

March 8, 2023

The Honorable Cathy McMorris Rodgers
Chair
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

The Honorable Frank Pallone
Ranking Member
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

Dear Chair McMorris Rodgers and Ranking Member Pallone:

On behalf of our nearly 5,000 member hospitals, health systems and other health care organizations, our clinician partners — including more than 270,000 affiliated physicians, 2 million nurses and other caregivers — and the 43,000 health care leaders who belong to our professional membership groups, the American Hospital Association (AHA) writes to share the hospital field's commitment to meaningful price transparency for patients and the public and update the Committee on recent activity related to the Hospital Price Transparency Rule.

The AHA appreciates the Energy and Commerce Committee's continued interest in the implementation of price transparency regulations. A number of questions posed in your November 2022 letter to the Government Accountability Office regarding hospital compliance with the Hospital Price Transparency Rule can be answered by information recently released by the Centers for Medicare & Medicaid Services (CMS).

Hospitals and health systems are committed to empowering patients with all the information they need to live their healthiest lives. This includes ensuring they have access to accurate price information when seeking care. Our members are working to comply with both state and federal price transparency policies, which include the federal Hospital Price Transparency Rule and provisions in the No Surprises Act.

Under the federal Hospital Price Transparency Rule, starting Jan. 1, 2021, hospitals are required to publicly post via machine-readable files five different "standard charges": gross charges; payer-specific negotiated rates; de-identified minimum and maximum negotiated rates; and discounted cash prices. The rule also requires hospitals to provide patients with an out-of-pocket cost estimator tool or payer-specific negotiated rates for at least 300 shoppable services.



Over the past several years, the AHA has engaged in substantial member education and engagement on the Hospital Price Transparency Rule. This includes:

- Establishing a CEO-level Price Transparency Task Force that helped guide the AHA in developing policies and sharing best practices with respect to price transparency and patient billing;
- Conducting member education through multiple member webinars, bi-weekly “office hours” with AHA and Healthcare Financial Management Association technical experts, issue briefs, member case studies and podcasts;
- Providing an implementation guide for members, including implementation checklists and FAQs;
- Conducting a three-part member webinar series on Health Care Consumer Expectations and Experiences with Kauffman Hall;
- Hosting a multi-stakeholder intensive design process, which included providers, payers, patient advocates, technology vendors, and others, to develop solutions to improve the patient financial experience of care;
- Supporting CMS efforts to establish voluntary sample formats that hospitals may use to meet the federal requirement to make certain standard charges publicly available through a machine-readable file by connecting the agency with experts from the hospital field; and
- Updating the AHA’s Patient Billing Guidelines, which include a focus on helping patients access information on financial assistance.

CMS has in place a process to ensure hospital compliance with the Hospital Price Transparency Rule. This includes: a review, usually involving direct discourse with the hospitals; if deficiencies are identified, a warning letter is sent from the agency; and if the deficiencies are not corrected, a corrective action plan is requested. Should a hospital continue to fail to come into compliance, CMS then applies a civil monetary penalty.

CMS found that in [2022](#), 70% of hospitals complied with both components of the Hospital Price Transparency Rule, including the consumer-friendly display of shoppable services information, as well as the machine-readable file requirements. This is an increase from 27% in 2021. Moreover, when looking at each individual component of the rule, 82% of hospitals met the consumer-friendly display of shoppable services information requirement in 2022 (up from 66% in 2021) and 82% met the machine-readable file requirement (up from 30% in 2021).

These numbers show significant progress on the part of hospitals and health systems – while acknowledging the work that remains – in implementing these requirements. The lower compliance rate in 2021, however, should not be interpreted as a lack of hospital commitment to transparency. Instead, it reflects the incredible challenges hospitals were experiencing in 2020 and 2021 in addressing the most acute phases of the COVID-19 public health emergency, which strained hospitals’ staff and

required the diversion of personnel and financial resources. As the pandemic phase of COVID-19 winds down and hospitals have been able to resume more standard operations, they are able to dedicate the resources necessary to build the full suite of price transparency tools.

CMS also shared information regarding how it has interacted with hospitals to support compliance and the issuance of penalties:

“As of January 2023, CMS had issued nearly 500 warning notices and over 230 requests for corrective action plans since the initial implementing regulation went into effect in 2021. Nearly 300 hospitals have addressed problems and have become compliant with the regulations, leading to closure of their cases. While it was necessary to issue penalties to two hospitals in 2022 for noncompliance ([posted on the CMS website](#)), every other hospital that was reviewed has corrected its deficiencies.”

Unfortunately, several third-party organizations repeatedly have claimed various rates of hospital compliance with federal price transparency policies that simply are not based on the facts. Last month, one such third-party – Patient Rights Advocate (PRA) – released a [paper](#) that misconstrues, ignores and mischaracterizes hospitals’ compliance with federal regulations. This creates a stream of misinformation that is inaccurate and distracting to these important discussions and work.

