



June 2, 2022

Mr. Jeffrey Grant
Deputy Director for Operations CCIIO
U.S. Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Washington, D.C. 20201

RE: Requested suggestions for CY 2023 OPPS Rule to strengthen and enforce Hospital Price Transparency Rule

Dear Deputy Director Grant:

Thank you for all your efforts to achieve systemwide healthcare price transparency through the Hospital Price Transparency Rule and the forthcoming Transparency in Coverage Rule. Together these two rules hold the promise of unleashing competition in our opaque, and thus dysfunctional, healthcare system, and of dramatically lowering healthcare prices while increasing access to care and coverage.

As you work to draft the Outpatient Prospective Payment System (OPPS) rule for 2023, I am reaching out on behalf of Power to the Patients, a national, nonprofit, public advocacy organization, to offer suggestions for better implementation, enforcement, and awareness of these critical policies.

Power to the Patients was created expressly to inform all healthcare consumers – patients, workers, employers, and unions – of their right to know the price of their health care before they get their bill, and of the power that comes with knowing and comparing prices. Our organization is giving voice to the tens of thousands of consumers who have signed onto our effort, as well as the 90 percent of Americans who, surveys have repeatedly shown, want to know the price of their care up front. Through our public awareness efforts, we have placed 44 painted graphic murals prominently in cities across America; sent planes pulling messages over beaches and public gatherings, such as the Super Bowl; engaged in regular national media coverage; and created TV advertising featuring prominent celebrities, including rapper Fat Joe, who visited the White House in April for this cause and attended the White House Correspondents Dinner on our behalf. Through these and other efforts we are working hard to let Americans know that the power to know prices is finally in their hands.

I believe you'll agree, we both have a lot more work to do. If we are going to unleash the true power of price transparency, we will need to achieve a major shift in consumer behavior. Moreover, educational efforts need to go beyond individual consumers to employers at the C-suite level. Employers and unions are the largest purchasers of healthcare, yet our research has found that they remain profoundly unaware of the power to know prices.

Once fully realized, systemwide healthcare price transparency holds the promise of achieving many of the goals of the Department of Health and Human Services, this Administration, and, in fact, all Americans. Once prices are no longer hidden from those purchasing healthcare – patients, workers, employers, unions, and taxpayers – price competition will enter the market driving costs down and access up. When prices are unleashed, healthcare will become a functional marketplace, and real purchasers – not providers and third-party payers – will have the power.

Of course, none of this will matter if hospitals continue to flout the rule. As you know, the Hospital Price Transparency Rule went into effect January 1, 2021. A year and a half later, fewer than 15 percent of hospitals are complying, according to a report (attached) from our sister organization, [PatientRightsAdvocate.org](https://www.patientrightsadvocate.org).

As we fight inflation, healthcare price transparency offers a readily available way to lower costs, empower patients, and provide financial relief to families, workers, employers, and taxpayers. That coupled with the Transparency in Coverage Rule due to take effect next month, if properly enacted and enforced, stand to do more to achieve these goals and fix our broken healthcare system than any other action.

At nearly one-fifth of our gross national product, almost twice that of the next leading developed country, healthcare spending is eroding our economy, financially harming families, and crippling employers. Moreover, it's ruining our nation's health: According to a [recent study](#), 64% of all U.S. adults said they avoided necessary healthcare last year out of fear for the unknown cost. Never has there been a more critical time in our nation's history to address this.

Before I share our ideas for better enforcement, implementation and awareness, however, please note that unlike hospitals and insurance companies, which do not share our views on transparency, **we have no financial motive beyond making healthcare more affordable for everyone. We do not stand to profit in any way from this effort. Our funding is philanthropic, as is our intention.**

Thus, we respectfully ask you to consider the following as you draft the forthcoming CY 2023 OPPI rule. We believe the following recommendations will compel the 85 percent of non-compliant hospitals to put patients ahead of profits and enlighten Americans of their right to know prices and change their behavior:

- 1. Establish uniform technical standards.** One of the most common ways noncompliant hospitals are skirting the rule is by using impenetrable, inconsistent, or non-standard file formats. Thus, we suggest that HHS clearly specify what technical standards hospitals should use when posting prices in their standard charges file. For instance, the agency could require that hospitals use a common set of data and file standards, such as JSON for machine-readable price files, and CSV for the human-readable price files. In addition, all pricing data should be available for free via application programming interfaces (APIs), so outside companies can aggregate data and create consumer shopping tools for mobile devices.
- 2. Provide a template.** To aid comparisons between and among hospitals, we encourage HHS to issue a universal template. This would include the list of 300 shoppable services, all the required fields (gross cash price, discounted cash price, prices by payer and plan, and lowest and highest negotiated rates), as well as a glossary of full payer and plan names, and their common abbreviations, for hospitals to adhere to. This will help eliminate confusion and assure purchasers are comparing apples to apples.

