



June 25, 2018

The Honorable Seema Verma
Administrator, Centers for Medicare and Medicaid Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

RE: CMS-1694-P

Submitted Electronically via www.regulations.gov

Dear Ms. Verma:

I am writing on behalf of the National Association of Health Underwriters (NAHU), a professional association representing more than 100,000 licensed health insurance agents, brokers, general agents, consultants and employee benefits specialists. The members of NAHU work on a daily basis to help individuals and employers purchase, administer and utilize health insurance coverage. NAHU believes that health insurance is expensive because medical care is expensive and, through the principle of transparency, we can engage, educate and empower consumers to make informed choices, which will help them lower costs and improve overall health and wellbeing.

We are pleased to have the opportunity to provide CMS with comments about healthcare price transparency requirements in the proposed rule titled "Medicare Programs: Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and Long-Term Care Hospital Prospective Payment System and Proposed Policy Changes and Fiscal Year 2019 Rates (CMS-1694-P)," as well as provide a response to your related request for information.

Proposed Requirement for Hospitals to Publicly Disclose Standard Charges for Services

NAHU believes the principle of transparency is the cornerstone of meaningful cost reform for consumers. Rising healthcare costs are the most significant barrier to health insurance coverage in America. Bending the cost curve of skyrocketing medical costs is the most critical—and vexing—aspect of healthcare reform. The purchase of healthcare drives one-sixth of our economy, yet most consumers make healthcare decisions with minimal regard to price, quality and, in some cases, the actual necessity of the purchase. Since insurers pay the vast majority of healthcare expenses, most consumers have no idea what the healthcare they receive costs, and they have been conditioned not to ask. Similarly, because most individuals have health plan coverage with a predetermined network, their care-selection process has become more about which providers and facilities are in their system rather than which people and institutions are providing high-quality services for the best price.



Accordingly, we are in support of the CMS proposal to require hospitals to make their current standard charges for items and services publicly available via the Internet and to update this data annually. The proposed rule allows for compliance through the publication of a machine-readable chargemaster. While that information alone will not be useful to most consumers directly, the influx of price data will be beneficial to health insurance carriers, administrators of group health plans, policymakers and other entrepreneurs. It can be used to improve plan designs and payment structures, as well enable the development of new transparency tools and resources that will provide significant value to consumers. It will also be of value to our membership, the professionally licensed health insurance agents and brokers who assist both individual and business purchasers of health insurance.

Beyond the proposed requirement, NAHU encourages CMS to continue to look for other opportunities to encourage the disclosure of data to consumers, particularly regarding the quality of service provided. Bending the cost curve is critical to ensure access to care long-term, but the cost of service should only be one factor in an informed decision about provider selection. Individual consumers need additional education and resources to help them determine the weight to give price, quality and other factors when making specific medical care decisions. The public release of more data about the efficacy of healthcare providers and institutions will also spur market advances to help consumers access high-quality care that meets all of their personal needs for the best possible price.

Request for Information

NAHU has prepared the following responses to your specific questions about how to handle details of the proposed transparency requirement:

- 1. Should “standard charges” be defined as the average rates for the items on the chargemaster, average rates for groups of services commonly billed together or the average discount off the chargemaster amount across all payers?**

NAHU suggests that “standard charges” should be the average rate for each service on the chargemaster, but that hospitals also be required to disclose the average amount of their payment by service, by factoring in negotiated rates and discounts. It is our understanding that both types of information are available in EPIC, so providing both prices will not be overly burdensome.

- 2. What types of information would be most beneficial to patients, how can hospitals best enable patients to use charge information in their decision-making and how can CMS and providers help third parties create patient-friendly interfaces with these data?**

It is unreasonable to expect that the disclosure of charge information will impact immediate decision-making in a hospital-based setting. CMS, hospitals and health plans must all approach



transparency requirements for hospitals with the mindset that once a person enters a hospital for care, particularly in an emergent situation and in any subsequent admission related to the emergency event, the person's ability to make provider and care choices based on transparent cost and quality data is inherently limited. However, hospitals should still disclose price and quality information publicly and update it annually, and they should still be required to provide meaningful cost and quality information to patients directly when they are in a facility because of the long-term benefits.

Patients generally want to know what their responsibility for the healthcare services they receive will be and if the facility they are selecting is an appropriate and high-quality place of care. The public availability of more cost and quality data will help guide the development of consumer tools that consumers might use during the initial choice of facility. It will also allow health plans to develop better networks, contracting terms and plan designs for consumers, and design some better behind-the-scenes cost controls and consumer-engagement tools to scaffold and incent more informed patient decision-making. The provision of cost and quality data to patients at the point of care could also inform future care decisions, prevent billing surprises and guide the patient's ongoing financial planning and expectations.

