

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

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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 in support of the provisions in the 2022 Medicare Outpatient Hospital Prospective Payment Rule, released on July 19, 2021, that seek to increase the effectiveness of the Hospital Price Transparency Final Rule, which went into effect on January 1, 2021.¹ This proposed rule would increase penalties for hospitals not in compliance with the Hospital Price Transparency Final Rule, effective January 1, 2022,² which follow reports of concerning high rates of hospital noncompliance with the final rule.³

The Hospital Price Transparency Final Rule requires hospitals to publicly report standard charges for all items and services. Hospitals must make this information available as a comprehensive machine-readable file and as a display of shoppable services in a consumer-friendly format.⁴ Under the final rule, hospitals found to be noncompliant with the price transparency requirements face a civil monetary penalty (CMP) of up to \$300 a day, or \$109,500 per hospital per year. On January 1, 2021, Centers for Medicare

¹ On July 19, 2021, the Department of Health and Human Service published a proposed rule entitled “Medicare Program: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; Price Transparency of Hospital Standard Charges; Radiation Oncology Model; Request for Information on Rural Emergency Hospitals.” Department of Health and Human Services: *Medicare Program: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; Price Transparency of Hospital Standard Charges; Radiation Oncology Model; Request for Information on Rural Emergency Hospitals*, 84 Fed. Reg. 42018.

² 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) (www.govinfo.gov/content/pkg/FR-2019-11-27/pdf/2019-24931.pdf) (final rule).

³ *Low Compliance from Big Hospitals on CMS’s Hospital Price Transparency Rule*, Health Affairs (Mar. 16, 2021) (www.healthaffairs.org/doi/10.1377/hblog20210311.899634/full/).

⁴ *Id.*

& Medicaid Services (CMS) began proactive audits of hospitals for compliance with the final rule as well as a review of complaints submitted via the hospital price transparency website, found here: <https://www.cms.gov/hospital-price-transparency>.⁵

We are concerned with troubling reports of low hospital compliance with the final rule. A *Health Affairs* survey on hospital noncompliance found that 65 of the largest 100 U.S. hospitals were noncompliant as of early February.⁶ Another report, issued July 2021 by the Patient Rights Advocate, found that only 5 percent of hospitals were fully compliant with the rule.⁷ Additionally, in your May 11, 2021 response to a bipartisan letter from Energy and Commerce Committee leadership, you stated the agency's intention to issue civil monetary penalties to hospitals failing to submit corrective action plans or comply with the requirements of the final rule.⁸ We are glad that CMS has sent over 100 warning letters thus far and support the Department's efforts to conduct vigorous oversight and ensure full compliance with the final rule.

Available analyses of existing price transparency measures among compliant hospitals further demonstrates the need for the agency to enforce full compliance with the rule. A New York Times investigation found that in many instances, patients insured under commercial plans were paying more in out-of-pocket costs for services than they would have if they had no health coverage at all.⁹ Even within the same hospital system, standard charges negotiated by insurers result in significant price variation across hospital sites, one Health Care Cost Institute study found.¹⁰ For example, a knee X-ray performed at one of Northern California's Sutter Health System hospitals may cost up to eight times as much as one performed at an affiliated site.¹¹ The wide price variation observed across compliance providers, insurers, and hospitals in these analyses highlight the importance of the proposed rule in stepping up the agency's enforcement actions against noncompliance.

In our April 13, 2021, letter, we urged the Department to revisit its enforcement tools, including the amount of the civil penalty, and we strongly support the proposal on noncompliance in the proposed rule.¹² The 2022 Medicare Outpatient Hospital Prospective Payment Rule includes proposals that provide for greater penalties for hospital noncompliance, increasing CMPs for noncompliance from a maximum of \$109,500 per year to a sliding scale of up to \$2 million per year for larger hospitals.¹³ The proposed

⁵ Centers for Medicare and Medicaid Services, Monitoring for Hospital Price Transparency (Dec. 18, 2020) (www.cms.gov/outreach-and-education/outreachffsprovpartprogprovider-partnership-email-archive/2020-12-18-mlnc-se).

⁶ *Low Compliance from Big Hospitals on CMS's Hospital Price Transparency Rule*, Health Affairs (Mar. 16, 2021) (www.healthaffairs.org/doi/10.1377/hblog20210311.899634/full/).

⁷ <https://static1.squarespace.com/static/60065b8fc8cd610112ab89a7/t/60f1c225e1a54c0e42272fbf/16264566614723/PatientRightsAdvocate.org+Semi-Annual+Hospital+Compliance+Report.pdf>

⁸ Health and Human Services Secretary Becerra, *Letter to the Honorable Brett Guthrie, Reply regarding Hospital Price Transparency Rule*. (May 11, 2021).

⁹ *Hospitals and Insurers Didn't Want You to See These Prices. Here's Why*, The Wall Street Journal (August 22, 2021) (<https://www.nytimes.com/interactive/2021/08/22/upshot/hospital-prices.html>).

¹⁰ *The Insanity of U.S. Health Care Pricing: An Early Look at Hospital Price Transparency Data*, Health Care Cost Institute (April 1, 2021) (<https://healthcostinstitute.org/hcci-research/hospital-price-transparency-1>)

¹¹ *Id.*

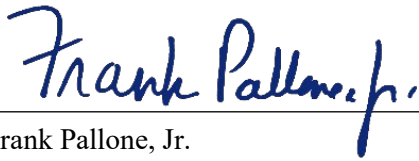
¹² <https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/HHS.2021.04.13.pdf>

¹³ Department of Health and Human Services: *Medicare Program: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; Price Transparency of Hospital Standard Charges; Radiation Oncology Model; Request for Information on Rural Emergency Hospitals*, 84 Fed. Reg. 42018.

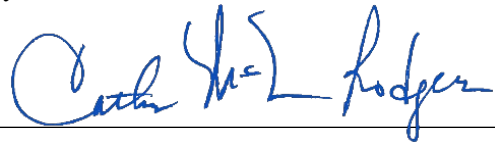
rule would also clarify requirements for price estimator tools and specifications for enhancing accessibility of standard charge information on machine-readable files. These proposals bolster HHS' commitment to "ensuring consumers have the information they need to make fully informed decisions regarding their healthcare," as stated in your May 11 letter.

We support the Administration's proposed rule to significantly increase potential penalties on noncompliant hospitals. We also applaud the agency's commitment to increasing price transparency and empowering consumers and employers to make informed decisions about their health care with meaningful and actionable information about health care prices.

Sincerely,



Frank Pallone, Jr.
Chairman



Cathy McMorris Rodgers
Republican Leader