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June 7, 2021

The Honorable Shalanda Young
Acting Director
United States Office of Management and Budget
725 17th Street NW
Washington, DC 20503

Re: Upcoming CY 2022 Outpatient Prospective Payment System (OPPS) Rule. Recommendations to Achieve Compliance and Strengthen Hospital Price Transparency: Stronger Penalties, Robust Enforcement, Standards, Upfront Price Notification Before Care.

Dear Acting Director Young,

We at PatientRightsAdvocate.org are dedicated to protecting and expanding American patients' right to Healthcare Price Transparency – the right to know and compare actual upfront prices, the right to choose fairly priced care they can afford, and the right to lower the costs of healthcare and coverage through consumer empowerment, choice, and a competitive market in healthcare. We write to highlight widespread noncompliance with the hospital price transparency rule and provide actionable steps to deliver meaningful healthcare price transparency to lower the costs of care and coverage. We look forward to meeting with your team to discuss our recommendations.

We appreciate the recent efforts of the federal government to implement systemwide healthcare price transparency through the hospital price transparency rule¹ and the insurer price transparency rule.² We thank President Biden for his support of healthcare price transparency in his Biden-Sanders Unity Pledge, and we appreciate HHS Secretary Xavier Becerra's promise to robustly enforce³ the hospital price transparency rule. We applaud the Administration's recent warning letters to hospitals who are not yet complying with the rule.⁴ We also highlight a recent letter⁵ by Democrat and Republican leaders of the House Energy and Commerce Committee, including Frank Pallone, Jr. (D-NJ) and Cathy McMorris Rodgers (R-WA), calling for robust enforcement of the rule with higher penalties and more accountability.

Collectively, these efforts are an essential step toward lowering the cost of healthcare through giving consumers fully transparent and easily accessible prices. All Americans – patients, workers (both unionized and not), employers, and taxpayers – have a right to know prices before they receive healthcare. Upfront, actual prices will lower costs of care and coverage by giving power to patients and employers to shop for the best quality of care at the lowest and best price.

¹ *2020 Outpatient Prospective Payment System (OPPS) & Ambulatory Surgical Center (ASC) Price Transparency Requirements for Hospitals to Make Standard Charges Public Final Rule*, 84 Fed. Reg. 65524 (Nov. 27, 2019).

² *The Transparency In Coverage Final Rule*, 85 Fed. Reg. 72158 (Nov. 12, 2020).

³ Shannon Muchmore. [Becerra backs price transparency, competition](#). Health Care Dive. Feb. 24, 2021.

⁴ Anna Wilde Mathews, Melanie Evans. [Hospitals Draw Warning on Price Disclosure Rule Compliance](#). Wall Street Journal. May 7, 2021.

⁵ U.S. Representatives Frank Pallone, Jr. (D-NJ), Cathy McMorris Rodgers (R-WA), Anna G. Eshoo (D-CA), and Brett Guthrie (R-KY). [Letter to The Honorable Xavier Becerra](#). U.S. House of Representatives Committee on Energy and Commerce. April 13, 2021.

Both the hospital rule and the insurance rule are key to unlocking price information for patients and employers to benefit from competition and through consumer choice, lower their costs of care and coverage. However, crucially, these are just first steps. Much more work is needed. The initial implementation of the hospital transparency rule demonstrates that we need strong enforcement and regulatory modifications in the CY 2022 OPPS Rule in order for it to become truly transformative.

Recommendations to Strengthen the OPPS Rule, actionable by January 1, 2022

- **Enact Higher Penalties for hospital noncompliance: \$300 per day per licensed bed per hospital.**
- **Enforce Penalties Robustly and Timely.**
- **Require Hospitals to Notify All Patients before care that all discounted cash prices and negotiated insurance prices are posted online.**
- **Implement and Enforce Clear Standards starting Jan. 1, 2022** to unleash all actual price information to consumers, technology innovators, and search engines to usher in online shopping tools.

Recommendations for the CY 2022 OPPS Rule, actionable by January 1, 2023:

- **Eliminate price estimates** which offer no accountability and confuse patients. Instead, **mandate hospitals publish total, bundled, complete actual prices upfront.** Give all patients (even those who are insured) the option to pay discounted cash or insurance prices.
- **Require hospitals to provide 24/7 medical billing remediation and consumer protection service** for easy recourse when medical bills do not match the agreed upon, upfront price.

