September 17, 2021

Chiquita Brooks-LaSure
Centers for Medicare & Medicaid Services
Department of Health and Human Services
P.O. Box 8013
Baltimore, MD 21244–1850

*Submitted via regulations.gov*

**RE: CMS-1753-P** Medicare Program: Proposed Changes to Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs. (Vol. 86, No. 147),

Dear Administrator Brooks-LaSure:

[Insert brief information about your organization]. [Insert organization name] appreciates the opportunity to provide comments on the Medicare Hospital Outpatient Prospective Payment System proposed rule for Calendar Year 2022. [Add additional information about how this rule would impact the individuals your organization represents].

The comments detailed in this letter represent the views of [Insert organization here]. We ask that these comments, and all supporting citations referenced herein, be incorporated into the administrative record in their entirety.

Our comments are focused on this area of the proposed rule:

- Section XIX – Proposed Updates to Requirements for Hospitals to Make Public a List of Their Standard Charges

**Section XIX – Proposed Updates to Requirements for Hospitals to Make Public a List of Their Standard Charges**

*[Insert organization]* strongly supports CMS efforts to increase hospital price transparency to help make health care more affordable; disclosing price and eventually, quality data represents a bold and critical step in providing meaningful transparency in the quality of care and the prices paid for hospital system care, and ultimately the health care system more broadly.[1] Currently, consumers and other purchasers of health care are unable to learn how much they are required to pay until after the services have been furnished. This cost information is hidden in proprietary contracts between health plans and hospitals, which are negotiated behind closed doors between the very same plans and hospitals. This practice has resulted in consumers, workers and employers having no insight into or oversight over the underlying prices of health care despite the fact that they ultimately pay for care through insurance premiums, deductibles, and co-pays. America's families agree that price transparency in health care is long

[1] Jaime S. King, Katherine L. Gudiksen, and Samuel M. Chang, "The Secret of Health Care Prices: Why Transparency is in the Public Interest", California Health Care Foundation, July 16, 2019, Available at: https://www.chcf.org/publication/secret-health-care-prices/#related-links-and-downloads.

overdue. Over 80% of voters, across the political spectrum support the federal government using its authority to ensure that Americans know the prices of health care before they receive it.[2]

Proposal to Increase Civil Monetary Penalty Using Scaling Factor

We applaud CMS's current efforts to implement the Hospital Price Transparency Regulation which requires hospitals, for the first time, to disclose health care prices. Despite CMS's efforts to usher in a new era of transparency in health care to empower consumers to be more informed purchasers of health care, hospitals have failed to meet the requirements under the new regulation to unveil their health care prices to the public. Numerous reports of hospital compliance from across the country have shown that less than 20% of hospitals are complying with the new requirements.[3] To improve hospital compliance, CMS is proposing to increase the civil monetary penalty under current regulation. We support CMS's effort to increase the penalty for hospital noncompliance from $300 a day to:

- For hospitals with 30 beds or less: Fine noncompliant hospitals $300 per day for a maximum annual penalty of $109,500.
- For hospitals with 31 to 550 beds: Fine noncompliant hospitals $10 per bed, per day, for a maximum annual penalty of $2,007,500.
- For hospitals with greater than 550 beds: Fine noncompliant hospitals $5,500 per day, for a maximum annual penalty of $2,007, 500.

However, we encourage CMS to go further. The fact that hospitals are choosing to pay the current $300 per day fine rather than comply with federal regulations to post prices should serve as evidence that hospitals are making undue profits from keeping health care prices hidden. To reach full price transparency, hospitals must be held accountable for noncompliance. To this end, ***[Insert organization name]*** **recommends that CMS increase the civil monetary penalty for hospitals with 31 beds or more to $300 per bed per day. Importantly, recent polling shows that 75% of voters across the political spectrum support increasing the penalty for hospitals who do not comply with current regulation to $300 per hospital bed per day.[4]**

Prohibit Hospital Conduct Acting as Barrier to Accessing Standard Charge Information

Hospitals are currently using various tactics to make it difficult for consumers to access the required health care price information. Using "blocking codes" or CAPTCHA, requiring consumers to agree to terms and conditions prior to gaining access, or failure to provide a link for downloading the machine-readable file required under the new rules, are all examples of how hospitals are working to keep prices hidden. *[Insert organization name]* strongly supports CMS's proposal to amend the existing regulation by requiring hospitals to ensure the required health care price information is easily accessible and without barriers, including by ensuring the information is accessible to automated searches and direct file downloads through a link posted on a publicly available website. While we support CMS's efforts to

[2] SocialSphere, "National Survey June 2021," Patient Rights Advocate, July 6, 2021, Available at: https://static1.squarespace.com/static/60065b8fc8cd610112ab89a7/t/60f1c21c49c4f65d0f57d5ae/1626456605014/SocialSphere+Patient+Rights+Advocate+June+2021+Survey+Results.pdf

