

ONE HUNDRED SEVENTEENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

November 4, 2022

The Honorable Gene L. Dodaro
Comptroller General
Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Comptroller Dodaro:

We are writing today to request that you undertake an investigation into hospital compliance with the Hospital Price Transparency Final Rule (“the final rule”).¹ The final rule was published in November 2019 and went into effect on January 1, 2021. We believe hospitals have now had ample time to prepare for its implementation and to comply with the requirements of the final rule. We are concerned with continuing reports of low hospital compliance and some hospitals’ complete lack of compliance. We are also troubled by reports that some hospitals disclosing their prices are making it difficult for consumers to access the price information. As such, we request that you undertake a comprehensive examination of hospital compliance with the final rule.

The Hospital Price Transparency Final Rule requires hospitals to make public a machine readable file containing a list of all the standard charges for all items and services, and to display charges for the hospital’s 300 most shoppable services in a consumer-friendly format.² Under the final rule, hospitals are required to make public the gross charges, the discount cash price, the payer-specific negotiated charges, and the de-identified minimum and maximum negotiated charges for all items and services. For hospitals found to be noncompliant, the Department of Health and Human Services will issue a written warning notice or request a corrective action plan (CAP) if noncompliance constitutes a material violation of one or more requirements of the final rule. If the non-compliance is still not resolved, hospitals will face a civil monetary penalty (CMP).

¹ Department of Health and Human Services, *Medicare and Medicaid Programs: CY2020 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates. Price Transparency Requirements for Hospitals to Make Standard Charges Public*, 84 Fed. Reg. 65524 (November 27, 2019) (final rule).

² *Id.*

On January 1, 2021, the Centers for Medicare and Medicaid Services (CMS) began proactive audits of hospitals for compliance with the final rule and a review of complaints submitted via the hospital price transparency website.³ In November 2021, CMS finalized the 2022 Medicare Outpatient Hospital Prospective Payment Rule which increased CMPs for hospital noncompliance from a maximum of \$109,500 per year to a sliding scale of up to \$2 million per year for larger hospitals.⁴ As of January 2022, CMS has issued over 300 warning letters and 98 requests for CAP for hospitals deemed to be non-compliant.⁵ In June 2022, CMS issued CMP notices to two hospitals for failure to comply with the final rule.⁶

We are concerned with continuing reports of high rates of hospital noncompliance with the final rule. The *Wall Street Journal* reported that some of the biggest hospitals have failed to comply with the final rule.⁷ A study by the Johns Hopkins Bloomberg School of Public Health found that more than half—55 percent—of hospitals were non-compliant with the final rule.⁸ Another report issued by the Patient Rights Advocate found that only 14 percent of hospitals were fully compliant with all of the provisions of the final rule.⁹ Additionally, over half of the approximately 40 percent of hospitals that posted negotiated rates were non-compliant with other provisions of the final rule including failure to post the payer specific negotiated rates.¹⁰ Additionally, 20 percent of hospitals did not allow consumers to see discounted cash price, in clear violation of the final rule. This follows a series of other reports documenting hospitals' slow compliance with the requirements of the final rule, and some hospitals' complete lack of

³ Centers for Medicare and Medicaid Services, *Hospital Price Transparency* (<https://www.cms.gov/hospital-price-transparency>) (accessed Sept. 9, 2022).

⁴ Department of Health and Human Services, *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*, 86 Fed. Reg 63458 (Nov. 16, 2021) (final rule).

⁵ *CMS issued over 300 warnings, but no fines, to hospitals falling short on price transparency last year*, Fierce Healthcare (Jan. 7, 2022).

⁶ Centers for Medicare and Medicaid Services, *Enforcement Actions* (June 8, 2022) (<https://www.cms.gov/hospital-price-transparency/enforcement-actions>).

⁷ *Hospitals Still Not Fully Complying with Federal Price-Disclosure Rules*, Wall Street Journal (Dec. 30, 2021).

⁸ Johns Hopkins Bloomberg School of Public Health, *Study Estimates That More than Half of U.S. Hospitals Not in Compliance with New Pricing Disclosure Rules in First Five Months* (Dec. 9, 2021) (press release)

⁹ Patient Rights Advocate.Org, *Semi-Annual Hospital Price Transparency Compliance Report* (Feb. 2022).

