

September 20, 2021

The Honorable Chiquita Brooks-LaSure  
Administrator  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard  
Baltimore, MD 21244

Dear Administrator Brooks-LaSure:

We write today to call for robust enforcement of key health care price transparency requirements, and to applaud your recent efforts to enhance compliance with such requirements by increasing civil monetary penalties for noncompliance. There is no doubt the health care system is broken, and that the American people deserve better. We appreciate your prompt attention to this matter and stand ready to assist the Centers for Medicare & Medicaid Services (CMS) and its staff.

On September 24, 2020, President Trump issued an Executive Order that was designed to make health care pricing more transparent and accessible to the American people, support competition, and empower consumers to make informed and value-conscious decisions (“Price Transparency Rule”).<sup>1</sup> The rule requires hospitals to provide the rates for 300 common services and the amount they are willing to accept in cash in a digital, consumer-friendly database. The Trump administration issued and subsequently finalized the Price Transparency Rule in November 2020, marking a significant step toward achieving full transparency in the health care market. In December 2020, the U.S. Court of Appeals for the D.C. Circuit issued a 2-0 decision upholding the Trump Administration’s Price Transparency Rule, affirming that hospitals must comply with the requirements of the final rule to publicly disclose their standard charges.<sup>2</sup> However, work remains to be done to ensure hospitals fully adopt and are held accountable to the provisions within the rule.<sup>3</sup>

Under the Price Transparency Rule, hospitals were required to disclose their standard charges the day the final rule took effect on January 1, 2021, providing hospitals with time to collect and publish the standard charge information.<sup>4</sup> CMS is responsible for evaluating and

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<sup>1</sup> CMS Completes Historic Price Transparency Initiative. (October 29, 2020).

<https://www.cms.gov/newsroom/press-releases/cms-completes-historic-price-transparency-initiative>

<sup>2</sup> <https://www.jdsupra.com/legalnews/court-of-appeals-rules-against-89518/>

<sup>3</sup> Medicare and Medicaid Programs: CY 2020 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates. Price Transparency Requirements for Hospitals To Make Standard Charges Public, 84 Fed. Reg. 65,524 (November 27, 2019).

<https://www.govinfo.gov/content/pkg/FR-2019-11-27/pdf/2019-24931.pdf>

<sup>4</sup> <https://www.federalregister.gov/documents/2019/11/27/2019-24931/medicare-and-medicaid-programs-cy-2020-hospital-outpatient-pps-policy-changes-and-payment-rates-and>

enforcing hospital compliance with the requirements prescribed in the rule.<sup>5</sup> It is our understanding that if CMS finds that a hospital failed to disclose its standard charges by January 1, 2021, CMS may take action to, in no required order, issue a warning notice to the hospital, request a corrective action plan, impose a civil monetary payment of \$300 per day until rule requirements are met, and name the noncompliant hospitals publicly on CMS's website.<sup>6</sup>

A study published on March 16, 2021 examining the price transparency of the 100 highest-revenue hospitals in the United States concluded that 65 of those 100 hospitals were non-compliant with the Price Transparency Rule.<sup>7</sup> Of these 65, 12 did not provide files or links to searchable databases. Furthermore, 53 of the 65 non-compliant hospitals did not include payer-specific negotiated rates or were non-compliant in other ways.<sup>8</sup>

Even "compliance" under the current definition has not resulted in adequate tools for patient price shopping. Hospitals deemed compliant have engaged in practices that do not meet the rule's intent, including providing incomplete information, implementing burdensome access restrictions, utilizing code to block prices from being displayed on search engines, and creating tools to obfuscate access to mobile app developers or patients. Nearly every hospital evaluated for compliance in one study buried their cost sheets deep within their websites.<sup>9</sup> The hospitals engaging in these practices should not be considered compliant with the law, as even savvy patients would struggle to navigate these intentionally complex systems.

It is clear that the current \$300 per day civil monetary penalty threshold was not sufficient to hold hospitals accountable for complying with the transparency agreements. For that reason, we commend CMS's recent proposal to increase the civil monetary threshold for noncompliant hospitals.<sup>10</sup> In the interim, we write to inquire about the results of CMS's current oversight efforts of non-compliant hospitals to ensure that Americans have access to the most transparent and up-to-date prices.

We respectfully request that you provide to us no later than 5 p.m. on Monday, October 4<sup>th</sup>, 2021, the following information:

1. The number of hospitals currently subject to the Price Transparency Rule;
2. Of these hospitals subject to the rule:
  - a. The number of hospitals that have received warning letters and/or correction action plans (CAP) from CMS for non-compliance (preferably by state);

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<sup>5</sup> Id.

<sup>6</sup> Ibid.

<sup>7</sup> Morgan Henderson, Morgane C. Mouslim, *Low Compliance From Big Hospitals On CMS's Hospital Price Transparency Rule*, HealthAffairs (March 16, 2021) <https://www.healthaffairs.org/doi/10.1377/hblog20210311.899634/full/>

<sup>8</sup> Ibid.

<sup>9</sup> Kevin Kennedy et al. "The Insanity of U.S. Health Care Pricing: An Early Look at Hospital Price Transparency Data." Health Care Cost Institute. April 1, 2021.

- b. The number of responses CMS received from non-compliant hospitals (preferably by state), and a description sufficient to help Congress understand either the improvement that is underway, or the work that remains to be done;
    - c. The number of hospitals that have been issued a civil monetary penalty by CMS;
  3. A description of how CMS is auditing compliance with warning letters and/or CAPs;
  4. The date by which CMS expects to issue its first civil monetary penalty for non-compliance;
  5. A description of how CMS informs Congress and the American people about which hospitals are fully compliant (or not) with efforts to increase transparency of health care pricing.

Thank you again for your attention to this important matter. We look forward to working with CMS and its staff to ensure full compliance with this important rule.

Sincerely,



SEN. MIKE BRAUN



SEN. MAGGIE HASSAN