost of the procedure, as well as the typical number of visits required for treatment. This is followed by the cost at various providers within the Nashua area. Note that these are cost estimates based on data that has been collected in the state's All Payer Claims Database (APCD). The precision of the estimate is based on the amount of data points they have for that provider. In this case, the estimate is more precise for Dr. Santone than it is for Dr. Neilson. The information they can provide is more personalized than a general estimator tool, but it is not guaranteed that they have all the necessary information to give an accurate out-of-pocket cost to the consumer. In Washington, a similar website was established by the state's Office of Financial Management and offers cost estimates for about 85 procedures based on ZIP code.

**Figure 1.**  
New Hampshire Price  
Transparency Example

The screenshot shows a search interface on the New Hampshire Department of Insurance website. The search criteria are: Procedure Name: Chiropractic Treatment, 1+ Non-Spinal Regions; Insurance Carrier: Anthem - NH; Plan Type: Individual (self-purchased) Medical Plans; Filter Results By Distance: 03060, Within 20 Miles. The results table displays the following data:

Provider Name	Estimate of Procedure Cost	Number of Visits	Precision of the Cost Estimate
<b>\$ Statewide Averages</b>	<b>\$27</b>	<b>4</b>	
<input type="checkbox"/> Loni Neilson, DC > <small>Manchester, NH</small>	\$16	▲ Above Average	▼ Very Low
<input type="checkbox"/> Dante Santone, DC > <small>Manchester, NH</small>	\$23	▲ Above Average	▲ High

While this may be a more desirable standard for state law, even states with complete price transparency do not necessarily have an easy and accessible way for consumers to receive the price information for the laws to be effective.

## PARTIAL PRICE TRANSPARENCY

States with partial price transparency require price transparency for providers, hospitals or insurance, but not all of them. Florida, for example, requires hospitals to give cost estimates within seven days upon request, but not providers or insurance companies.<sup>35</sup> On the other hand, Tennessee requires out-of-pocket cost estimates be provided by insurance carriers through a public website,<sup>36</sup> and Nebraska requires cost estimates from providers for uninsured and self-pay patients.<sup>37</sup>

## LIMITED PRICE TRANSPARENCY

Limited Price Transparency describes states which have price transparency requirements for either providers or insurers, but only in certain situations. For example, cost estimates in New Jersey are only available if a non-emergency procedure is scheduled in advance or if it is out-of-network, and must be provided before the appointment.<sup>38</sup> In Montana, patients are

only entitled to price information within ten days of the request if the treatment is greater than \$500.<sup>39</sup> California exclusively requires cost estimates for those who are uninsured, but does not enforce responsiveness.<sup>40</sup> Additionally, California requires hospitals to post the average charges of the 25 most common inpatient and outpatient procedures to their website, and update it yearly.<sup>41</sup>

## NO PRICE TRANSPARENCY

Unfortunately, a majority of states still have no price transparency laws on the books. Some of them do have some kind of price transparency tool, however, it is not considered to be helpful enough to help empower the consumer. Wisconsin is among the states that currently do not have laws mandating price transparency, however a pair of private organizations operate voluntary tools. The Wisconsin Hospital Association operates a tool called Price Point,<sup>42</sup> which gives the median price charged for procedures at individual hospitals, but does not have the information needed to give accurate out-of-pocket estimates. The Wisconsin Health Information Organization operates the state's independent All-Payers Claim Database, which collects claims data from insurers, self-funded employers and the state to cover approximately 75% of Wisconsin's population.\* These capabilities could serve as a baseline for an eventual implementation of a universal

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\* <https://www.hcinnovationgroup.com/population-health-management/article/21118480/liberating-data-in-wisconsin-how-the-state-is-evolving-its-allpayer-claims-database>

transparency measure. There are still about 17 states that do not have any laws or price-transparency tools.

