

April 4, 2022

Meena Seshamani
Director, Center for Medicare
Centers for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

RE: Critical Suggested Changes to the Upcoming CY 2023 OPPS Rule

Dear Meena,

Thank you for the work that you and the Centers for Medicare and Medicaid Services (CMS) have done to implement the [Hospital Price Transparency Rule](#) that took effect January 1, 2021. This rule is a vital first step toward delivering real, upfront prices to consumers who pay for healthcare and coverage – patients, employers, unions, workers, and taxpayers – as well as entrepreneurs, price comparison analysts, and technology developers.

Systemwide price transparency will revolutionize American healthcare by providing consumers with financial certainty, preventing widespread overcharging and billing errors, increasing workers' wages, and counteracting inflation by lowering costs. This issue is absolutely critical to achieve social justice and equitable access in healthcare. Upfront, actual prices empower all individuals, especially those with limited financial resources, to comparatively shop both within and across hospitals for the best quality at the lowest price, and confirm that the bill matches the agreed upon price.

Americans continue to be financially harmed by the egregious overcharging, upcoding, and price hiding of hospitals. Unfortunately, PatientRightsAdvocate.org's second [Semi-Annual Hospital Price Transparency Compliance Report](#) found that only 14.3 percent of the 1,000 hospitals reviewed are complying with the rule. The remaining 85.7 percent are blocking consumers from price comparisons, obstructing those seeking a fair market price, and hindering tech innovators from aggregating the data in a meaningful way. Yet, [89% of Americans surveyed](#) in February believe hospitals should be required to post all actual binding prices, not estimates.

I write to encourage you to make several improvements as you draft the forthcoming CY 2023 Outpatient Prospective Payment System (OPPS) rule. We believe that the following recommendations will compel more hospitals to comply, and will make the rule more useful for consumers seeking the best prices and for tech innovators looking to aggregate the data in consumer-friendly applications:

- I. Specify and implement technical data standards for hospital standard charges files.
- II. Require a consumer-friendly data file with actual, binding prices for shoppable services.
- III. Require robust enforcement by issuing the maximum penalties to noncompliant hospitals, and publish a list of hospitals receiving warnings and penalties.
- IV. Eliminate the price estimator tool.
- V. Require hospitals to proactively provide upfront prices to patients, and launch a public awareness campaign to notify patients of their rights.

VI. Engage consumer groups such as PatientRightsAdvocate.org as a resource.

VII. Consider other policies that promote healthcare price transparency.

Our detailed recommendations are as follows:

I. Specify and implement technical data standards for hospital standard charges files.

Our research found that hospital price lists routinely suffer from a range of data standard problems, including:

- Difficult file types and formats,
- Gaps, errors, and duplicates in price data,
- Readability issues (human and machine) due to data presentation and layout, and
- Both intentional and unintentional obfuscation of data by hospitals.

A common set of data and file standards, developed with feedback from consumer groups such as PatientRightsAdvocate.org, will benefit the hospitals that are making efforts to comply, consumers who are trying to access the data, and the constituency of researchers, innovators and academia who are looking to aggregate this information. Below are our suggested pricing data standards:

1. Require that the machine-readable pricing files be disclosed in one Standard File Format, e.g. JSON, in addition to a human-readable price file disclosed in one Standard File Format, e.g. CSV.
2. Require disclosure of the full payer and plan name and provide hospitals with a uniform, nationally applicable set of abbreviations for the most common payers and plans.
3. Mandate that plan specific rates be disclosed in the machine-readable file and updated in real time.
4. Define a standard schema for machine-readable file disclosures, including all names and data types.
5. Require that all pricing data also be provided for free via application programming interfaces (APIs).
6. Provide a safe harbor or require that the use of CPT or DRG codes be made available without royalty, copyright, or other fees for the purpose of price transparency including by any downstream software.
7. Require that explicit billing codes, such as CPTs or DRGs, be identified for each procedure, and require separate files or tabs for each billing code type, including CPT, DRG, HCPCS and NDC.
8. Require that the pricing file can be found with just a single click from the hospital's homepage.
9. Require all hospitals to post a machine-readable file with actual prices (discounted cash prices and insurance-negotiated rates) for the 300 shoppable services, whether or not they have a price estimator tool.

10. Implement a standard for representing where there is no data for a particular field, or provide a legend to help users understand the meaning of a dash or “N/A,” or another symbol or acronym that we have observed on these pricing files.
11. Require all descriptions, codes, and standard charge information to be separated by rows, and items and services to be separated by columns.
12. Require all hospitals to post a list of insurers, payers, and specific plans accepted, so patients will know in advance whether the hospital is in-network.

II. Require a consumer-friendly data file with actual, binding prices for shoppable services.

We suggest that CMS require hospitals to post a consumer-friendly data file with actual, binding prices for shoppable services, without any barriers to access. Hospitals already know both their prices for delivering services and the data about the various services that could potentially be included in a procedure, so they are able to disclose an actual price to patients prior to care and be bound to deliver care at that price. We encourage CMS to hold hospitals accountable for these price disclosures, by requiring them to absorb any under-estimated costs rather than holding patients financially responsible for the provider’s or facility’s erroneous determination.

By providing complete, upfront, binding price information in lieu of estimates, hospitals can empower patients with knowledge of competition and choices in healthcare, financial certainty, and the ability for recourse if they have been overcharged.

III. Require robust enforcement by issuing the maximum penalties to noncompliant hospitals, and publish a list of hospitals receiving warnings and penalties.