- 3. Require that all fields be filled, and all plans listed.** Our research has found that many hospitals in their attempts to feign compliance post incomplete prices with multiple errors and omissions. Files reflect unorthodox file formatting, incomplete date, incorrect data, inaccessible data, odd symbols, and obscure acronyms. Some post formulas for consumers to compute to determine pricing. Asking hospitals to provide complete information, in a standard uniform way on one template will help purchasers compare prices. In addition, we would suggest that HHS require all hospitals to post a list of insurers, payers, and specific plans they accept, so patients will know in advance whether the hospital is in-network.
- 4. Enforce one-click access.** Require that hospitals provide on their homepage a clearly marked link to their pricing files, so consumers can access prices with a single click.
- 5. Eliminate the price estimator.** The option for hospitals to provide an estimator tool undermines the very essence of the transparency rule, which is to provide a way for patients and other purchasers of healthcare to compare prices across plans and against cash prices, which are often lower than negotiated plan rates. Estimator tools do not provide binding prices, and require consumers to disclose personal identifying information, including insurance information, for data tracking. This benefits hospitals at the expense of patient privacy. The estimator tool also violates the rule's requirement that prices be available "without barriers." Consumers should have immediate, free, unfettered, and confidential access to binding prices at all hospitals.
- 6. Begin robust enforcement.** To our knowledge, despite the rule's having been in effect for 18 months, and despite rampant noncompliance, not one hospital has been fined. We encourage HHS and the Centers for Medicare and Medicaid to immediately begin robust enforcement. Issue letters, follow up with maximum fines, and publicly list the names of hospitals that are not complying, including the status of their warnings and penalties. Even with the increased fines proposed in the CY 2022 OPPI Rule, hospitals continue to keep prices hidden likely because no penalties have been issued.
- 7. Require hospitals to be proactive in providing prices.** In addition to requiring hospitals to post their prices online, we further urge HHS to require hospitals to provide a printed price sheet to every patient stating what their care will cost in advance of any procedure. Make it a requirement that prices disclosed match the bill.
- 8. Make sure insurers' prices align.** When the Transparency in Coverage Rule takes effect July 1, require that insurers design their tables, so they mesh with hospitals' fields, and that prices align. Otherwise, insurers will use this disclosure to further obfuscate prices and frustrate consumers.
- 9. Create public awareness.** Patients have been blind to prices for so long, they don't expect to be informed before they receive care. As Power to the Patients continues in its dedicated effort to make all healthcare consumers aware of their right to know prices, we would welcome any opportunity to partner with HHS to spread the word and encourage patients to ask for and receive prices up front. The more consumers know about this right, the easier it will be for your agency to enforce the transparency rules. That said, broad awareness will only result in frustration if hospitals aren't compliant. Perhaps, HHS could also require hospitals to educate their patient base about how and where to easily find real, binding prices on the hospitals' websites.
- 10. Make prices binding and enforce accountability.** Hold hospitals accountable for their price disclosures by requiring them to absorb any under-estimated costs. Create a clearinghouse for patients to use when their bill doesn't match the posted price.
- 11. Adopt other policies to encourage compliance.** For instance, make a hospital's ability to participate in and receive payments from Medicare or Medicaid contingent upon its full compliance with the Hospital Price Transparency Rule, or make their licensure contingent upon

compliance. Another policy about to become law in Colorado is to forbid hospitals that are not fully compliant from sending patients to collections.

12. Require top hospital executives to attest. Hospital CEOs and CFOs, and ultimately top executives for health insurance plans, should be required to provide annual attestations affirming that their price lists are complete, accurate, and will match the prices billed to patients.

We appreciate the work that HHS and CMS have done to date and hope these ideas will stimulate further steps toward realizing the Biden Administration's pro-competition vision, while substantially lowering healthcare costs in a time of high inflation. We welcome the opportunity to discuss any of these ideas further and to work with you to make systemwide healthcare price transparency a signature success of this Administration and a victory for all Americans.

Respectfully yours,

Marni Jameson Carey

President, [PowertothePatients.org](https://www.powertothepatients.org)

ENCL: Patient Rights Advocate Semi-Annual Hospital Price Transparency Compliance Report