Healthcare Price Transparency is written in the law by the Affordable Care Act and is a key driver to make future healthcare consumer-driven and more affordable.

Healthcare price transparency – government requirements for hospitals and insurers to disclose their prices – is a unifying, bipartisan issue supported by 91% of Americans, including 94% of Blacks and 95% of Hispanics.⁶ Knowing prices – both discounted cash prices and negotiated rates – upfront will empower patients and employers to shop for the best quality of care at the best price, while preventing overcharging, price-gouging and fraud.

Prices for the same procedure can vary significantly both within one hospital and across hospital systems and plans. For example, at Sutter Health’s California Pacific Medical Center, the price of a C-Section varies from \$6,241 to \$60,584, depending on the payer.⁷ No other sector in the economy works this way, and government price transparency efforts are key to rationalizing this sector.

⁶ Jan. 14-17, 2021, [The Marist Poll](#), 1,440 adults nationwide.

⁷ Anna Wilde Mathews, Tom McGinty, Melanie Evans. [How Much Does a C-Section Cost? At One Hospital, Anywhere From \\$6,241 to \\$60,584.](#) Wall Street Journal. Feb. 11, 2021.

Using price data, innovators like [Turquoise Health](#), [Firelight Health](#), and [Shop Health](#) will unleash mobile apps to shop for healthcare, and online search engines like Google and Yahoo will easily be able to display comparative prices. Online and mobile tools like Expedia, Orbitz, Open Table, and Yelp have radically improved price and quality comparisons in other markets like travel and retail. Similarly, transparency tools in healthcare will allow consumers to become informed, to benefit from competition and choice, and to take control of their healthcare spending.

Allowing American employers to see and compare prices across all payers and plans will enable them to design more cost-effective benefits and encourage their employees to seek care from high quality, low-price providers. They will also be able to monitor their third-party administrators to ensure they are doing an effective job. Better informed consumers – whether patients, employers, or the government – will push hospitals and insurers to offer better value, and thus reduce the massive amounts of waste, inefficiency, and overcharging in healthcare.⁸

Hospitals are not complying with the rule. Robust enforcement is necessary now to protect consumers from information blocking, obfuscation, and incomplete compliance.

At the center of the hospital price transparency rule is a requirement for hospitals to post complete pricing information (all discounted cash prices and all insurance negotiated rates) in a downloadable, machine-readable, and easily accessible file on their websites. Unfortunately, our [PatientRightsAdvocate.org](#) research, looking at subset of hospitals that have posted their prices, shows that only 86 of 431 hospitals surveyed (20%) are complying with the rule.⁹ Many hospitals are undermining the rule with incomplete information, burdensome access restrictions, code to block prices from being displayed on search engines, and tools to obfuscate access to mobile app developers.¹⁰ Companies working to parse the pricing files into usable information have identified several consistent problems, including the following:

- Many hospitals have failed to post a machine-readable file of their prices.
- Large sections of pricing data are missing, especially for commercial prices.
- Hospitals provide no information for many plans with which the hospital contracts.
- The payer’s parent company is identified rather than the relevant plan name.
- Procedure codes are missing.

Specifically, here are several egregious examples our team has encountered:

- Centura Health, with 17 hospitals throughout the Mid-West, said that they considered their patient estimator tool, which reveals price estimates one-at-a-time, to constitute a downloadable machine-readable file since one could “download the price data one item at a time.” For reference, doing so for just *one* of Centura's hospitals would require a total of 280,000 clicks.

⁸ William Shrank, Teresa Rogstad, Natasha Parekh. [Waste in the US Health Care System: Estimated Costs and Potential for Savings](#). Journal of the American Medical Association. Oct. 7, 2019.

⁹ [PRA Analysis of American Hospitals Shows 20% Compliance With Price Transparency Rule](#). PatientRightsAdvocate.org. May 24, 2021.

¹⁰ Tom McGinty, Anna Wilde Mathews, Melanie, Evans. [Hospitals Hide Pricing Data from Search Results](#). Wall Street Journal. March 22, 2021.

- The price estimator tool of many hospitals requires personal, demographic, and insurance information before providing an estimate. The tool also requires the patient to permit the hospital to contact his or her insurance company to confirm eligibility and coverage.
- The price estimator tool of many hospitals displays a long disclaimer beneath the estimate, allowing the hospital to add additional fees – negating the purpose of the estimate.

