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US Chamber of Commerce Files Lawsuit Challenging HHS's Health Plan Price Transparency Rule

WRITTEN BY

Sara B. Richman | Virginia Bell Flynn | Barak A. Bassman | Leah Greenberg Katz | Alexandra Lilly Milios

The federal government's push for greater price transparency in health care has been highly controversial among health care stakeholders. In 2020, the American Hospital Association (AHA) unsuccessfully challenged HHS's "Price Transparency Requirements" rule. The U.S. Court of Appeals for the District of Columbia ultimately upheld the regulation, determining that the relevant statute authorized the scope of the regulation and that it did not run afoul of the First Amendment.

But the DC Circuit's holding has not closed the door on challenges to price transparency rules. On August 10, the United States Chamber of Commerce and the Tyler Area Chamber of Commerce brought a new complaint challenging the regulation in the Eastern District of Texas, reviving an issue that appeared to have been settled.[1] The DC Circuit case focused on the definition of "standard charges" in the rule, arguing that the rule's interpretation of that phrase violates section 2718(e), the Administrative Procedure Act (APA), and the First Amendment of the Constitution. The Chamber's Texas lawsuit argues that the rule's requirement to include the "historical net price" of prescription drugs in the machine-readable file violates the agency's statutory authority under the Affordable Care Act of 2010 (ACA) and the Public Health Services Act.

Background

The regulation at play in these cases requires a health care provider to disclose price information to consumers. The efforts to require greater price transparency were first initiated in the ACA. Section 2718 of the ACA, entitled "Bringing down the cost of health care coverage", required hospitals to establish an annual public list of their standard charges for items and services provided by the hospital. While the goal of this provision was to increase price transparency to patients, critics noted that the requirement resulted in convoluted reports that were difficult for patients to understand, and "not helpful to patients for determining what they are likely to pay for a particular service or hospital stay."[2]

In June 2019, President Trump issued an executive order titled "Improving Price and Quality Transparency in American Healthcare to Put Patients First."[3] The order directed the secretary of HHS to "propose a regulation, consistent with applicable law, to require hospitals to publicly post standard charge information, including charges and information based on negotiated rates and for common or shoppable items and services."[4] Two months later, the secretary issued a notice of proposed rulemaking, and proposed a regulation requiring hospitals to disclose not just chargemaster rates, but also "payer-specific negotiated charges".[5] After receiving nearly four thousand comments, the secretary issued a final rule in November 2019.[6]

The DC Circuit Case

The AHA filed suit against the secretary of HHS on December 4, 2019, arguing that the rule's interpretation of the term "standard charges" violated the authorizing statute, the Administrative Procedure Act, and the First Amendment. Further, it was the AHA's position that the "disclosure of privately negotiated rates does nothing to help patients understand what they will actually pay for treatment and will create widespread confusion for them."[7] The AHA contended the regulation would "accelerate anticompetitive behavior among commercial health insurers and hinder innovations in value-based care delivery."[8] The District Court granted summary judgment to the secretary on all of its claims.[9] The DC Circuit Court then affirmed the District Court's grant of summary judgment in favor of the defendants, holding that:

(1) the definition of "standard charges" from the regulation complied with the ACA;

(2) the regulation complied with the ACA requirement to make "a list" of standard charges public;

(3) the secretary examined the relevant data and articulated a satisfactory explanation for burden placed on hospitals;

(4) the secretary complied with the requirements to display awareness of change in position and to show good reasons for the new policy; and

(5) the regulation did not violate the First Amendment.[10]

Thus, the court affirmed the District Court's order granting summary judgment to the secretary, and the regulation was upheld.

Chamber of Commerce Complaint

Now, the regulation is being challenged again by the U.S. Chamber of Commerce (Chamber) in the Eastern District of Texas.[11] The Chamber seeks declaratory and injunctive relief arguing that the regulation "runs afoul of long-established protections against the forced disclosure of confidential commercial information, including trade secrets, and is detrimental to the business community as a whole."[12] In its complaint, the Chamber asserts that it has standing to bring the suit because "it will be directly impacted by the rule's requirements, as the U.S. Chamber is a self-insured employer that is directly subject to the rule and therefore is required to comply with the rule." Further, it notes that the Chamber will "incur substantial costs in order to comply with the rule's burdensome and unlawful . . . requirements."

The Chamber specifically challenges a provision in the second section of the rule that "requires insurers to post on a website a host of internal pricing data in three 'machine-readable files.'"[13] It also argues that since the original proposed version of the rule did not include certain requirements that were included in the final rule, the defendants violated the APA by imposing the requirement without providing notice and an opportunity to comment.[14] Specifically, the Chamber claims:

(1) the "machine-readable files" requirement exceeds defendants' statutory authority in violation of the APA[15];

(2) the “historical net price” requirement exceeds defendants’ statutory authority in violation of the APA[16];

(3) the “historical net price” requirement is not a logical outgrowth of the proposed rule[17];

(4) the “historical net price” requirement is arbitrary and capricious[18]; and

(5) the “machine-readable files” requirement is arbitrary and capricious[19].

The Chamber seeks a declaration that the provisions of the rule are unlawful and an order vacating and setting them aside.[20]

Implications

Though health care stakeholders may have thought the challenges to the Health Plan Price Transparency Rule were overcome, this lawsuit brings the challenge back to life. We will continue to monitor this case and provide updates as the court takes action.

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[1] *Chamber of Com. of the U.S. v. U.S. Dep’t of Health & Human Srvs.*, No. 6:21-cv-00309 (Aug. 10, 2021).

[2] *Requirements for Hospitals to Make Public a List of Their Standard Charges via the Internet*, 83 Fed. Reg. 20,164, 20,549 (May 7, 2018).

[3] Exec. Order No. 13,877, 84 Fed. Reg. 30,849 (June 24, 2019).

[4] *Id.* at 30,850.

[5] *Proposed Requirements for Hospitals to Make Public a List of Their Standard Charges*, 84 Fed. Reg. 39,398, 39,571, 39,574 (Aug. 9, 2019).

[6] *Id.*

[7] Press Release, American Hospital Association, Melinda Hatton — General Counsel, AHA Statement on DC Circuit Court of Appeals Decision on Mandated Disclosure of Negotiated Rates, https://www.aha.org/press-releases/2020-12-29-aha-statement-dc-circuit-court-appeals-decision-mandated-disclosure.

[8] *Id.*

[9] *Am. Hosp. Ass’n v. Azar*, 468 F.Supp.3d 372 (D.D.C. 2020)

[10] *Am. Hosp. Ass’n v. Azar*, 983 F.3d 528 (D.C. Cir. 2020).

[11] *Chamber of Com. of the U.S. v. U.S. Dep't of Health & Human Srvs.*, No. 6:21-cv-00309 (Aug. 10, 2021).

[12] *Id.* at 3.

[13] *Id.*

[14] *Id.* at 6.

[15] *Id.* at 18.

[16] *Id.* at 20.

[17] *Id.* at 25.

[18] *Id.* at 26.

[19] *Id.* at 28.

[20] *Id.* at 31.

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