



October 20, 2022

RE: Comment regarding CY 2023 OPPS Proposed Rule E.O. 12866 Meeting 0938-AU82 - CY 2023 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates (CMS-1772)

Dear Representatives from CMS, HHS & OMB:

Thank you for the opportunity to meet with you over Zoom today to share my insights and recommendations as you seek to finalize the Hospital Outpatient Prospective Payment System (OPPS) Rule for 2023. As president of [Power to the Patients](https://www.patientsrightsadvocate.org), I am writing on behalf of tens of thousands of Americans who have joined with our organization to ask you to go further in strengthening your rule to better address the interrelated issues of consolidation, competition and price transparency.

Power to the Patients is a national, nonprofit, public advocacy organization that exists expressly to inform health-care consumers – patients, workers, employers, and unions – of their right to know the price of their health care upfront, a legal right more than 90 percent of Americans support. Unlike hospitals and insurance companies, which do not share our views on transparency, we have no financial motive beyond making health care more affordable for everyone. We do not stand to profit in any way from this effort. Our funding is philanthropic, as is our intention.

As the proposed rule states (*Page 752. XIX. Request for Information on Use of CMS Data to Drive Competition in Healthcare Marketplaces*), President Biden’s Executive Order on Promoting Competition in the American Economy (EO 14036) specifically identified hospital consolidation as an area of major concern. Indeed, hospital consolidation leads to higher prices, less access, and reduced competition. Thus, the mention of the Executive Order’s promise to “Direct HHS to support existing hospital price transparency rules” is a highly appropriate action.

If consolidation is the cancer in our health-care system, systemwide and vigilantly implemented price transparency, which would increase competition, is the cure: Access to complete and accurate prices would introduce market competition, which would cause hospitals to compete on price, not market size. Once consolidation stops leading to a guaranteed ability to charge higher prices, hospitals will lose their appetite for merging and acquiring other hospitals and clinics.

Thus, as I shared on the call today, I respectfully urge you, as you finalize this rule, to please consider strengthening the Hospital Price Transparency Rule and the more recently enacted Transparency in Coverage Rule in the following eight ways:

- 1. Fully implement and enforce existing transparency rules.** Since the Hospital Price Transparency Rule went into effect 22 months ago, only 16 percent of hospitals are fully complying, according to [a recent report](https://www.patientsrightsadvocate.org/semi-annual-compliance-report-2022) (<https://www.patientsrightsadvocate.org/semi-annual-compliance-report-2022>) from our sister organization, [PatientRightsAdvocate.org](https://www.patientsrightsadvocate.org). Despite this low rate of compliance, to date HHS has only fined two hospitals, both in Georgia. Notably, however, since those two hospitals were fined, both are now in exemplary compliance. Enforcement works. We encourage HHS and CMS to ramp up enforcement through additional warning letters, followed promptly by maximum fines.

2. **Issue standard templates.** To facilitate compliance, we encourage CMS to furnish a standard formatted template for hospitals to use to post their standard charges. Make it mandatory for hospitals to use these universal templates for both their machine-readable files, and their consumer-facing files of 300 shoppable services. These templates should include all the required fields (gross cash price, discounted cash price, prices by payer and plan, and de-identified lowest and highest negotiated rates). CMS should also consider clearly specifying what technical standards hospitals should use, such as JSON for machine-readable price files, and CSV for the human-readable price files. This would streamline the data gathering process for high-tech aggregators, and make comparing prices across health systems much easier for consumers.
3. **Eliminate price estimator tools.** The option for hospitals to provide an estimator tool in lieu of a list of 300 shoppable services undermines the very point of the transparency rule, which is to provide a way for patients and other purchasers of health care to compare prices across plans and against cash prices, which are often lower than negotiated rates. Estimator tools do not provide binding prices. They do not disclose cash prices. Nor do they reveal prices of other carriers. Plus, they require consumers to disclose personal identifying information, including insurance information, which compromises their privacy while enriching the hospital database. These tools also violate the rule, which requires that hospitals make prices available without barriers. Consumers should have immediate, free, unfettered, and confidential access to binding prices at all hospitals. We ask that the final rule remove the price estimator tool option.
4. **Make sure insurers' prices align.** True systemwide priced transparency will require that the data insurers have unleashed under the Transparency in Coverage Rule mesh with hospitals' posted prices, and that prices align. We suggest HHS set in place requirements to help assure that happens, so insurers and hospitals don't further obfuscate prices and frustrate consumers. Currently, many hospitals are posting N/As in pricing fields, indicating that prices are not available. However, insurers are posting prices for these services, indicating that hospitals do in fact have prices available; they are just choosing not to post them.
5. **Require top hospital executives to attest.** Require the CEOs and CFOs of hospitals and health insurance plans to provide annual attestations affirming that their price lists are complete, accurate, and will match the prices billed to patients.
6. **Adopt other policies to further encourage compliance.** We encourage CMS and HHS to go beyond issuing warning letters and fines to enforce 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. A new law in Colorado forbids hospitals that are not fully compliant from sending patients to collections.
7. **Create public awareness.** As Power to the Patients continues to make all health-care consumers aware of their right to know prices, we would encourage HHS to start a vigorous awareness campaign as well urging patients to ask for and receive prices up front. For this effort to work, we need hospital cooperation through enforcement, and consumer engagement through awareness. Perhaps, HHS could also require hospitals to educate their communities about how and where to easily find real, binding prices on the hospitals' websites.

- 8. Include all Ambulatory Surgical Centers in the transparency effort.** Both inpatient and outpatient facilities need to post prices. More than 70 percent of surgeries in the United States are performed in an ambulatory care setting. Not including these prices would be a disservice to consumers who need to shop and compare all prices across all patient setting, and who don't differentiate between inpatient and outpatient care. Revealing some prices and not others would only confuse them.

In summary, every move toward achieving systemwide price transparency boosts competition and discourages consolidation. While we sincerely appreciate the work that HHS and CMS have done to date to reduce and unwind consolidation, promote competition and achieve price transparency, we respectfully ask you to consider incorporating these eight suggestions in the Final CY 2023 OPPS Rule. Thank you again for your time, attention and consideration.

Respectfully yours,

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