[3] Caitlin Owens, "Most hospitals aren't complying with price transparency rule," Axios, June 15, 2021, Available at: https://www.axios.com/hospitals-price-transparency-costs-regulations-noncompliance-ebf6bd21-5709-4298-b67a-74c8a90a1ec1.html

[4] SocialSphere, "National Survey June 2021," Patient Rights Advocate, July 6, 2021, Available at: https://static1.squarespace.com/static/60065b8fc8cd610112ab89a7/t/60f1c21c49c4f65d0f57d5ae/1626456605014/SocialSphere+Patient+Rights+Advocate+June+2021+Survey+Results.pdf

ensure hospitals reduce barriers to consumer access to health care price information, we encourage CMS to hold hospitals accountable for engaging in practices that restrict consumers' access to the required price information**. *[Insert organization name]* recommends that CMS explicitly state in regulation that any intentional practices found to prevent consumers from accessing the required price information during CMS's compliance review process will immediately result in the forfeiting of the corrective action plan process and will be subject to the maximum civil monetary penalty**.

Feedback on Ways to Improve the Standardization of the Data Disclosed by Hospitals

We support CMS's efforts to standardize the data hospitals are required to share by requiring hospitals to post machine-readable files using a CMS-specified URL in addition to the CMS-specified naming convention. We also support CMS's approach to require a standardized location for hospitals to post a link to the machine-readable file from the hospital's homepage in order to limit the public's search for the files. While *[insert organization name]* supports these approaches to standardize data disclosed by hospitals, we also encourage CMS to require hospitals to disclose data on a standardized set of services with corresponding quality information.

The Hospital Price Transparency rule requires hospitals to post health care price information for 300 "shoppable" services. Of those, CMS would mandate 70 services and each hospital system would choose 230. Evidence suggests that health care price transparency, alone, has little impact on consumer behavior[5] for several reasons including difficulty in understanding well-intended transparency information, lack of quality data against which to compare price, and the diminished impact of prices on out-of-pocked costs[6]. In addition to focusing on changing consumer behavior, we recommend that CMS broaden its focus of price transparency to also change the behavior of providers and payers, and to inform regulators and policymakers. To that end, individual providers who direct most of health care spending can effectively use price and quality information to encourage patients to access lower-cost, higher-quality referred providers. [7] Employers and other payers can also use price and quality information to drive care towards higher-value providers. [8] To do that, it is critical for CMS to establish national uniformity across a common set of services, and to work towards requiring hospitals to report on corresponding quality information.

As a result, ***[Insert organization name]* recommends that CMS:**

- **Mandate transparency on a smaller, but nationally uniform set of high-cost and high-volume services provided in inpatient and outpatient settings. A reasonable requirement would be the publication of 100 total services to include a broadly**

[5] Mehrotra, Ateev, et al., "Promise and Reality of Price Transparency," New England Journal of Medicine, Vol. 378, No. 14 (April 5, 2018); and Whaley, Christopher, et al., "Association Between Availability of Health Service Prices and Payments for These Services," Journal of the American Medical Association, Vol. 312, No. 16 (May 3, 2018).

[6] Mehrotra, Ateev, et al., "Promise and Reality of Price Transparency," New England Journal of Medicine, Vol. 378, No. 14 (April 5, 2018); and Whaley, Christopher, et al., "Association Between Availability of Health Service Prices and Payments for These Services," Journal of the American Medical Association, Vol. 312, No. 16 (May 3, 2018).

[7] Carman, Kristen, et al., "Understanding an Informed Public's Views on the Role of Evidence in Making Health Care Decisions, "Health Affairs, Vol. 35, No. 4 (April 2016); and Levinson, et al., "Not All Patients Want to Participate in Decision Making-A National Study of Public Preferences, "Journal of General Internal Medicine (June 2005).

[8] Robinson, James, and Timothy Brown, Evaluation of Reference Pricing: Final Report, letter to David Cowling of CalPERS (May 15, 2013). Available at: https://kaiserhealthnews.files.wordpress.com/2014/05/reference-pricing-california-berkeley.pdf.

**representative sample of services (i.e. imaging, evaluation and management, core surgical specialties, radiation oncology) from the following categories:**

i. **50 highest dollar volume (price x volume) inpatient services**
ii. **50 highest dollar volume (price x volume) outpatient services**

- **Move towards requiring all disclosed pricing information to be paired with quality information to achieve meaningful transparency of cost and quality for consumers, researchers and policymakers.**

Thank you for considering the above recommendations. Please contact [Insert organization contact name] at [Insert organization contact email] for further information.

Sincerely,

**[Insert organization name]**