

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-1786-P
P.O. Box 8010
Baltimore, MD 21244-1810

**RE: Comment from Independent Women's Forum and Independent Women's
Voice Regarding Medicare Program's Hospital Outpatient Prospective Payment
and Ambulatory Surgical Care Payment Systems
File No. CMS-2023-0120**

We were deeply disappointed to read the draft rule CMS-2023-0120-0002 that purportedly is about price transparency, apparently in name only. Instead, the language used will have the effect of price obscurity. Wittingly or not, the effect is to pad the pockets of industry while making it harder than ever for patients and their doctors to see actual prices and make real choices.

For far too long, American healthcare consumers have faced uncertainty about medical prices, often while facing health problems. The additional stress of the specter of unaffordable bills—in amounts known only after the fact—should not weigh on American patients.

Indeed, we would never tolerate similar practices in other industries. In purchasing other goods or services, consumers nearly universally receive and can understand price information upfront, prior to any decision or transaction. That not only gives them the certainty they need to plan for the expense but also allows them to compare prices from various sellers in the market and make a value-based decision among competitors. This price competition is the essential building block of any market. Without it, we lack the capacity—as we have seen in health care—to put downward pressure on prices.

While price certainty and price competition are normal and natural in other markets, they are nearly totally absent from America's healthcare system, and the evidence is in our skyrocketing costs. Sadly, too many Americans have personal experience with healthcare sticker shock, and they have no recourse because this shock comes *after the care has already been consumed*, after it is too late for them to do anything differently.

Thankfully, many policymakers understand this problem and have sought to require system-wide, upfront, transparent pricing in health care.

We applaud these efforts and we fight continually to ensure that the intention of these efforts—to change the patient experience by providing real, actionable price transparency—is not lost in the final execution of the price transparency policy-making process.

Therefore, we write to express serious concern about the new proposed rule **CMS-2023-0120-0002**. These draft regulations would undermine the original rule and dis-serve Americans in several key ways. We hope that regulators who care about patients, as well as the future health of our economy and the impact of skyrocketing medical costs, will strengthen the draft rules to eliminate weasel words and address the following:

- 1. The latest proposed regulations remove the word “enforcement” (of hospital compliance) and replace it with “assessment.”** This is not encouraging. Already American consumers observe that existing price transparency requirements are not adequately enforced. A survey by Patient Rights Advocate shows that only **36%** of hospitals are in compliance with existing requirements. This word change in the latest proposed rule suggests that enforcement will be a sham, and instead, the focus will simply be on “assessing” or measuring non-compliance. This is not acceptable. To the contrary, the price transparency rules should be not only enforced but strengthened to the strongest degree reasonable. For example, the attestation of complete and accurate pricing, required of hospital management, should be binding and actionable under the False Claims Act.
- 2. The proposed regulations allow for too much abuse of price transparency under the guise of price “estimates.”** The rule continues the use of the Price Estimator Tool, which is a loophole allowing hospitals to only give estimates in the place of real prices. Similarly, the rule adds a “consumer-friendly expected allowed amount” in certain situations, which is more verbiage that simply means an estimated average price. Price estimates do not allow patients to hold hospitals accountable. Only real, upfront prices are useful to consumers.
- 3. Similarly, the rule includes provisions that will make it too difficult for many consumers to gain meaningful benefits from the price information** if they lack the resources to hire third parties to interpret complex data sets or data in file formats that are not readable by humans. First, the rule would allow algorithms, percentages, or mathematical formulas in place of dollar figures in certain situations in the required machine-readable price

transparency files. Most consumers, without sophisticated software or a third-party consultant, will be unable to interpret this information to understand their price. Secondly, the rule would allow JSON files, which are not readable or understandable by human beings, instead of CSV or Excel files. The latter two options are more widely used and are readable by human beings; medical prices, including cash prices, should be communicated in CSV- or Excel-formatted files so that both machines and human beings can read and interpret the price data.

- 4. The proposed rules fall short of full, system-wide price transparency.** They should be amended to unequivocally ensure that patients understand what information and payment options are available to them. This means that hospitals should be required to publicly share all price information, including cash prices, as well as their charity care and financial aid policies. There should also be a requirement that hospitals provide notice—to all patients and the general public—about their right to transparent, upfront prices, and their right to pay cash. Finally, price transparency requirements should extend to all labs, ambulatory surgical centers, and imaging centers, not just care consumed at hospitals.

It is critical that policymakers get the implementation of price transparency requirements right. Industry wants you to weaken the rules and undermine the promise that price transparency holds for American patients. But for American voters, this is a **90%** issue, and they are counting on you to get this right and serve their interests, not allow industry to continue to milk patients. We respectfully ask that CMS address these above concerns and make changes to the proposed rules in order to uphold and strengthen price transparency requirements.

Thank you.