One way CMS could assist would be by using the charge data that will newly be available to create a database of standard charges and regular payments by service filtered by state. Doing so would eliminate the public need to collect data from all reporting providers and substantially advance the functionality of the new data.

Another way that CMS could help would be correlating data about the commonality of procedures, combining it with relevant cost data by state or geographic regions, then making that information publicly available. Such a databank would be able to yield a result that procedure X costs Y and it is the standard procedure for a particular medical need vs. procedure A that costs B and is the second most common procedure for that same medical need.

3. Should healthcare providers be required to inform patients how much their out-of-pocket costs for a service will be before those patients are furnished that service?

NAHU believes that, in most instances, providers should be required to provide consumers with a good-faith estimate of both the cost of services and how billing will work before the provision of care. In emergency situations, in many cases it will not be possible to provide patients with any cost or billing estimate ahead of the time of services without sacrificing the quality of medical care. However, emergent patients should still be provided with cost estimates as soon as possible, and certainly before discharge. Disclosure could occur through documented face-to-face meetings with patients, or through the use of a standardized template of written information to be given either



before the provision of care (in the case of scheduled, elective or non-emergent inpatient procedures) or as soon as possible afterward (in an emergent situation). The template data could also become part of standardized discharge paperwork.

Cost disclosures made by providers should include a qualifier that they are only an estimate and that engaging in medical examinations and treatment can sometimes necessitate an expanded scope of care that may result in increased costs. Furthermore, a statement accompanying each disclosure should note that only the individual's health plan can provide entirely accurate information about the person's out-of-pocket cost obligations. Such final details can only be determined and any issues can only be resolved after treatment is complete and the claim submitted and processed by the health plan.

Hospitals and other facilities that provide medical care treatment that may involve multiple providers with separate health plan contracting and consumer billing procedures should be required to inform their patients that coverage for services obtained in the facility might be billed separately. Furthermore, they should advise patients that related providers and services may be treated differently by health plans regarding network status. We also believe that consideration should be given to requiring providers to post notices to inform patients that they might be able to obtain services less expensively elsewhere.

4. What is the most appropriate mechanism for CMS to enforce price transparency requirements? Should CMS impose civil monetary penalties on hospitals that fail to comply with the publication requirement?

CMS, in the proposed rule, has shifted the transparency requirement for hospitals to publicly providing a list of standard charges for all consumers, rather than just an obligation to provide such information on an individual request basis. Therefore, NAHU believes that it is appropriate for the federal government to establish the ability to impose monetary penalties on entities that do not comply with this mandate. While there is always the concern that financial penalties will be passed on to the consumer, in the health insurance carrier and employer group health plan sectors, the prospect of significant noncompliance penalties that are tabulated by the number of affected consumers, has proven to be an effective means of incenting at least the attempt at compliance.

NAHU is an association of professionals who are personally subject to significant consumer protection requirements that come with hefty fines geared at ensuring compliance, such as the HIPAA and HITECH privacy and data security requirements and state licensing and market conduct requirements. Furthermore, our membership guides millions of employer plans sponsors through legal obligations that come with significant noncompliance penalties, including ERISA,



HIPAA, COBRA, FLSA and the ACA. Based on this experience, we have some suggestions as to how you can improve and incent compliance beyond just the threat of monetary penalties.

CMS should invest the time to develop clear and detailed guidance outlining parameters for how hospitals should publicly provide the required data to the public. The more straightforward and more explicit the instructions, the higher the likelihood hospitals will follow them and consumers will ultimately benefit. When it comes to enforcement policy, CMS should always keep in mind its actual goal of providing consumers with more significant information to help inform quality and cost-efficient medical care choices. Therefore, CMS should direct enforcement personnel and resources towards helping to bring struggling institutions into compliance. Enforcement discretion should be available, with a focus on levying penalties against willful and persistent resisters rather than at institutions that are making a good-faith effort to meet transparency requirements.

Conclusion

Making informed healthcare decisions helps us understand that healthcare can be expensive but not necessarily better in value. Encouraging the principles of transparency, consumerism, health and wellbeing by exposing more quality and price information will help consumers. We look forward to the release of additional guidance for hospitals to allow access to other quality and price-transparency data. Giving all consumers the ability to compare services will encourage more educated and informed purchasing decisions, lowering costs without sacrificing care.

Thank you for the opportunity to provide input on this proposed rule. The American healthcare consumer is poised to change the rules of the game by demanding transparency of healthcare cost and quality information so NAHU truly appreciates your commitment to gathering the viewpoints of all stakeholders and providing Americans with more informative, consumer-friendly healthcare cost and quality data and tools. If you have any questions about our comments or need more information, please do not hesitate to contact me at (202) 595-0787 or jtrautwein@nahu.org.

Sincerely,

A handwritten signature in black ink, reading "Janet Stokes Trautwein".

Janet Stokes Trautwein
Executive Vice President and CEO
National Association of Health Underwriters