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December 21, 2020

Chiquita Brooks-LaSure
Team Lead
HHS Agency Review Team
Biden-Harris Transition
1401 Constitution Avenue, NW
Washington, D.C., 20230

Dear Ms. Chiquita Brooks-LaSure:

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) requests that your Administration exercise enforcement discretion with respect to compliance with the Centers for Medicare & Medicaid Services' (CMS) hospital price transparency final rule requiring hospitals to make public, effective Jan. 1, 2021, all of the rates they negotiate with commercial health insurers.¹

We, like your Administration, have made it clear that tackling the COVID-19 pandemic should be our nation's highest priority. Although distribution of two life-saving vaccines has begun, hospitals across the nation are overwhelmed with patients in need of care from the effects of the virus. The most recent numbers as highlighted in AHA's Dec. 17 [COVID-19 Snapshot](#) are a testament to the many challenges hospitals are facing.

In addition to the doctors, nurses and other essential personnel who have worked tirelessly to care for COVID-19 patients, the personnel required to comply with the final rule are overwhelmed. They are the ones who, for example, are responsible for bringing hospital surge capacity online and assisting with the monitoring and tracking of vaccine distribution. They should not be diverted from these and similar high-priority tasks at the height of the pandemic and vaccine rollout to ensure compliance with the rule's requirements to make public the rates negotiated with commercial health insurance companies.

¹ Price Transparency Requirements for Hospitals to Make Standard Charges Public, 84 Fed. Reg. 65,524 (Nov. 27, 2019).



Yet CMS is doing just that: The agency said on Dec. 18 that it will begin to audit hospital compliance with the rule on Jan. 1, 2021.² Hospitals found out of compliance are subject to, among other things, civil monetary penalties.

CMS' misapprehension of hospital contracting and billing have made compliance with the rule, particularly the disclosure of the negotiated rates for every item and service, impracticable and often impossible. And the agency's faulty grasp of the compliance challenges led it to grossly underestimate the rule's burdens.

We have made it clear repeatedly that the hospital field is committed to providing patients with the information they need on their out-of-pocket costs to enable them to be more prudent purchasers of health care services, and we remain focused on that goal. However, we continue to believe that the requirements related to the rates that commercial health insurers negotiate with hospitals is anticompetitive. Worse still, those rates will not be useful to consumers, but rather, will confuse and frustrate them. Whichever way that issue is resolved in consultation with your Administration, now is not the time to heap these requirements on hospitals that need to keep their focus and resources devoted to caring for patients and administering vaccines.

We therefore urge your Administration to state publicly that CMS will exercise its enforcement discretion while you evaluate whether to rescind the onerous and anticompetitive requirement to publish the prices for each item and service negotiated for each commercial health insurer.

During the pandemic, CMS has repeatedly recognized difficulties in complying with various rules and notified the public that it would invoke its enforcement discretion to aid in dealing with this unprecedented challenge.³ We ask that the agency do the same regarding this rule for the duration of the COVID-19 public health emergency or at least until CMS has been able to evaluate fully whether it believes the rule should be revised.

We are available to discuss this request with you at your earliest opportunity. Please contact Melinda Hatton, AHA general counsel, at (202) 626-2336 or mhatton@aha.org.

Sincerely,

/s/

Richard J. Pollack
President and Chief Executive Officer

² <https://www.cms.gov/outreach-and-education/outreach/ffsprovpartprogprovider-partnership-email-archive/2020-12-18-mlnc-se>.

³ See, e.g., <https://www.cms.gov/medicare/covid-19/snf-enforcement-discretion-relating-certain-pharmacy-billing>.