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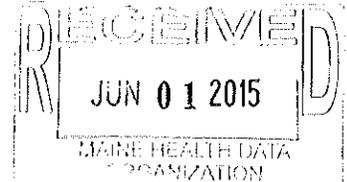
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STATE OF MAINE
ONE HUNDRED AND TWENTY-SEVENTH LEGISLATURE
COMMITTEE ON INSURANCE AND FINANCIAL SERVICES

May 28, 2015

Ms. Lisa Harvey-McPherson
Chair of the Board of Directors
Maine Health Data Organization
102 State House Station
Augusta, Maine 04333-0102



Re: Efforts to improve consumer resources for comparison of prices for health care services

Dear Ms. Harvey-McPherson,

As you know, the Joint Standing Committee on Insurance and Financial Services recently considered LD 813, An Act to Ensure that Hospitals Comply with the Laws Governing Transparency of Medical Billing. The bill proposed to establish financial penalties for hospitals, ambulatory surgical centers and other health care entities that fail to comply with the laws related to disclosure of charges for health care services.

Although the committee voted "Ought Not to Pass" on LD 813, the requirement that hospitals, ambulatory surgical centers and other health care entities disclose charges for health care services remains very important for Maine consumers. Equally important is a centrally-managed state resource that allows consumers to compare charges and quality between and among health care providers in their communities and throughout the State. The Maine Health Data Organization currently provides some of these resources on their website. We were excited to hear earlier this session that MHDO is undertaking a project to transform the website with significant improvements so consumers will be able to better compare prices and quality for hundreds of additional health care services.

It is our understanding that this project is being funded through federal grants and is expected to be completed in the fall of 2015. Given the importance of this project, we ask that the MHDO report back to the Committee by January 31, 2016 on this project, including a live demonstration of the website's new tools for price comparison. If you have any questions, please do not hesitate to contact us or our legislative analyst, Colleen McCarthy Reid.

Thank you for your consideration.

Sincerely,

Rodney L. Whitemore
Senate Chair

Henry E.M. Beck
House Chair

Transparency in Health Care Pricing: Bargain Hunting in Maine

**The Husson University Baccalaureate Nursing Program,
Husson University, Bangor, Maine**

Nicole Webb, Colleen Gilley, Ryan Stroud, Tyler Thompson
Moirra O'Neill, RN, PhD, Geoff Gratwick, MD

Summary: In June 2014, Maine passed legislation requiring hospitals to give uninsured Mainers advance access to the price of health care procedures. Four baccalaureate nursing students from Husson University surveyed 34 Maine Hospitals and found that only 14 appear to be in compliance with the new law.

Further, 18 of Maine's hospitals appear to be in direct violation of the law. The authors offer explanations of why this is so and suggest how uninsured Maine residents can be better served.

A total of 125,000 Mainers (or 11.6% of adults) lack health insurance according to the most recent data available from 2014 (2). These people will still need health care, but will have to pay out-of-pocket for the care they receive. Most self-pay patients have meager resources and no bargaining power. If they are to be informed consumers and get the most for their money they must have advance access to accurate medical price information. Maine historically has been a leader in health care price transparency; recent legislation has strengthened these requirements (4). We set out to see how easily uninsured Mainers can ascertain the cost of a common hospital procedure and to identify the best practices of hospitals that conform to the new law.

Background:

Over the past five years 57,500 Maine residents have lost health insurance coverage because of cuts in MaineCare eligibility and expired waiver access(5). Tens of

thousands of Mainers in poverty remain uninsured as a result of the current governor's five vetoes of bipartisan legislative votes in favor of expanding Medicaid. Maine will have the highest rate of uninsured in New England when New Hampshire fully implements its recent Medicaid expansion. In addition, 75,000 Mainers who have purchased subsidized coverage under the Affordable Care Act may find themselves uninsured if the Supreme Court decides that subsidies to states on the federal insurance exchange are unconstitutional in the summer of 2015. It will become all the more critical that Maine's uninsured have access to accurate medical cost information.

The first emergency contact with the medical system for those who lack insurance is almost always unexpected - and often catastrophic. Its cost can be devastating. They cannot afford timely interventions, medications and follow-up visits let alone the preventative care that might have forestalled the problem in the first place. Medical bills are the most common reason for consumer bankruptcy in Maine and the United States (6).