Below are examples of how PRA continues to misrepresent data or the facts, which we contrast with direct guidance from CMS, the sole arbiter of hospital price transparency compliance. These inaccuracies undermine the purported findings in the paper, and we strongly urge caution in basing any determinations of hospitals’ compliance on flawed analyses by third-parties that have a tenuous understanding of the rules, which often directly conflicts with the policy and technical requirements.

- **PRA:** “Our latest review of hospital compliance, completed just over two years after the Hospital Price Transparency Rule’s implementation, analyzed the websites of 2,000 U.S. hospitals focusing on the nations’ largest health systems, and found only 24.5% of them (489) to be compliant with all the requirements of the rule.”
- **CMS:** “hospitals are putting the hospital price transparency requirements into practice, demonstrating a substantial increase in hospitals meeting website assessment criteria from 27 percent to 70 percent between 2021 and 2022...”
- **PRA:** “We deemed files noncompliant due to incomplete or missing data fields, formulas instead of actual dollar amounts as prices, or fields with zeros, blanks and asterisks for negotiated rates.”
- **CMS**
 - **On using formulas instead of dollar amounts:** “It is possible that a hospital may have established a payer-specific negotiated charge that

cannot be displayed as a standardized dollar amount. In these situations, the hospital may indicate the standardized algorithm as its payer-specific negotiated charge in the machine-readable file.”

- **On fields with zeros, blanks, and asterisks for negotiated rates:** “The rule at 45 C.F.R. 180.60 requires that hospitals make public several data elements, including all five types of standard charges, as applicable, in the machine-readable file. We believe the “as applicable” reference is reasonable and necessary, given differences across hospitals that are subject to the regulations. We encourage hospitals to consider taking steps beyond the display requirements of the Hospital Price Transparency regulations to improve the public’s understanding of the data the hospital has posted in its machine-readable file, and, in particular, to clarify ***why there may appear to be data missing from the machine-readable file.***” (*Emphasis added*)
- **PRA:** “We also observed an increased usage of 'N/A's in pricing files without any disclaimer or explanation.”
- **CMS:** “When an item or service does not have a corresponding standard charge associated with an item or service, we strongly recommend your hospital use a single indicator, such as “-1,” “N/A,” or other method to communicate to the public that there is no corresponding standard charge.”
- **PRA:** “Also of note, a significant number of hospitals posted their files in obscure locations on their websites”
- **CMS:** “As explained in the CY 2022 OPPS/ASC proposed rule, in our experience, many publicly available web pages that are selected by hospitals to host the machine-readable file (or a link to the machine-readable file) are discoverable using simple internet searches (using key words such as the hospital name plus ‘standard charges,’ ‘price,’ or ‘machine-readable file’) or, for example, by navigating to the hospital’s home page and clicking and searching through pages related to patient billing and financing. We noted that because of the flexibility we allowed to hospitals to choose the internet location, we recognized and expected that there would be some variability in how hospitals choose to publicly display their machine-readable file and how quickly the file can be found by the public. However, we indicated our belief that this flexibility is afforded under the regulation so long as the hospital ensures that the machine-readable file is accessible “without barriers,” including that the file and its contents would be digitally searchable (84 FR 65561 through 65562).”
- **PRA:** “A growing number of hospitals posted encoded, complex JSON-formatted files without user documentation.”
- **CMS:** “What is a ‘machine-readable’ file format? A machine-readable file format is a digital representation of data or information in a file that can be

imported or read into a computer system for further processing. Examples of this format include, but are not limited to, .XML, **.JSON**, and .CSV formats.” (*Emphasis added*)

- **PRA:** “We found a significant increase in the number of hospital pricing files that are one to seven gigabytes (GB) or larger, making it onerous for researchers, technology innovators, and consumers to download, although many large hospitals have successfully created compliant files less than 200 megabytes (MB) in size.”
- **CMS:** “We note that many machine-readable data sets that are made available for public use can be quite large. For example, Medicare Provider Utilization and Payment Data files include information for common inpatient and outpatient services, all physician and other supplier procedures and services, and all Part D prescriptions...we have not heard that large Medicare data files of data derived from claims causes any confusion for healthcare consumers, and healthcare consumers do not typically use the information in the data files directly. Instead, voluminous Medicare data is used by a variety of stakeholders, some of whom take the information and present it to users in a consumer-friendly manner.”

In addition to the CMS report, we would draw your attention to a recent NBC Nightly News [story](#), “Are hospitals complying with the federal price transparency law?,” which also highlights CMS’ oversight work. We also would note that Turquoise Health, a health tech company that analyzes provider and payer data, has shown in its review similar uptake to the CMS results with respect to hospital compliance. In an October [report](#), Turquoise found that through the third quarter of 2022, 76% of hospitals (4,909) have posted a machine-readable file.

Hospitals and health systems look forward to continuing to work with CMS to deliver reliable and useable pricing information to patients.

We appreciate your ongoing interest in the Hospital Price Transparency Rule and look forward to working with you as the Committee seeks more information on hospital compliance with this regulation.

Sincerely,

/s/

Stacey Hughes
Executive Vice President