¹⁰ *Hospitals Still Not Fully Complying with Federal Price-Disclosure Rules*, Wall Street Journal (Dec. 30, 2021).

compliance.¹¹ Studies have documented a patchwork of compliance or attempts at compliance that do not meet all the requirements of the final rule.¹²

Under the final rule, hospitals are required to make public charges for the most shoppable services in a consumer-friendly format.¹³ We are concerned that some hospitals are making it difficult for consumers to access this information. Some hospitals are requiring consumers to input personally-identifiable information or specific plan information, in clear violation of the final rule.¹⁴ Some hospitals are also burying the information deep in their websites or requiring consumers to search through multiple pages and subpages to find the information.¹⁵ *The Wall Street Journal* reported that some hospitals are masking the price information from online search results by embedding special webpage coding on their websites.¹⁶ These disturbing examples of hospitals failing to comply with this final rule is making it difficult for consumers to access price data and compare prices.

In light of these concerns, we request that the Government Accountability Office (GAO) undertake an examination of hospital compliance with the provisions of the Hospital Price Transparency Final Rule. Specifically, we request GAO to report on the following:

1. To what extent are hospitals complying with the final rule's requirement to make public a machine-readable file containing a list of all the standard charges for all items and services, including the requirement to make public the gross charges, the discount cash price, the payer-specific negotiated charges, and the de-identified minimum and maximum negotiated charges for all items and services?

¹¹ Health Affairs, *Low Compliance from Big Hospitals On CMS's Hospital Price Transparency Rule* (Mar. 16, 2021); ADVI, *Implementation of Newly Enacted Hospital Price Transparency* (accessed Mar. 29, 2021); *Hospitals Hide Pricing Data from Search Results*, Wall Street Journal (Mar. 22, 2021); *Hospitals slow to disclose their payer-negotiated rates*, Modern Healthcare (Jan. 8, 2021); Suhas Gondi, Adam L. Beckman, Avery A. Ofoje et al., *Early Hospital Compliance with Federal Requirements for Price Transparency*, JAMA Internal Medicine (June 14, 2021).

¹² *Id.*

¹³ Department of Health and Human Services, *Medicare and Medicaid Programs: CY2020 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates. Price Transparency Requirements for Hospitals to Make Standard Charges Public*, 84 Fed. Reg. 65524 (November 27, 2019) (final rule).

¹⁴ *Early results from federal price transparency rule show difficulty in estimating the cost of care*, Peterson-KFF Health System Tracker (April 9, 2021). Patient Rights Advocate.org, *Semi-Annual Hospital Price Transparency Compliance Report* (Feb. 2022).

¹⁵ *Hospitals Hide Pricing Data from Search Results*, Wall Street Journal (Mar. 22, 2021); *Hospitals slow to disclose their payer-negotiated rates*, Modern Healthcare (Jan. 8, 2021); *Hospitals Still Not Fully Complying with Federal Price-Disclosure Rules*, Wall Street Journal (Dec. 30, 2021); Nisha Kurani, Giorlando Ramire, et al., *Early results from federal price transparency rule show difficulty in estimating the cost of care*, Peterson-KFF Health System Tracker (April 9, 2021).

¹⁶ *Hospitals Hide Pricing Data from Search Results*, Wall Street Journal (Mar. 22, 2021); *Hospitals Still not Fully Complying with Federal Price Disclosure Rules*, Wall Street Journal (Dec. 30, 2021).

The Honorable Gene L. Dodaro

November 4, 2022

Page 4

2. To what extent are hospitals complying with the final rule's requirements regarding the online posting of a machine-readable list of hospital standards and charges, as well as a consumer-friendly list of the 300 shoppable services and their prices?
3. To what extent is the price information easily accessible for consumers, including whether the price information is readily displayed?
4. How is CMS monitoring and enforcing hospital compliance with the final rule, including what steps is CMS taking to ensure compliance? To what extent has CMS taken action against hospitals noncompliant with the final rule?

Thank you for your assistance with this request. If you have any questions, please contact Saha Khaterzai with the Committee Majority staff or Alec Aramanda with the Committee Minority staff.

Sincerely,



Frank Pallone, Jr.
Chairman



Cathy McMorris Rodgers
Ranking Member