In non-emergencies, the situation is not much better. Uninsured Mainers are unable to plan for medical expenses because these costs are difficult to determine in advance. The talk used to be about families living on the margins being one busted transmission away from financial ruin; now the talk is that they are just one appendectomy or broken leg away from financial ruin. By the time a patient receives a bill and becomes aware of the debt he or she has accrued, it is too late for financial planning.

Advanced access to information about medical costs has two benefits: First, people without insurance can plan ahead, save for a procedure or seek help from family

and friends. Second, they can compare prices at different hospitals and clinics and shop for the best deal. While price transparency won't help in all cases, many times it can make a difference.

There is wide and unexplained variation in the cost of medical procedures by hospital and geography. For example, according to the Maine Health Data Organization (MHDO), the average total cost for knee arthroscopy in Maine ranges from \$4,043 (Mercy Hospital, Portland) to \$11,785 (Mount Desert Island Hospital) (7). The MHDO is an independent state agency with a web site that currently lists a limited amount of price information for 200 procedures from hospitals and clinics across the state.

There are other factors to consider when making medical care decisions. Quality of care can be more important than cost but access to relevant information about a surgeon's performance or a hospital's outcomes is difficult to obtain. Again, information from the MHDO as well as the 'Get Better Maine' sites is good but limited. Their bar charts can be difficult to interpret for people lacking a medical background.

In June 2014, the Maine legislature passed *An Act to Clarify the Law Governing Public Disclosure of Health Care Prices* in June, 2014. This law sets forth an institution's obligation for the public disclosure of its health care services. It requires hospitals to have prices available in advance for the uninsured and to display "prominently" information about access to the MHDO website.

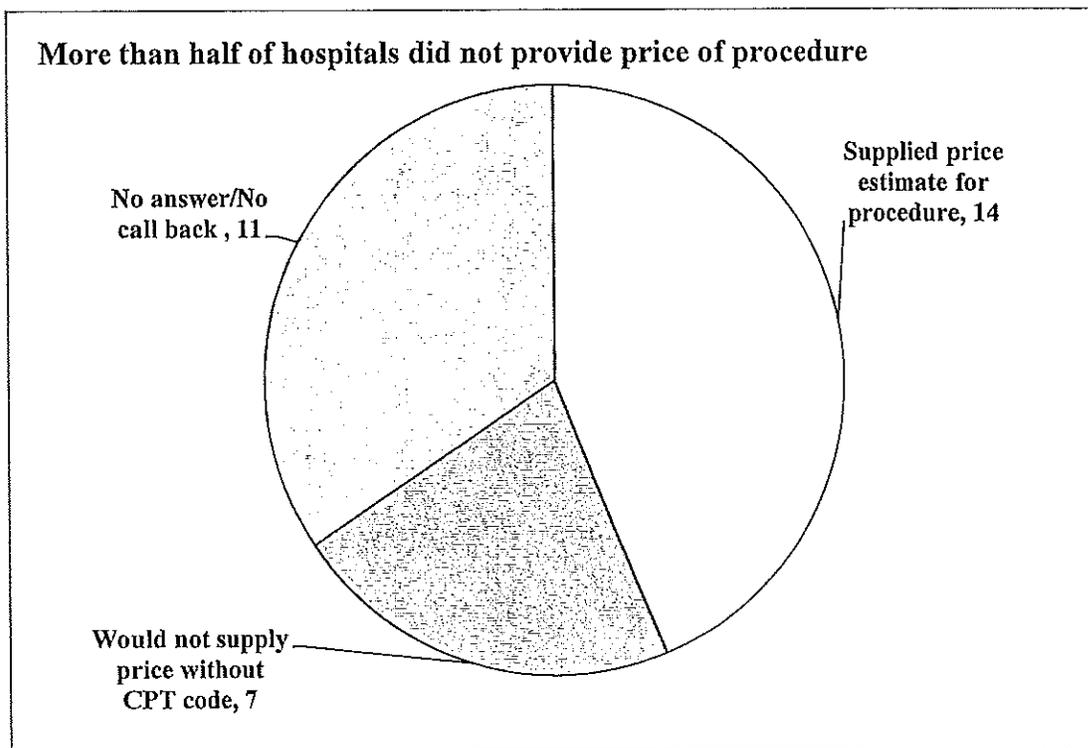
Are uninsured patients able to access the information they need to manage their health care costs?