Through rulemaking and enforcement activities, we encourage OMB and HHS to quickly increase oversight efforts and enforcement activities to ensure that hospitals are adequately complying with the requirements related to the machine-readable pricing file. Strong, consistent enforcement will hold hospitals accountable and will enable consumers to save and benefit from both fair prices and fair billing practices, because they will be able to ensure that the bill matches the price, as they can in every other industry.

Enact Higher Penalties for hospital noncompliance: \$300 per day per licensed bed per hospital. Again, enforce penalties robustly and timely.

We recommend increasing the penalty for noncompliance to a more meaningful fine of \$300 per day per hospital bed, effective January 1, 2022. Given the large revenues generated by most hospitals, the current \$300 per day penalty is far too low to ensure adequate compliance with the rule. Scaling this penalty by the number of hospital beds will result in a meaningful financial incentive for hospitals to fully comply with the rule, while providing proportional fairness to smaller and rural hospitals.

A number of organizations recommend stronger penalties for noncompliance with the price transparency rule. Consumers First, a diverse coalition consisting of Families USA, the American Federation of State, County and Municipal Employees (AFSCME), the American Academy of Family Physicians, the American Federation of Teachers, the American Benefits Council, the Purchaser Business Group on Health, and First Focus on Children, also recommends a more impactful penalty.

Consumers First also recommends that HHS “revise the civil monetary penalty for noncompliance by imposing a penalty of \$300 per day per licensed bed in each hospital. Enacting a stronger civil monetary penalty will increase hospital compliance with the new regulation and appropriately scale the monetary penalty based on hospital size.”¹¹

Implement and Enforce Clear Standards, effective January 1, 2022.

Our research found that hospitals are reporting information in a haphazard, inconsistent manner, which makes data difficult to search, parse, analyze, and aggregate. We convened technology innovators and former HHS administrators and legal counsel, who recommended the following standards:

- 1. Require that the machine-readable pricing files be disclosed in ONE (1) Standard File Format, e.g. JSON, in addition to a human-readable price file disclosed in ONE (1) Standard File Format, e.g. CSV.**

The use of JSON for machine-readable pricing files and CSV for human-readable files allows for ease of implementation and parsing without burden. These file standards are also consistent with both CMS guidance for payers and the Transparency in Coverage rule. The Transparency in

¹¹ https://familiesusa.org/wp-content/uploads/2021/04/VAL-2021-90_Consumers-First-Administrative-Agenda.pdf

Coverage rule mentions that JSON and CSV serve the Department's goal of ease of public access and are non-proprietary, open, and common formats that both developers and consumers can use.

2. Require disclosure of the full payer and plan name.

Payers and plans must be clearly identified using any and all CMS or other payer directory tools. All payer and plan names for each hospital should be fully written, so that the information in the price files is understandable. HHS and CMS can provide hospitals with a uniform, nationally applicable set of abbreviations for the most common payers and plans. HHS and CMS should provide a dictionary file for the hospitals using CMS provider directory services.

3. Mandate that plan-specific rates, and not simply rates by payer, must be disclosed in the machine-readable file and updated real-time.

4. Define a standard schema for machine-readable file disclosures, including all names and data types.

5. Require that all pricing data be provided for free via application programming interfaces (APIs).

All pricing data shall be provided using application programming interfaces using RESTful API technology.

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.

If owners of the code sets, including the American Medical Association (AMA), do not agree to license-free use of the codes for price transparency, we suggest that CMS, within three months, initiate work to remove those code sets from all payment methods overseen or used by CMS including Medicare, Medicaid, SCHIP and other programs. This work should be performed by January 1, 2023, and all future CMS pricing and payment programs should only use code sets that are non-proprietary and without licensing royalties. Also, we suggest that CMS provide a safe harbor to technology companies that are parsing, harmonizing, and posting this data to hold them harmless from legal liability if the code sets provided by the hospitals are incorrect.

7. Require that explicit billing codes, such as CPTs or DRGs, be identified for each procedure.

The codes should be plainly identified and not omitted, embedded, or otherwise obfuscated within the file.

8. Prohibit hospitals from requiring personal and demographic information to access price data and tools.

Healthcare consumers need the ability to easily search the discounted cash prices and search across plans without having to provide any personal information. In order to shop and evaluate the pricing performance of their hospital and insurer, consumers need broad access to all pricing information in addition to their individual plan. All consumers need to be protected to pay a discounted cash price as a choice, even if insured, as discounted cash prices often provide patients and employers with substantial savings.