## ANOTHER OPTION: LOW-COST-SEEKING INCENTIVES

Some states offer a shared savings program that incentivizes consumers to choose lower-cost healthcare services in non-emergency situations. When a patient chooses lower-cost services, it may result in savings for the insurer or provider, which is then shared with the patient through rewards such as a reduction in copayments, credits toward a deductible, or cash. In Florida, there is a shared savings program that is available to full or part-time state employees on the State Group health plan.<sup>43</sup> The program is run by the Department of Management Services, and the benefits are automatic when enrolled in the State Group health plan. Enrollees can use the Healthcare Bluebook<sup>44</sup> to search for rewardable services or a bundled service from SurgeryPlus.<sup>45</sup> By doing so, they earn rewards as a credit to a designated spending or savings account offered by the State Group health plan or as a reimbursement for out-of-pocket medical expenses.

In Nebraska, insurance carriers are required to offer a program that gives 50% of the shared cost savings to the enrollee, in cash or credit, when the savings are \$50 or more.<sup>46</sup> In Tennessee, they also require insurance carriers to offer shared savings incentives through cash, credit towards the enrollees' deductible, or reduction of a premium, copayment, or cost sharing.<sup>47</sup> This can be used in any state with price transparency laws regardless of how comprehensive they may be. Medicaid also offers a shared savings program which has delivered savings for five years in a row, including \$1.6 billion in 2021, while still providing high-quality care to patients.<sup>48</sup>





# Policy Proposals

The federal rules under the Trump administration, despite their good intentions, have not been very successful to date because of the minimal punishments and lack of enforcement. However, they do lay a good foundation for the states to implement their own price transparency legislation. By codifying the federal rules, price transparency will be protected in case the federal rules are ever removed. Then states can also adjust the legislation to make sure that it fits the needs of their citizens, have better compliance, and ultimately produce the healthcare savings that price transparency makes room for.

Model legislation<sup>49</sup> has been proposed that can serve other states in implementing transparency. This legislation mandates that each licensed hospital in the state maintain a list that includes payor specific charge information for a list of “shoppable” procedures. If hospitals are determined to be out of compliance with the requirement, the legislation provides for fines from the state. For example, in Colorado they do not allow hospitals to go to collections on unpaid bills if they are not in compliance, and in Texas, top penalties could be \$365,000 a year.<sup>50</sup>

The next step would be to address surprise billing. This may include building upon the federal No Surprises Act by codifying and enforcing the requirement for an Advanced Explanation of Benefits (AEOB). When a patient schedules a healthcare service at least ten days in advance, the hospital and insurance company must send them a good faith estimate within three business days of what it will cost them.<sup>51</sup> It includes information such as the amount the insurance plan is paying and contracted rates of in-network providers. This proposal would not only make pricing information easier to access for consumers, but also give more details to help

customers understand the context around pricing and how they can compare their options. States have codified and enforced the No Surprises Act to varying degrees,<sup>52</sup> and ensuring the AEOB could be a great next step. Other suggestions for accessibility include requiring all healthcare facilities, not just hospitals, to disclose prices, have stricter penalties, and give state agencies the necessary tools to enforce compliance.

Finally, states could provide incentives for consumers to use the price transparency tools available to them. As mentioned above, states have done this by using shared savings healthcare programs to reward state employees for choosing lower-priced procedures, and asking individual and small business markets to do the same. These rewards can come in the form of gift cards, lower premiums and deductibles, or adding money to health savings accounts. One way to test this out might be with a pilot program as exemplified by Kentucky and New Hampshire.<sup>53</sup> Policymakers interested in this means of implementation should look to the example of Florida discussed in the previous section.

Other actions include ending out-of-network discrimination so that patients understand other options, giving smaller companies the ability to see how their health care dollars are spent, and banning anti-competitive contracting provisions.

# Conclusion

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While some like to use the cost of healthcare as evidence of free-market failure, in reality the healthcare marketplace hasn't been "free" for decades. From the creation of Medicare to the Affordable Care Act to the expansion of Health Maintenance Organizations under President Nixon, the story of American healthcare is one of an inexorable march toward putting barriers between consumers and their care. Price transparency is far from a silver bullet for the rising cost of care, but would represent a meaningful step toward giving power back to consumers when it comes to their healthcare decisions.

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330 East Kilbourn Ave. | Suite 725  
Milwaukee, WI 53202

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