Imagine you are a construction worker with a knee injury and no health insurance. This example is not atypical: 3,000 of the working uninsured in Maine are employed in construction (8). The doctor at a free clinic in town tells you that before long you will probably need knee arthroscopy. You can still limp around; it is not an emergency. But if you want to avoid chronic pain and eventual disability your knee will need fixing. You don't have much money in your bank account but you expect a good tax return this year. What it cost you for knee surgery?

With this scenario in mind, we looked at the prices for knee arthroscopy on the MHDO website. As noted above, the range was significant. But it was not clear that this information was complete. There are always additional costs associated with surgery such as X-rays, MRIs, Radiologists, Anesthesiologists, etc. We also wondered how a Maine resident without access to the Internet could determine the best price. So we called each of Maine's 34 acute, non-profit general hospitals directly and asked their billing offices the cost of knee arthroscopy.

We were able to contact all 34 hospitals by phone. Two reported not having orthopedic surgeons on staff, thus leaving us with a sample of 32. Of these 32, only 14 provided a price estimate over the telephone. The remaining 18 hospitals did not or could not provide the price information we needed. One would provide information only by

mail, requiring the caller's name and address. Seven would not provide prices without a Current Procedural Terminology Code (CPT code). Eight hospitals said they would call back with the information but did not do so. Two hospitals did not pick up the telephone after repeated attempts and transfers from department to department. All 18 of these hospitals appear to be in direct violation of PL 560 (LD 1760) passed by the 126th legislature.



Discussion of Results:

Maine's Transparency Laws require easy access to medical procedure and service prices for those without health insurance. Our results suggest that a majority of hospitals are not complying with the law. The failure of nine hospitals to even make follow up calls as promised suggests a critical communication gap. In addition, the requirement for CPT codes is an obstacle for many patients who do not know either what a CPT code is

or where to find one. An on-line search for the CPT code for knee arthroscopy gives twenty results of bewildering complexity for non-medical personnel.

The requirement that hospital prices be available and understandable is not new. The Affordable Care Act (2008) requires hospitals to maintain and publicize a price list of common procedures and services. Maine's Transparency Law of June, 2014, mirrors and extends this requirement. We made our calls in the fall of 2014. Given the convergence of state and federal policy, it is surprising that a sizable number of Maine hospitals were unprepared to answer a consumer question on rates for the uninsured. The fact that 14 hospitals were able to provide the needed information suggests that there is not an inherent obstacle to this process. The question then becomes why a majority of Maine's hospitals do not view their obligation to provide price transparency as a priority.

Our calls led us to the following conclusions about best practices:

- The great majority of compliant hospitals were small and rural.
- Most were fully aware that CPT codes are not consumer friendly and used lay terms to help patients understand the terminology. They were able to cross-reference codes with their provider services. One hospital executive noted that "mostly we can figure out CPT codes internally but if all else fails we ask patients to call providers directly."
- Four hospitals worked hard to match patients with available insurance coverage. Each had trained billing staff as Consumer Assistance Counselors (CACs) or placed financial counselors in the billing department. One hospital was particularly sensitive to the high costs of

uncompensated care and noted that their newly hired financial counselor had a finance background. This counselor endeavored to help eligible patients get public coverage, a policy on the exchange or worked to negotiate a price with them.

- Another hospital reported that they had a counselor who would sit down with uninsured patients who were uncomfortable navigating on-line applications and help them apply for coverage.
- One hospital offered a ten percent discount for the uninsured.
- Several CACs commiserated with the difficulty of navigating the internet and commented that merely putting prices on a hospital website was not sufficient.
- Several other hospitals advised callers about free care options.

Summary and Recommendations:

Despite the need, fundamental reform of our for-profit health care system is unlikely to come soon. For those who still adhere to the concept that competition will decrease medical prices, however, it follows that for this to happen costs must be easily available, transparent and inclusive enough so that the market can function effectively. Good information, of course, is essential to a well-functioning market.

Currently many hospitals are not providing Maine medical consumers with this information; the medical market is not serving the uninsured well. Improved transparency cannot solve the inherent contradictions and inequities of our current system but can immediately help a limited number of Mainers to make a better informed choice. The

human cost of our system is likely to grow worse as the current administration continues in its efforts to trim Mainers from MaineCare and resists efforts to significant health reform.

