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Xavier Becerra, Secretary, HHS  
Chiquita Brooks-LaSure, Administrator, CMS  
Department of Health and Human Services  
200 Independence Ave, SW  
Washington, DC 20201

September 11, 2023

**Re: [Request for Medicare Program: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems, etc](#) Docket Number CMS-1786-P**

Dear Secretary Becerra and Director Chiquita Brooks-LaSure:

Thank you for the opportunity to provide comments on proposed rules relating to hospital price transparency and Medicare payment systems. U.S. PIRG, with state affiliates in two dozen states, is an advocate for the public interest. We promote policies that protect consumers and support the delivery of the high value healthcare we deserve. You have the opportunity to help patients and insured families by issuing policies to bring down the high prices in the health care system that strain their budgets.

**Americans are struggling to pay the high prices of the health care they need.**

The Biden Administration has worked hard to ensure greater access to health insurance for the American public and recent data shows the national uninsured rate has reached [an all-time low in 2023](#). And your Department has taken significant first steps to identify some of the highest priced prescriptions and will subject them to [drug price negotiation](#) in 2024. But more can, and should be done, to help the people in America with the cost of health care.

As [U.S. PIRG shared with the House Ways & Means Committee](#) in March 2023, per capita spending on health care is [double](#) the average of other wealthy countries, a result of the high prices for medical care services and prescription drugs. Even insured individuals and families face significant out-of-pocket costs: the expense of deductibles, co-pays, and co-insurance. One study found in 2021 that annual spending for health care is about [\\$1,650 per person](#), and that personal financial burden is expected to continue to grow.

Therefore, it's not surprising that people are struggling to pay their medical bills, even when they have insurance. [Nearly 50% of adults](#) in the US say it is “very or somewhat difficult for them to afford their health care costs.” And those who are uninsured are facing even greater medical debt.

We applaud these elements of the proposed rules and offer some suggestions to strengthen them.

1. Improving the hospital price transparency rule to improve compliance and make the law work for the public.
2. Expanding site-neutral payment rules to take further steps towards eliminating some reimbursement incentives that drive up prices.

## **Hospital Price Transparency:**

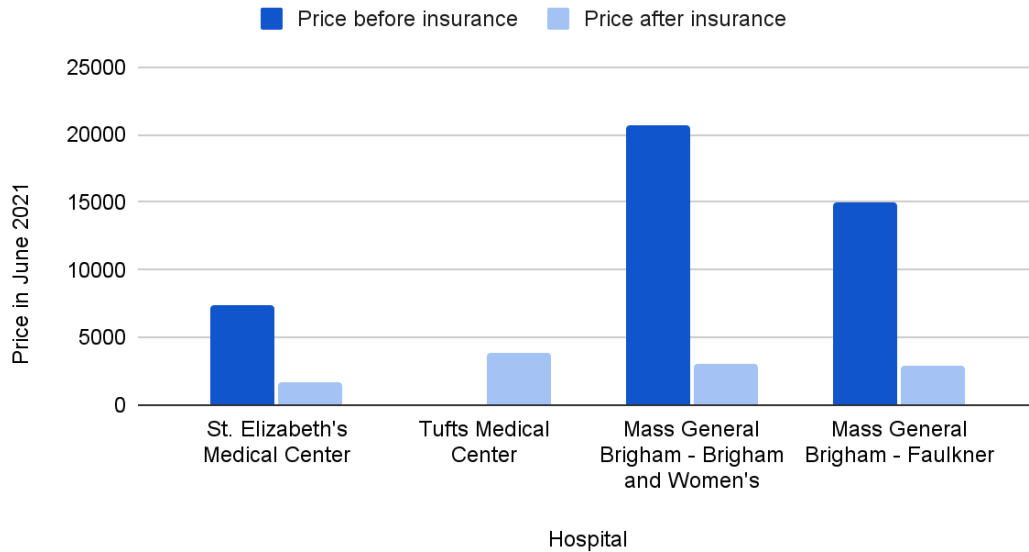
Health care services and goods are some of the few things that Americans need but can't get the prices for in advance. That's why the [hospital price transparency regulation](#), which went into effect on January 1, 2021, was such an important consumer win. The rule requires U.S. hospitals to make public its standard charges for the items and services it provides.

Because hospital care is the [largest part](#) of health care expenditure in the U.S., it is imperative that individual patients, employers and health policy experts are able to find and compare hospital prices. Knowing and understanding prices for services by individual hospital will better allow us to develop smart policy to alleviate the burden of health care costs on families and our federal and state health care programs. Outliers will be identified. Competition can return. And where competition doesn't work to drive down prices, policy solutions can be tailored to fit the problems identified.

We know the transparency rule can be effective, but more work must be done to improve how it is implemented. In June 2021, after the hospital price transparency rule went into effect, PIRG put it to the test: [What's it going to cost? Wide variation in prices for hospital care in Boston](#). The first thing we noticed in developing the report was how difficult it was to find the prices to use in writing this simple analysis. It took hours of digging on hospitals' webpages, following up with multiple phone calls with the hospital billing departments, and lots of “googling” of difficult-to-understand terms before our college intern was able to figure out how to compare prices of knee surgery in Boston. When she finally got enough information to write the report, what she did find was powerful. She demonstrated the importance of having up-front prices; there was a huge variation for knee surgery in her hometown:

“I was quite surprised to see the wide variation of prices. Costs ranged from \$7,330 to \$20,738 before insurance and from \$1,738 to \$3,905 after insurance.