We applaud the Administration for increasing the penalties in the CY 2022 OPPS Rule. However, the increased fines have not yet incentivized the majority of hospitals to comply, because none have been levied, to our knowledge. While our review of hospital websites continues to find widespread noncompliance, CMS reportedly has not issued any penalties to hospitals nor has it been transparent about which hospitals have received warning letters.

Hospitals have had ample time to comply with this rule and have flagrantly refused to do so, or have only given the appearance of complying while continuing to obfuscate their real prices. CMS’s leniency in levying penalties has been rewarded with outright disregard for duly promulgated requirements. As such, we suggest that the CY 2023 OPPS Rule require CMS to issue the maximum penalties to noncompliant hospitals and publicly release their names. Only such robust enforcement will compel hospitals to take seriously their obligations to CMS and to consumers to fully implement price transparency requirements.

IV. Eliminate the price estimator tool.

The use of “price estimator tools” as allowed in the Hospital Price Transparency Rule allows hospitals to intentionally obfuscate prices, blocking consumers from any knowledge of comparative prices to shop. The tool provides consumers with meaningless estimates accompanied by disclaimers which remove any accountability for hospitals to stand by their estimates. Feedback from thousands of consumers who have unsuccessfully attempted to use hospitals’ price estimator tools has shown that the tools:

- Fail to provide actual, upfront prices that would allow consumers to shop with financial certainty,
- Mislead patients by producing inaccurate estimates or non-binding price ranges,

- Collect an inordinate amount of personally identifiable information for data tracking, violating consumer privacy and creating more barriers to pricing, and
- Often prohibit access to the discounted cash price, discriminating against patients who are uninsured or seeking to self-pay.

We suggest that HHS eliminate the price estimator tool in favor of the consumer-friendly and machine-readable data file in a standard format with actual, binding prices for shoppable services. Only when consumers can easily see and compare prices within and across hospitals will they be empowered to drive down their cost of care through consumer choice.

V. Require hospitals to proactively provide upfront prices to patients, and launch a public awareness campaign to notify patients of their rights.

To successfully exercise their right to see prices, healthcare consumers must first be educated about their rights. Hospitals have engaged in clandestine pricing practices for so long, that most patients now expect prices to be hidden. If all consumers know that hospitals are required to disclose prices, they will demand that hospitals do so, and will aid CMS in enforcement by submitting complaints when hospitals are noncompliant. We recommend that CMS consider requiring hospitals and providers to notify patients of the actual price in advance of every patient encounter.

[Our survey](#) found that only 29% of Americans are aware of their right to see upfront prices from hospitals. We suggest that HHS undertake a public awareness campaign to let patients know that hospitals are now legally required to post all of their prices. Empowered with this knowledge, patients can ensure that hospitals fully disclose all prices in advance.

VI. Engage consumer groups such as PatientRightsAdvocate.org as a resource.

In preparing our semi-annual compliance reports and in other aspects of our work, our team members have engaged in numerous conversations with consumers, employers, unions, and technology companies about both usability and technical aspects of the price transparency rules and pricing data files. When CMS determines compliance, drafts future rules, and reviews technical pricing data standards, we encourage you to consider PatientRightsAdvocate.org as a resource to represent the essential perspectives of these stakeholders. Few organizations have a better knowledge of the existing hospital price disclosures, their varying standards, and consumers' experiences with pricing data than our organization. We are available to share our lessons learned with CMS to improve price transparency requirements and the corresponding data standards.

VII. Consider other policies that promote price transparency.

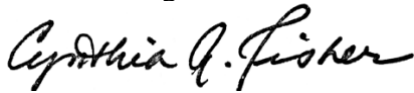
Finally, we encourage CMS to adopt other policies that we believe will truly achieve real, systemwide price transparency in healthcare. Specifically, we recommend that CMS consider the following actions in future rule making:

- Make compliance with the Hospital Price Transparency Rule a Condition of Participation and Condition of Payment to compel all hospitals to be fully compliant or risk losing participation and/or reimbursement from Medicare and Medicaid.
- Require hospital management to provide annual attestation that their price lists are complete, accurate, and will match the prices billed to patients and enforce against hospitals that falsely attest to price transparency compliance.

- Forbid hospitals from taking debt collection actions against patients if the hospital is not in compliance with the Hospital Price Transparency Rule.
- Require hospitals to honor the Medicare rate for any charges to any patient for any services where there was noncompliance with posting of the price information.
- Forbid hospital mergers, hospital monopolization tactics, federal funding, and accreditation for hospitals that are noncompliant with price transparency requirements.
- Coordinate with the Federal Trade Commission to enforce a “truth-in-pricing” approach to hospitals’ disclosure of their prices.
- Create a private right of action that enables users to take action against a hospital, insurer, or provider that does not comply with price transparency requirements or charges a price in excess of the price posted.

We again applaud the work CMS has done so far to protect patients with the right to price transparency in healthcare. We encourage you to take additional steps to strengthen these rights and usher in the Biden Administration’s pro-competition vision to substantially lower the costs of healthcare in a time of high inflation. Actual, upfront prices will restore trust in the healthcare system, achieve social justice and reduce racial disparities in healthcare, and protect consumers’ health and wealth for generations to come.

Warmest Regards,



Cynthia A. Fisher
Founder and Chairman
PatientRightsAdvocate.org

ENCL: PatientRightsAdvocate.org Semi-Annual Hospital Price Transparency Compliance Report