

# Agenda V: Entity and Financial Information (EFI)

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# For Today

- What is entity and financial information?
- Why does it matter?
- How have APCDs historically handled EFI?
- What are the relevant legal considerations?
- What are the current policy considerations?
- What are your initial thoughts and questions about EFI?

# Entity and Financial Information

- Payer/Health Plan identifiers
- Provider identifiers – health systems, hospitals, physician organizations
- Detailed payment information for specific health care services
  - allowed and plan paid amounts
  - patient responsibility (copay, coinsurance and deductible)
  - charged amounts
- EFI is not likely to impinge on patient privacy
- EFI is business information that some health care entities consider confidential and proprietary
  - If payer and provider identifiers are combined with allowed amounts for specific services, then negotiated rates are revealed
  - States often ask data requesters to justify the need for EFI

## HPD Legislative Intent:

- Increase transparency regarding cost, utilization, quality, equity
- Inform policy decisions regarding provision of quality care, improving public health, reducing disparities, advancing coverage, reducing costs

# Charges vs. Allowed vs. Paid Amounts

CHARGE	INSURANCE DISCOUNT	ALLOWED AMOUNT	COPAY (fixed)	COINSURANCE (%)	DEDUCTIBLE	INSURANCE PAYMENT
\$ 500	\$ 225	\$ 275	\$ 25	\$ 0	\$ 50	\$ 200
\$6,000	\$3,000	\$3,000	\$ 0	\$ 600	\$ 0	\$2,400

Every Explanation of Benefits shows this information and is sent to the patient without restriction on disclosure.

# EFI Data Supports HPD Use Cases

## Cost Analysis - Examples

- Variation in price by geography
- Analysis of cost drivers
- Cost of prescription drugs
- Out of pocket costs
- Provider benchmarking
- Cost of low value care
- Cost of avoidable complications
- Cost to treat chronic conditions

## Health System Performance - Examples

- Comparative effectiveness of different payment models
- Effects of delivery system consolidation on cost, utilization, and access
- Evaluation of new models of care delivery
- Effectiveness of alternative payment models
- Variation in outcomes by site of care

EFI is broadly acknowledged to be important in fulfilling many HPD use cases...

# Public Reporting Principles for the HPD - Revised

## 1. Protect Patient Privacy

- Protect patient-level data from reidentification with prohibitions on publishing direct identifiers.
- Follow guidelines such as [CHHSA data-deidentification](#) and HIPAA safe harbor.

## 2. Inform Policy and Practice

- Generate information that is accurate, meaningful, relevant, actionable, and as comprehensive as possible.
- Consider the needs of diverse audiences, and design public information products that meet those needs.
- Consider ways to mitigate the risk of anticompetitive behavior when publicly reporting data.

## 3. Engage Stakeholders in the Process

- Incorporate stakeholder perspectives into priority-setting for public reporting.
- When appropriate, preview the results with affected stakeholders prior to publication.

## 4. Adopt Methods that Ensure Credibility

- Use only methods that can be supported by the data and techniques that produce reliable and stable results over time, acknowledging the limitations of data collected for other purposes (primarily billing).
- Use best practices when creating comparisons, including factors such as appropriate sample sizes, meaningful variation, risk adjustment, and statistical validity.

## 5. Align with Existing Efforts

- When available and appropriate, use nationally accepted, standardized measures.
- Consider measurement efforts underway in California and nationally.
- Coordinate with other relevant state agencies.

## 6. Provide Information to Support User Understanding

- Include information about data sources, methodology, and limitations with public information products.
- To the extent possible, use language understandable to diverse audiences.

...but some stakeholders expressed concern about anticompetitive effects.

# APCDs Typically Conservative in Releasing EHI

HPD's enclave environment will contribute to ensuring appropriate access and will limit release.

