



## **CMS Rebuffs Billionaires' Demands in Hospital Price Transparency Rule**

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November 9, 2023

While the new hospital price transparency (HPT) regulations contain some important changes, CMS refused to acquiesce to the billionaires' campaign to require "real prices" not estimates and a host of other demands. PatientRightsAdvocate.org led the charge on price transparency (click [here](#) and [here](#)), but their arguments were also advanced by Arnold Ventures and some of the groups they support (for example, click [here](#)). Summarized below are a few of the recommendations advanced by the billionaires that were shut down completely by CMS. While they failed to achieve any significant changes this time, they will continue to push Congress for more.

Click [here](#) for the final OPPS rule – the discussion regarding hospital price transparency begins on page 1366 and the text of the HPT regulation begins on page 1666. Click [here](#) for the fact sheet and [here](#) for the press release. *For implementation deadlines for each new requirement*, see Tables 151A and 151B on pages 1462-1463 of the final rule.

### **Billionaires Wanted "Real Prices" in Dollars and Cents, NOT Estimates.**

In TV commercials, meetings with Congress and comments on the proposed rule, the billionaires pushed the narrative that hospitals should provide real prices, not estimates, and that real prices mean dollars and cents.

CMS explains that the HPT regulations are designed to make public hospital standard charges - not to provide a guaranteed price for a particular individual patient. CMS distinguishes between the information contained in the machine-readable files (MRFs) required by the HPT rule from information available through the hospital and payer price estimators, comparison tools and good faith estimates. A hospital may offer a price estimator tool to meet requirements for a consumer-friendly display; the price estimator tool must allow "healthcare consumers to, at the time they use the tool, obtain an estimate of the amount they will be obligated to pay the hospital for the shoppable service." Under the No Surprises Act, individual patients may obtain a good faith estimate from a hospital. CMS encouraged individual consumers to access this information, declining to require inclusion of "real prices" in the MRF.

### **Other Billionaire Recommendations Rejected**

PatientRightsAdvocate.org had many other recommendations for CMS including to eliminate JSON files, require C-suite level attestations to accuracy and completeness, impose liability under the False Claims Act, strengthen enforcement mechanisms and penalties, and expand price transparency requirements to ASCs, imaging centers and laboratories. CMS declined.

### **CMS Pushes Back Against Claims that Only 36% of Hospitals are Compliant with HPT**

CMS states emphatically that “only CMS can determine a hospital’s compliance with the HPT requirements” and to date **only four hospitals** have warranted civil monetary penalties (CMPs) for non-compliance.

PatientRightsAdvocate.org prepares its own “analysis” and has repeatedly argued that hospitals are noncompliant when they express prices in anything other than a dollar amount or when they leave certain categories blank or use N/A. Their claims are often repeated by Member of Congress and in the press.

In a move designed to prevent any confusion over what blank categories or N/A might mean, CMS finalized a requirement beginning July 1, 2024 that a hospital (not an individual C-suite executive) must affirm in the MRF that, to the best of its knowledge and belief, it has included all applicable standard charge information and that the information is true, accurate, and complete as of the date indicated in the MRF. The affirmation statement will be included in the templates that hospitals are required to use beginning July 1, 2024. CMS also finalized a new general requirement that beginning January 1, 2024, each hospital must make a good faith effort to ensure that the standard charge information encoded in the MRF is true, accurate, and complete as of the date indicated in the MRF.

CMS defends its record of enforcement actions with the following details:

- As of September 2023, CMS had issued 989 warning notices and 631 requests for corrective action plans (CAPs) since the initial regulation went into effect January 2021.
- After a comprehensive compliance review, CMS determined that approximately 346 hospitals did require any compliance action; 738 received a closure notice after having addressed deficiencies indicated in a prior warning notice or a request for a CAP following an initial comprehensive compliance review.
- As of the date of the proposed rule, CMS had imposed CMPs on four hospitals and publicized those on the CMS website.

### **The Billionaires Will Redouble Efforts to Pass Legislation**

Still pending in the House is H.R. 5378, the Lower Costs, More Transparency Act, reported out of the House Energy and Commerce Committee in September, to both codify existing requirements and expand those requirements. Click [here](#) for the bill and [here](#) for our earlier memo. Among other provisions, the bill would:

- Extend price transparency requirements to clinical diagnostic laboratory testing, imaging services and ambulatory surgical centers.
- Increase civil monetary penalties (CMPs) according to bed count, with CMPs up to \$10M for persistent noncompliance.
- Require hospitals to include negotiated rates in dollar amounts, eliminating the ability to use algorithms, percentage amounts or estimated amounts.

In the Senate, S. 2840, the Bipartisan Primary Care and Health Workforce Act (click [here](#)), was reported out of the Senate HELP Committee with amendments to codify existing hospital and insurer price transparency regulations (and click [here](#)) and require HHS to publicize non-compliant hospitals (click [here](#).)

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