Given poor hospital compliance with current law there are several options to consider:

- Policy makers should consider steps to be taken with the hospitals that do not comply with current law. Compliance will undoubtedly be rapid if sanctions are spelled out and significant.
- The MHDO database can be expanded to include more procedures and price information including that for associated procedures (e.g. X- rays, anesthesia and pathology) that add to currently posted costs. It will not solve all of the problems of access, given the limited availability of the Internet to many Mainers. Nor will it deal with the inherent opacity of medical terminology. It is unlikely that more information about service quality and patient outcomes website will be useful to patients without medical training..
- An educational program for hospital billing staff about the law and their obligations would be simple - and a worthwhile step.
- Maine policy makers can consider other options to our current for-profit health care system. In other countries which are committed to universal health care the issue of transparent prices is of minimal importance.

References:

- 1.) LD 1453, 2014; § 2.22 MRSA 1718-B; LD 1760, 2014.

- 2.) Gallup Poll, Portland Press Herald, 2/24/15
- 3.) Farwell, Jackie. Bangor Daily News 3/27/2014. Most States Fail On Health Price Transparency but not Maine..
- 4.) Kilbreth, E. (2014). As the nation goes, so goes Maine? Journal of health politics, policy and law. 39 (3) DOI10.1215/03616878-2682743
- 5.) US Census Bureau (2015). American Community Survey. The survey is based on analysis of uninsured Maine residents ages 18-64 with family incomes up to 138% of the poverty level (27,7200 for a family of 3 in 2015). Accessed at <http://familiesusa.org/product/top-9-occupations-working-uninsured-maine-who-would-benefit-expanding-health-coverage>
- 6.) Austin, DA (2014). Medical debt as a cause of consumer bankruptcy. Maine law review. 67(1) 2-23
- 7.) Maine Health Data Organization¹<https://mhdo.maine.gov/healthcost2014/CostCompare>
- 8.) US Census Bureau, 2015.

**An Act To Clarify the Law Governing Public
Disclosure of Health Care Prices**

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 22 MRSA 1718-A, as enacted by PL 2013, c. 332, 1 and affected by 3, is repealed.

Sec. 2. 22 MRSA 1718-B is enacted to read:

1718-B. Consumer information regarding health care entity prices

This section applies to the disclosure of health care prices by a health care entity.

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the

following meanings.

A. "Frequently provided health care services and procedures" means those health care services and procedures that were provided by the health care entity at least 50 times in the preceding calendar year. B. "Health care entity" means a health care practitioner, as defined in section 1711-C, subsection 1, paragraph F; a group of health care practitioners; or a health care facility, as defined in section 1711-C, subsection 1, paragraph D, that charges patients for health care services and procedures. A health care entity does not include a pharmacy or a pharmacist.

2. Requirements. The following requirements apply to health care entities.

A. A health care entity shall have available to patients the prices of the health care entity's most frequently provided health care services and procedures. The prices stated must be the prices that the health care entity charges patients directly when there is no insurance coverage for the services or procedures or when reimbursement by an insurance company is denied. The prices stated must be accompanied by descriptions of the services and procedures and the applicable standard medical codes or current procedural technology codes used by the American Medical Association.

B. A health care entity shall inform patients about the availability of prices for the most frequently provided health care services and procedures.

C. A health care entity shall prominently display in a location that is readily accessible to patients information on the price transparency tools available from the publicly accessible website of the Maine Health Data Organization established pursuant to chapter 1683 to assist consumers with obtaining estimates of costs associated with health care services and procedures.

A health care entity that does not routinely render services directly to patients in an office setting may satisfy this subsection by providing the information on its publicly accessible website.

Effective 90 days following adjournment of the 126th Legislature, Second Regular Session, unless otherwise indicated.

This amendment, which is the majority report of the committee, replaces the bill. It retains the substance of the bill and adds the following.

1. It requires health care entities to maintain prices rather than price lists to reflect that prices are typically retained in databases.

2. It requires health care entities to display a notice informing patients of their ability to obtain estimates of costs from the Maine Health Data Organization.

3. It allows health care entities that do not render their services directly to patients in an office setting to satisfy the requirements of notice by providing information on their publicly accessible websites.