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Expanding the Doctrine of Patient Informed Consent to Include Pricing Transparency and Disclosures

Health care reform has and remains a very relevant issue for the vast majority of Americans including those patients and consumer advocates seeking to further health-care pricing transparency and disclosure. In response, a number of state legislatures have passed various statutes, regulations, and other laws, directly mandating that state agencies effectuate uniform patient pricing and health care based consumer disclosure initiatives or policies, including requiring health care companies, physicians, providers, and insurance companies, to make such pricing, cost, and other health care financial and other coverage information available and accessible to patients and consumers of health care. For a comprehensive listing of such patient pricing and health consumer disclosure laws, see the National Conference of State Legislature's list [here](#).

Generally speaking, despite these various federal and state initiatives seeking to further patient pricing and health care consumer based disclosures, there is still significant uncertainty faced by many individuals when seeking health care treatment, medical procedures, or other health care based services. Additionally, there remains notable price disparities in health care services, where for example, a recent [article](#) highlights how treatment for chronic obstructive pulmonary disease disorder (COPD) in one hospital may cost \$99,690 dollars, but less than 30 miles away, may only cost \$7,044 for the exact same treatment. Price disparity remains a concern for health care reform, where many [experts](#) have opined that health care costs are so high in part because of the significant price disparities among hospitals and physicians. To assist patients and consumers of health care services, the Centers for Medicare and Medicaid

Services (CMS) has set up a [database](#) designed “to provide information on services covered by the Medicare Physician Fee Schedule (MPFS) [and] provides more than 10,000 physician services, the associated relative value units, a fee schedule status indicator and various payment policy indicators needed for payment adjustment.”

A consideration that has received less focus, is whether the [doctrine of informed consent](#) should be expanded to include patient pricing and health-care consumer based financial disclosures. Simply put, informed consent is understood as “the process of communication between a patient and physician [including health care provider] that results in the patient’s authorization or agreement to undergo a specific medical intervention.” Arguably, issues of cost, pricing, insurance coverage, and other financial considerations are just as relevant if not equally important to patients when weighing particular health care treatments, procedures, and decisions. Still many articulate that seeking health care services or treatment is much [different](#) than buying a home or having a car repaired, where you cannot necessarily provide a good faith estimate where complications and certain unknowns may arise or alternatively, where such pricing information may serve as a disincentive for patients to seek the health care they otherwise desperately need. Regardless, the issue of health-care pricing transparency and disclosure has and remains relevant to the overall health care reform debate.

About Us

Robert N. Wilkey, Esq. is the Principal Attorney of Wilkey Legal Consultants, LLC (“WLC”) located in Exton, PA, with over a decade of class action, mass tort, and complex civil litigation, including pharmaceuticals, medical devices, and consumer healthcare related matters, and provides FDA regulatory, consulting, and litigation based services to firms in the area and throughout the country. Mr. Wilkey is involved in various labor reform and whistleblower advocacy related projects involving medical residents for claims and grievances before the Accreditation Council for Graduate Medical Education (ACGME), the effectuation of maximum hour legislation, whistleblower protection and employment based reforms for medical residents and health-care professionals

Mr. Wilkey holds a BA/MPP from Brigham Young University and a JD from the University of Iowa College of Law, and currently provides regulatory, legal, and consultation and litigation services to individuals, corporations, industry, non-profits, school districts, and government entities.

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