



*Electronic Submission via Regulations.Gov*

September 17, 2021

The Honorable Chiquita Brooks-LaSure  
Administrator Centers for Medicare and Medicaid Services  
Hubert H. Humphrey Building  
200 Independence Ave., SW  
Washington, D.C. 20201

***Re: CMS-1753-P: 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 Proposed Rule (Vol. 86, No. 147), August 4, 2021.***

Dear Administrator Brooks-LaSure:

On behalf of the New Jersey Hospital Association (NJHA) and its over 400 hospital and health system members, thank you for the opportunity to comment on the Centers for Medicare & Medicaid Services' (CMS) hospital outpatient prospective payment system (OPPS) and ambulatory surgical center (ASC) payment system proposed rule for calendar year (CY) 2022.

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

CMS proposes to increase the civil monetary penalties for noncompliance with the hospital price transparency rule on a sliding scale based on hospital bed count. **NJHA strongly opposes increasing these penalties and urges CMS not to finalize this proposal.**

CMS argues that increasing the penalty will encourage greater compliance, citing findings from their initial reviews and a number of external studies. However, there is no evidence that the current penalty amount impacted early compliance with this rule. In fact, to date, CMS has not actually issued any penalties. Hospital noncompliance is more likely due to competing priorities primarily related to the ongoing COVID-19 pandemic, something we raised prior to the implementation start date of Jan. 1, 2021.<sup>1</sup>

Compliance with this rule takes considerable time and effort – it is not simply a compilation of existing spreadsheets. Many personnel across multiple departments working alongside a number of hospital technology vendors must build and populate the machine-readable files from scratch. As we have previously noted, because the negotiated rate information required by CMS does not actually exist for many services, hospitals must make decisions about how to populate these sheets with the most meaningful information available. All of this takes

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<sup>1</sup> AHA letter to Biden-Harris Transition Team on the Hospital Price Transparency Rule. December 12, 2021. Available at: <https://www.aha.org/lettercomment/2020-12-21-aha-letter-biden-harris-transition-team-price-transparency-rule>

considerable time and resources, and the personnel required to comply with this rule have been overwhelmed with more pressing assignments, such as bringing hospital surge capacity online and assisting with the monitoring and tracking of vaccine distribution.

As CMS notes in the proposed rule, “noncompliance [with the Hospital Price Transparency rule] is less serious than noncompliance that poses or results in harm to the public.”<sup>2</sup> Hospitals made the same calculation in prioritizing COVID-19 preparation and care over preparing for compliance with this rule. CMS showed support for hospitals needing to prioritize COVID-19 over other federal requirements during this period, offering enforcement discretion for a number of federal requirements. NJHA continues to argue that such flexibilities should be granted for these policies as well. In lieu of these flexibilities, hospitals have been forced to make those resource allocation decisions on their own.

**Given hospitals’ need to continue focusing their efforts on caring for their communities in the midst of COVID-19, as well as the ongoing uncertainty about how CMS defines “compliance,” this is not a time for CMS to impose such hefty fees for noncompliance. NJHA requests that CMS not finalize the proposed increases to the transparency noncompliance penalties until the calendar year after the end of the PHE, when hospitals will have more time to devote the necessary resources to implementation.**

### **Outpatient Clinic Visits in Excepted Off-campus Provider-based Departments (PBDs)**

NJHA lends its support to the arguments made by the AHA in its submitted comments. Specifically, NJHA urges CMS to reverse this harmful policy and restore full OPSS payment for hospital outpatient clinic visits in excepted PBDs.

### **Proposed Changes to the Inpatient-Only (IPO) List**

NJHA lends its support to the arguments made by the AHA in its submitted comments. We strongly support CMS’ CY 2022 proposal to halt the elimination of the IPO list. The IPO list was put into place to protect beneficiaries given that many medical and surgical services are complicated, invasive procedures with the potential for multiple days in the hospital and an arduous rehabilitation and recovery period.

### **Payments to 340B Hospitals**

NJHA joins in support of the AHA’s comments on this issue. NJHA continues to oppose the agency’s deep OPSS payment cuts to 340B hospitals. These cuts directly harm 340B hospitals and their ability to care for their patients, contravening Congress’ intent in establishing the 340B program. These cuts are the crux of the legal issue the U.S. Supreme Court will review in its upcoming term. For more than 25 years, the 340B program has helped participating hospitals stretch scarce federal resources to reach more patients and provide more comprehensive services. The continuation of this harmful policy, especially as the COVID-19 pandemic continues, will

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<sup>2</sup> 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, 86 FR 42018 (Proposed August 4, 2021)

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undoubtedly result in the continued loss of resources for 340B hospitals and exacerbate the strain on these hospitals and the patients they serve.

Thank you for the opportunity to comment on this rule proposal. For any questions or comments, please reach out to me at [NEicher@njha.com](mailto:NEicher@njha.com).

Sincerely,

A handwritten signature in cursive script that reads "Neil Eicher".

Neil Eicher, MPP

Vice President, Government Relations & Policy

New Jersey Hospital Association