State APCD	What Data is Released
Colorado	<ul style="list-style-type: none"><li>• Payment information is available if required and justified based on project purpose or research questions/goals</li><li>• Payment information is available by provider or payer, not both</li><li>• Anonymous codes replace payer / provider names while allowing differentiation</li></ul>
Utah	<ul style="list-style-type: none"><li>• Pricing information is available by line of business only (e.g., commercial insurance, Medicaid, Medicare), not by payer</li></ul>
Oregon	<ul style="list-style-type: none"><li>• Release either payer name or amount of payment, not both.</li><li>• Commercial users are limited to public use files</li></ul>

# States Releasing Pricing Information

	AR	CO	CT	DE	MA	MD	ME	MN	NH	OR	RI	UT	VT	WA
<b>Paid Amount</b> (insurer)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
<b>Allowed Amount</b> (i.e., the maximum amount that a health plan will pay to a provider)	✓	✓	✓		✓	✓			✓	✓	✓		✓	
<b>Capitation / Prepaid Amount</b> (fee-for-service equivalent amount)	✓	✓	✓	✓	✓		✓		✓	✓	✓	✓	✓	✓
<b>Charge Amount</b> (i.e., the amount the provider charges the payer for the service)	✓	✓	✓	✓	✓	✓			✓	✓	✓	✓	✓	✓
<b>Member/Patient Cost Sharing</b> (copay, coinsurance, deductible)	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓

“... California should seek to determine when the public benefit of disclosure of negotiated rates outweighs any anticompetitive harms.” p10

HPD is collecting all of these data elements.

Katherine L. Gudiksen, Samuel M. Chang, and Jaime S. King, [The Secret of Health Care Prices: Why Transparency Is in the Public Interest](#), UCSF, July 2019, Table 2



# Federal Antitrust Law, and Information Exchanges

- Generally, federal antitrust law makes it illegal for businesses to engage in actions, through agreements or by concerted action, that unreasonably restrain competition.
- The federal government, states, and private parties may sue for antitrust violations.
- Information Exchanges
  - There are antitrust concerns for information exchanges because they could allow price-fixing arrangements or allow competitors to change prices interdependently to the detriment of consumers.
  - Courts have also noted that information exchanges can have procompetitive effects and benefit consumers.

# Federal Policy Shifting Toward Increased Transparency

- Hospital transparency rule went into effect 1/1/2021
  - Requires public release of negotiated rates for all items and services with a standard charge
  - Rule upheld against lawsuit challenge
  - Compliance mixed to date; July 2021 executive order aimed to increase compliance, strengthen enforcement
  - Available information indicates substantial variation and [challenges with standardization](#)
- Insurance transparency rule implementation to be phased in 2022-2024
  - Requires public release of negotiated rates with in-network providers for all covered items/services – effective 7/1/2022
  - Requires public release of billed charges and allowed amounts for covered items/services provided by out of network providers – effective 7/1/2022
  - Consumer price transparency tools must be available 1/1/2023 (500 shoppable items, services, and drugs) and 1/1/2024 (all covered items, services, and drugs)

Federal requirements for publication of contracted payment amounts on public websites weakens claims of confidentiality.

# Change in Policy by the Federal Department of Justice About Health Care Information Exchanges

In 1996, the federal Department of Justice (“DOJ”) issued antitrust enforcement guidelines creating safe harbors for certain health care information exchanges. The DOJ stated that it would not challenge an information exchange that met the guidelines unless there were extraordinary circumstances.

On February 3, 2023, the DOJ withdrew those guidelines. The DOJ indicated that it did so because it thought the guidelines were outdated and thus, were “overly permissive” on subjects such as information sharing. The DOJ stated it would assess antitrust issues on a case-by-case basis.

# State Immunity from Federal Antitrust Law and Effect on HPD

Actions by or through the State of California may be immune from federal antitrust law. Generally, states are immune:

- If the state articulated a clear policy to allow anticompetitive actions; and
- if private parties are involved, if the state has and exercises power to review the private party's actions for consistency with state policy.

These requirements will be met by HCAI because HPD statute provides a clear state policy about HPD increasing transparency, and HPD will have a thorough review process for data applications.

# Summary

- EFI is important to fulfilling many HPD use cases.
- Some stakeholders are concerned about the potential for anticompetitive use of EFI.
- APCDs have historically been conservative about releasing EFI data.
- The policy environment is shifting toward greater transparency.
- As with all elements of the program, HPD will “crawl, walk, run.”

What are your questions about EFI and how it interacts with the work of the DRC?