9. Require that the pricing file can be found with just a single click from the hospital's homepage.

We recommend a “Prices” tab on the homepage including both the machine-readable file and the consumer-friendly tool with actual prices for shoppable services.

10. 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.

Price estimator tools are not useful to patients and do not hold hospitals accountable. Such tools should not substitute for actual price information for items and services.

Require Hospitals to Notify Upfront all patients before care of both the discounted cash price and negotiated insurance prices.

All consumers need to have the option to pay either a discounted cash price or an insurance-negotiated rate. At the point of scheduled care, we recommend that patients be informed that they now have the right to see and pay the discounted cash price which is on average 39% lower than insurance-negotiated rates.¹² We recommend that you require hospitals to inform patients of their online price list as well as the price of their care in advance of scheduled care.

Currently, patients and employers who pay for healthcare services are blinded to prices and are unaware of such dramatic price variances. They generally have no idea that hospitals are now required to post their prices online and that they can choose to pay them at discounted cash rates or through their insurance. Healthcare consumers need to know they have the right to upfront, actual prices and the power to shop.

In addition to making their prices easily accessible online, hospitals can inform patients setting up their appointments for planned procedures of the associated discounted cash and insurance prices so that they are empowered to choose the payment method that works best for them and have financial certainty and recourse when bills don't match the quoted price. American veterinary clinics, which employ specialists and surgeons similar to hospitals, provide both the discounted cash and insured rates to animal owners across the country as a standard of care. Hospitals can follow in the “four-legged footsteps” of veterinary clinics and provide this real and actionable price information to their consumers as well.

Finally, we make the following recommendations for the CY 2022 OPPS Rule, actionable by January 1, 2023:

- **Eliminate price estimates which offer no accountability and confuse patients. Instead, mandate hospitals publish total, bundled, complete actual prices upfront – both in the data file and the shopping tool.**

Require hospitals give all patients (even those who are insured) the option to pay the truly discounted cash prices or their insured coverage rates. Our research found that in many cases, hospitals are obfuscating the actual discounted cash price and instead presenting the substantially higher

¹² Lawrence Van Horn, Arthur Laffer, Robert L. Metcalf. 2019. [The Transformative Potential for Price Transparency in Healthcare: Benefits for Consumers and Providers.](#) Health Management Policy and Innovation, Volume 4, Issue 3.

chargemaster price. A consistent, discounted cash price should be available for all patients who pay upfront.

- **Require hospitals to provide consumer protection and billing remediation service** for easy recourse and remedy when medical bills do not match the agreed upon, upfront price.

In every other industry, consumers can easily contest a bill and are not required to pay it until the issue is resolved. We suggest that each hospital have medical billing remediation and consumer protection that is available and easily accessible by phone or by website 24/7 and in default favors the consumer and frees them from financial responsibility until mutually remedied.

Patients are intentionally blocked from the ability to fight overcharges, errors and fraud and given no method of remedy to help them with their bills. This critical consumer protection, in favor of the consumer unless proven otherwise, will eliminate the need for patients to hire a lawyer or third party to help them challenge hospital bills.

It will lead to greater cost savings and will ultimately shift the power to the consumer to see a complete, all-in price, be assured that the bill will match the price, and have recourse if it does not. The well-informed consumer will take action to save their own money and prevent overcharging, erroneous bills, and fraud.

We also recommend timely implementation and robust enforcement of the Transparency in Coverage Rule, effective Jan. 1, 2022, without any delay.

The success of health reform efforts depends on the success of the federal government's initiatives to create a price transparent market for healthcare services. High and growing healthcare costs threaten family standards of living and our nation's future prosperity. While the hospital price transparency rule was an important first step, it needs important modifications, including stronger penalties, robust enforcement, upfront price notification before care, and standards.

We urge you to pursue rulemaking that achieves the modifications outlined above, and we encourage you to devote the necessary resources to strong enforcement of both rules. These crucial measures will give power to patients to greatly lower their own healthcare costs. The realized savings will dramatically improve wages, savings, debts, and family legacies. Reducing the healthcare cost burden through transparency will empower American individuals and businesses to benefit from increased earnings and business growth, reducing the U.S. deficit while igniting economic growth.

Thank you for considering these important actions.

Sincerely,



Cynthia A. Fisher
Founder and Chairman
PatientRightsAdvocate.org