



## House Energy & Commerce Committee Approves Price Transparency Changes

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June 5, 2023

Bipartisanship is back with a 49-0 vote (click [here](#)) in the House Energy and Commerce Committee on H.R. 3561, The PATIENT Act, which includes price transparency provisions impacting hospitals, insurers, and clinical diagnostic laboratory tests, among other hospital-related provisions.

This memorandum focuses on the price transparency provisions for hospitals and identifies additional bills and potential regulatory changes that may alter existing regulatory requirements.

- Click [here](#) for the text as reported out of Committee – see Sec. 101, pages 1-14 for hospital price transparency provisions; click [here](#) to watch the markup and review Committee prepared materials; click [here](#) for the Committee’s section-by-section outline of the full bill.

The bill shares jurisdiction with both the House Ways and Means Committee and the House Education and Workforce Committee. However, neither of those Committees has scheduled a mark-up yet. Two bills have been introduced in the Senate: S. 1130 (click [here](#)), introduced by Sen. Braun (R-IN), generally codifying current regulations, and S. 468 (click [here](#)) introduced by Sen. Kennedy (R-LA), requiring annual updates and increasing Civil Monetary Penalties. Both bills have been referred to the Senate HELP Committee.

Additionally, Cynthia Fisher’s group, PatientRightsAdvocate.org, is working not only to advance price transparency legislation, but to strengthen and expand the existing regulations. Last week they met with OMB on the OPPTS proposed rule to discuss price transparency. Click [here](#) for more information, including materials, from the first meeting; a second meeting is scheduled for June 8. Their recommendations include:

- Submission of price data directly to CMS with the CEO’s attestation of completeness and accuracy;
- Bar the use of N/A in data fields;
- Establish uniform data standards for price files;
- Expand price transparency requirements to include ASCs; and
- Include facility fees.

We welcome your input after you have reviewed the proposed changes so that we may raise any significant concerns with the other committees with jurisdiction. It's possible this bill will be voted on in the House before August recess.

### **Summary of H.R. 3561, the PATIENT Act (Promoting Access to Treatments and Increasing Extremely Needed Transparency Act of 2023)**

- For a refresher on current hospital price transparency regulations, click [here](#); click [here](#) for FAQs prepared by CMS on the current regulations; and [here](#) for the recent enforcement changes.)

While the bill has been described as merely codifying existing regulations, it goes beyond the current requirements and may increase compliance costs for hospitals. Below are some important changes included in the bill:

- Under current regulations, CMS deems a hospital compliant with the shoppable services requirements if the hospital provides an internet-based price estimator tool that meets certain requirements. Beginning in 2025, CMS may no longer deem the establishment of an internet-based price estimator tool as constituting compliance.
- It requires HHS to implement a standard, uniform method and format for disclosure of required information by January 1, 2025.
- It requires HHS to promulgate a rule to establish a process to regularly monitor the accuracy of pricing information displayed by each hospital.
- It requires HHS by January 1, 2025 to issue a public request for information as to the best method for hospitals to publish quality data.
- Through rulemaking, the Secretary is to ensure that hospitals are taking reasonable steps to ensure that the data is accessible to individuals with limited English language proficiency.
- While not expressly stated, the bill appears to eliminate the potential for a warning to noncompliant hospitals by requiring HHS to notify the hospital of its failure to comply no later than 30 days after the date on which HHS determines a failure exists. Current regulations simply state that CMS may warn of noncompliance before sending a notice of violation and requesting a corrective action plan. The steps seem to be compressed under the bill's text. The bill reduces the time by which hospitals must complete a corrective action plan to 45 days after receiving notice of noncompliance. CMS released an update to its enforcement on April 26, 2023 which is more aggressive than before but perhaps less so than the bill's proposal - click [here](#).

- Increases civil monetary penalties (CMPs) for hospitals with more than 30 beds:
  - The daily CMPs are the same as current regulations, but the CMP for a hospital in violation for a one-year period would be increased to \$5,000,000. The current regulations set the CMP for one full year of non-compliance at a minimum total penalty amount of \$109,500 per hospital, with a maximum CMP of \$2,007,500 per hospital.
- The legislation gives the Secretary the authority to increase CMPs.
- Requires Additional Reports to Congress:
  - An HHS annual report to Congress and to the public containing information regarding complaints of alleged violations of law and enforcement activities by the Secretary, along with the resolution of the compliance and enforcement inquiries. The report is also to provide an analysis of factors contributing to health care costs.
  - Within a year of enactment, GAO is required to report on compliance and enforcement, with recommendations for improving price transparency and increasing CMPs to ensure compliance.

*For additional information, please contact our General Counsel Diane Turpin at [diane.turpin@shcare.net](mailto:diane.turpin@shcare.net) or 202-578-5444.*