

ONE HUNDRED SEVENTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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April 13, 2021

The Honorable Xavier Becerra
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Becerra:

We write today regarding the implementation of the Hospital Price Transparency Final Rule, which went into effect on January 1, 2021.¹ We are concerned about troubling reports of some hospitals either acting slowly to comply with the requirements of the final rule, or not taking any action to date to comply. We urge you to ensure that the Department of Health and Human Services (HHS) conducts vigorous oversight and enforces full compliance with the final rule.

The Hospital Price Transparency Final Rule requires hospitals to make public a machine-readable file containing a list of all the standard charges for all items and services, and to display charges for the hospital's 300 most shoppable services in a consumer-friendly format.² Under the final rule, hospitals are required to make public the gross charges, the discount cash price, the payer-specific negotiated charges, and the de-identified minimum and maximum negotiated charges for all items and services. For hospitals found to be noncompliant, HHS will issue a written warning notice or request a corrective action plan (CAP) if noncompliance constitutes a material violation of one or more requirements of the final rule. If the non-compliance is still not

¹ On November 27, 2019, the Department of Health and Human Services published the final rule entitled "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" also known as the "Hospital Price Transparency Final Rule." Department of Health and Human Services, *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. 65524 (Nov. 27, 2019) (final rule).

² *Id.*

resolved, hospitals will face a civil monetary penalty (CMP) of up to \$300 a day, or \$109,500 per hospital per year. On December 18, 2020, the Centers for Medicare & Medicaid Services (CMS) announced that it would audit a sample of hospitals for compliance starting in January 2021.³

The final rule was published in November 2019, and hospitals had ample time to prepare for its implementation. However, a *Health Affairs* study of hospital compliance found 65 of the nation's 100 largest hospitals were "unambiguously non-compliant" between late January 2021 to early February 2021.⁴ Eighteen percent of those hospitals either did not post any files or provided links to databases that were not downloadable. Eighty-two percent of them did not include the payer-specific negotiated rates or were in some other ways noncompliant. According to the study, at least 22 percent of the hospitals generally were compliant with the requirements of the final rule.

Other studies also have found a patchwork of compliance or attempts at compliance that do not meet all of the requirements of the final rule.⁵ For instance, some hospitals are providing consumers a price estimator tool instead of providing the full list of charges and payer-negotiated rates in one file, and some are making consumers fill out lengthy forms for estimates.⁶ Some hospitals also are providing the data in a non-useable format or failing to provide the codes for items and services.⁷

³ Centers for Medicare and Medicaid Services, *Monitoring for Hospital Price Transparency* (Dec. 18, 2020) (www.cms.gov/outreach-and-education/outreachffsprovpartproprovider-partnership-email-archive/2020-12-18-mlnc-se).

⁴ Health Affairs, *Low Compliance From Big Hospitals On CMS's Hospital Price Transparency Rule* (Mar. 16, 2021) (www.healthaffairs.org/doi/10.1377/hblog20210311.899634/full/).

⁵ ADVI, *Implementation of Newly Enacted Hospital Price Transparency* (advi.com/analysis/Hospital_Transparency_-_ADVI_Summary.pdf) (accessed Mar. 29, 2021); *Hospitals Hide Pricing Data From Search Results*, Wall Street Journal (Mar. 22, 2021) (www.wsj.com/articles/hospitals-hide-pricing-data-from-search-results-11616405402); *Hospitals slow to disclose their payer-negotiated rates*, Modern Healthcare (Jan. 8, 2021) (www.modernhealthcare.com/transformation/hospitals-slow-disclose-their-payer-negotiated-rates).

⁶ *The Health 202: Hospitals drag feet on new regulations to disclose costs of medical services*, Washington Post (Jan. 25, 2021) (www.washingtonpost.com/politics/2021/01/25/health-202-hospitals-drag-feet-new-regulations-disclose-costs-medical-services/); *4 TAKEAWAYS FROM THE FIRST DAYS OF THE CMS PRICE TRANSPARENCY RULE*, HealthLeaders Media (Jan. 11, 2021); *Hospitals slow to disclose their payer-negotiated rates*, Modern Healthcare (Jan. 8, 2021) (www.modernhealthcare.com/transformation/hospitals-slow-disclose-their-payer-negotiated-rates).

⁷ ADVI, *Implementation of Newly Enacted Hospital Price Transparency* (advi.com/analysis/Hospital_Transparency_-_ADVI_Summary.pdf) (accessed Mar. 29, 2021).

Initial research by the Health Care Cost Institute (HCCI) has also found low compliance with the rule. HCCI was able to look at one hospital system as a case study, and the range of prices for the same services is astonishing.⁸ This report, conducted three months after the effective date of the rule, shows that, if available, this information will be used by researchers and health care purchasers.

We also are concerned that some hospitals disclosing their listed prices are making it difficult for consumers to access the price information. The *Wall Street Journal* reported that some hospitals that have published their standard charges have blocked the information from appearing on search engines with special coding embedded on their websites.⁹ According to the *Wall Street Journal*'s examination, hundreds of hospitals, including some of the nation's largest hospital systems, have embedded codes on their websites that prevent search engine websites, such as Google, from displaying pages with their prices lists.¹⁰ Some hospitals have also made the information inaccessible to consumers by burying the price information in their websites, and requiring multiple clicks through layers of webpages in order to access the list of charges.¹¹

We were pleased you committed that HHS will “do robust enforcement to make sure price transparency is there for all Americans” at the Senate Committee on Health, Education, Labor, and Pensions hearing on February 23, 2020.¹² We share your commitment to increasing price transparency for consumers and employers. To that end, we urge HHS to enforce the final rule to ensure hospitals are fully compliant with the disclosure requirements so that patients can readily access the price information for all items and services in an easy-to-use format. Given the widespread non-compliance by hospitals, we urge HHS to revisit its enforcement tools, including the amount of the civil penalty, and to conduct regular audits of hospitals for compliance. We also request a staff briefing on the implementation of the final rule and on the agency's audit of hospitals' compliance with the final rule.

⁸ Health Care Cost Institute, *The Insanity of U.S. Health Care Pricing: An Early Look at Hospital Price Transparency Data* (Apr. 1, 2021) (healthcostinstitute.org/hcci-research/hospital-price-transparency-1).

⁹ *Hospitals Hide Pricing Data From Search Results*, *Wall Street Journal* (Mar. 22, 2021) (www.wsj.com/articles/hospitals-hide-pricing-data-from-search-results-11616405402).

¹⁰ *Id.*

¹¹ *Id.*; *Hospitals slow to disclose their payer-negotiated rates*, *Modern Healthcare* (Jan. 8, 2021) (www.modernhealthcare.com/transformation/hospitals-slow-disclose-their-payer-negotiated-rates).

¹² Senate Committee on Health, Education, Labor, and Pensions, *Full Committee Hearing on the Nomination of Xavier Becerra to serve as Secretary of Health and Human Services*, 117th Cong. (Feb. 3, 2021) (www.help.senate.gov/hearings/nomination-of-xavier-becerra-to-serve-as-secretary-of-health-and-human-services).

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Thank you for your attention. We look forward to working with you on this important matter. If you have any questions, please contact Saha Khaterzai with the Committee on Energy and Commerce majority staff or Grace Graham with the Committee on Energy and Commerce minority staff.

Sincerely,



Frank Pallone, Jr.
Chairman



Cathy McMorris Rodgers
Ranking Member



Anna G. Eshoo
Chairwoman
Subcommittee on Health



Brett Guthrie
Ranking Member
Subcommittee on Health