## Arthroscopic Knee Surgery Prices at Boston Area Hospitals



We know the potential of clear and complete hospital price transparency. Yet, despite the increased attention by CMS and higher fines (up to \$2 million annually per hospital), too many hospitals continue to be [noncompliant](#). In July 2023, only 36% of the 2,000 hospitals reviewed were in full compliance (up from 24.5% in February). This is despite CMS working to enforce the rule. By April 2023, CMS issued more than [730 warning notices, and more than 269 requests for corrective action plans](#). Yet, of this date, CMS has [fined only](#) 14 hospitals for noncompliance.

### **Recommendations:**

We support the proposed rules that require a standardized template for reporting of hospital prices, but we urge you to strengthen the rules in the following ways:

#### **1. Use one standard form and one standard price-code system.**

The proposal to use one standard data submission form is an important step forward. But it is also important what information is in each data cell. The proposed rule offers several options for reporting by procedure code. These different options will continue to make it difficult for individuals and researchers to compare one hospital and procedure to the next and for researchers to seamlessly compile and analyze large data sets. The benefit of transparency is to allow easy comparison. With too many variables in the data cells, the public good of price data transparency is undermined.

**2. Require reporting of cash and plan-negotiated rates in true prices (dollars and cents).**

Hospitals have been allowed to report prices as an algorithm or as a percentage of Medicare rates. These alternatives to a true understandable “price” eliminates the effectiveness of price transparency. Data sets that use different ways to list the price will not be comparable for researchers. And for consumers? Impossible. Can any reasonable individual be expected to know or research the Medicare rate for their upcoming treatment or surgery, and then do the math to figure out what the percentage means in real money? Unlikely. Dollars and cents are what patients will be asked to pay on their hospital bill. How can they possibly compare their final billed charges with an algorithm or percentage of Medicare rate? We urge you to prohibit these confusing alternatives to a true price, and require reporting of data by dollars and cents.

**3. Do not allow the addition of “consumer-friendly expected allowed amount”.**

This new data option for the machine-readable file should not be allowed, even if a price cannot be expressed as dollars and cents. This “allowed amount” is only an average and therefore is only an estimate, not a price that a patient can rely on and budget for. Allowing for this option could open the door to more estimates and fewer real prices which does nothing to improve the impact of the price transparency rule.

**4. Require machine-readable files to be filed as an accessible Excel file.**

Allowing either JSON or CSV files means that many will not be able to use the data. Only those with expensive computer systems and an advanced knowledge of data management will be able to access the hospital price data in JSON and CSV. That means most individuals will be left with only the Price Estimator Tool (which only has estimates for 300 services and will unlikely include all prices they may need.)

**5. Refocus rules on “enforcement”, not simply “assessment.”**

The proposed rule appears to be emphasizing assessment over enforcement. With the strong evidence of noncompliance, CMS needs more to refocus on enforcement of the transparency rule. Assessment has its place, but enforcement will ensure better compliance.

**6. Ensure the affirmation requirement has appropriate accountability mechanisms.**

The proposed rule requires hospitals to affirm the accuracy and completeness of the prices they represent in their filings. Additional clarity would strengthen the rule, such as establishing a C-suite level executive is required to sign the affirmation and that the affirmation applies to all of the submitted data, including that data offered on public websites (such as the 300 shoppable services). These affirmations should not be considered enough to ensure compliance, but CMS should actively audit the filing and test the affirmation’s assertion.

## Site Neutral Payments

As large hospital systems consolidate, they are also [rapidly acquiring](#) doctor’s offices, private practices, clinics, labs, and imaging centers. One result is that these non-hospital locations can

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now use the acquiring hospital's billing code. And what used to be billed as a doctor's visit can now be charged at a hospital's rate, which means higher prices. Now, our [insurers are paying more](#) and patients are experiencing higher out-of-pocket costs in their deductibles and coinsurance. A regular doctor's appointment and even routine lab work may quickly become much more expensive – for our insurers and for the patient's part of the bill.

In 2015, Medicare took some initial steps to address this incentive to charge more, despite the service being offered in a lower-cost setting. The [site neutral payment system](#) created a standard payment for certain services regardless of where patients are treated. But the program was limited to new off-site hospital locations. Existing sites could continue to charge hospital rates, even though the site is not an actual hospital. It's time to expand the site neutral payment policy to more procedures and more settings so consumers and their insurers aren't needlessly paying more for the same services.

### **Recommendation:**

**Expand the site neutral payment policy to more procedures and more settings so consumers and their insurers aren't needlessly paying more for the same services.**

Doctors offices are able to offer these same services at the same, and in some cases, higher quality and at a *lower* cost. But Medicare payment policies allow a higher payment to hospital outpatient departments, creating an incentive to further consolidation - and resulting in higher prices for everyone. We urge you to follow the MedPAC recommended site-neutral payment policy as issued in the [March 2023 Report to Congress](#) to bring site neutral payment policies to more settings and for more procedures.

### **Conclusion**

The high cost of health care is a pressing national issue. This proposed rule could establish important guardrails to help address high prices. Hospital price transparency is essential and [87% of voters](#) support policy for hospitals disclosing prices as a way to lower prices. Payment systems should be designed to keep prices reasonable and not allow hospitals to inflate their prices for the same service offered in lower cost settings. We thank you for your attention to these issues and urge you to adopt our suggestions to issue a stronger rule to help consumers with the high prices of health care. Thank you for your consideration.

Sincerely,



Patricia Kelmar, JD  
Senior Director, Health Care Campaigns