



September 17, 2021

Submitted via Regulations.gov

Terri L. Postma, MD, CHCQM
Medical Officer, US HHS Centers for Medicare & Medicaid Services
Attention CMS 1753-P
PO Box 8010
Baltimore, MD 21244

RE: CMS-1753-P, Hospital Transparency Provisions of the Medicare Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs

Dear Ms. Postma:

We write on behalf of two non-profit health care cooperatives in Wisconsin. The first, Common Ground Healthcare Cooperative, purchases health care for approximately 50,000 individual market consumers that do not have access to employer-sponsored coverage. The other, The Alliance, purchases health care for more than 100,000 employees and family members of about 300 large and mid-size employers that self-fund their benefits.

We are submitting joint comments on the hospital transparency provisions of the OPPI rule to illustrate the importance of real transparency when it comes to health care pricing. While our organizations serve very different populations, we are both health care purchasers that operate outside of the influence of hospital systems to advocate in the best interest of consumers/payers. Both of us believe that government has an important role to play in fixing the problems that stand in the way of health care behaving like a free market, including a lack of transparency in pricing.

At the core of our mutual concerns is the fact that health care pricing today is needlessly complicated and fails to serve the needs of the general public. We encourage you to work with independent purchasers like The Alliance and Common Ground Healthcare Cooperative to identify problems with transparency and correct them as we move forward. In other words, we understand we are at the beginning of a longer journey, and we are asking federal agencies to “keep their foot on the gas” when it comes to transparency regulations and enforcement.

Support for Enforcement and Penalties

It is well documented in news stories and research that many hospitals are currently failing to comply with the price transparency rules that went into effect on January 1, 2021. While we would like to believe these transgressions are a result of the newness of the requirements, evidence we have collected shows:

- Some hospitals are not posting information at all.
- Some hospitals that are requiring patients to log-in to see the information instead of posting it publicly.
- Some hospital systems are not posting user-friendly information. In one case, data is being presented in what looked like a jumble of coding, and the only way to find a CPT code is to do a

“CTRL F” search. We needed to get our IT experts involved to translate the data and put it into a usable format.

- Many hospitals are posting information that does not accurately depict contracted rates. Instead, they are coming up with various formulas that depict rates that sometimes exceeded and sometimes fell short of our actual contracted rates, making it impossible to understand contracted rates or compare data between payers or hospitals.

While we certainly understand that transparency is a new requirement and some hospitals may need additional time to come into compliance, we believe there are hospitals that are not faithfully working to disclose contracted rates. Putting information behind a log-in is a good example of this, another is using a formula to justify posting something other than contracted rates which are readily available. Hospitals that are engaging in these practices are actually doing more work not to comply with the rules. Therefore, we support the increased penalties proposed in the rule and would support additional penalties for hospitals that are not making a good faith effort to report the required information.

We also believe that the sooner HHS steps up enforcement when it comes to hospital transparency, the sooner we will be able to move toward information that benefits consumers when making health care decisions. We are nowhere near that today, and if compliance risk does not outweigh the risk hospitals perceive from making contracted rates public, we will certainly fall short of the goal.

Make Data Submissions Uniform and Actionable

In the past two years, federal agencies have issued regulations that apply to both health plans and providers in regard to price transparency. We are willing to do the work to the best of our ability to make this information relevant to payers and consumers, but we recognize that our efforts will fail if we cannot compare data between hospitals and payers on a uniform basis.

Common Ground Healthcare Cooperative asked two hospitals that are posting incorrect data to explain why they were displaying inaccurate data about our contracted rates. Each hospital used different methodologies to calculate the rates, illustrating the need for greater clarification and specificity in the methodology hospitals should use.

One system was calculating rates by looking at the total number of services/procedures billed under a specific code, then calculating the percentage of those that were attributed to our health plan, then applying a percentage of charges based on our discount. That system, while not matching our fee schedule at all, at least displayed the services by CPT, with a description and titles across the top that clearly identified different payers. However, this methodology resulted in certain level 1 visits looking less expensive than level 5 visits, and the system did not display data from all payers.

The other hospital system was calculating rates using a totally different formula. This system was taking into account denials and multiple service reduction claims edits. If there were several charge codes on a single claim (prescription, pathology, supplies and so on), this system would calculate our discount off charges by comparing the allowed amount for topline claims to their chargemaster, and then applying the discount to all lines on the claim.

In sharing our experience through these comments, we hope to help CMS resolve these or similar problems in final or future rulemaking. The data standards will continually need to be better defined and clearly communicated, and hospitals should be given a narrowly prescribed way of calculating and displaying easily accessible data in a consistent presentation format. We would suggest that data be displayed by CPT code coupled with plain language descriptor text using formulas that require calculations to be done as uniformly as possible.

Auditing

We are aware that there are some hospitals and health plans that have a mutual interest in keeping prices secret. We are also aware that when these interests align, it will be difficult for CMS or anyone else to identify misinformation that is being reported.

For this reason, we recommend that CMS develop a system for conducting compliance audits to ensure that data between payers and providers is accurately reported.

Medicare and Medicaid Rates

As commercial payers, we often hear from providers that underpayments from Medicare and Medicaid programs are impacting our pricing. Whether this is correct or incorrect, we see no reason why the data should not be displayed in a way that allows a comparison between Medicare, Medicare Advantage, Medicaid, and private payers.

This data should be reported using a percentage of Medicare as a basis (when applicable).

We would encourage CMS to develop a template that would assist hospitals when defining the inputs and reporting the calculations. This would ensure uniformity across hospitals and help us, as payers, identify the highest value providers.

The Role of All Payer Claims Databases (APCDs)

Healthcare is complex, and it is unlikely that consumers will be able to use the information from the hospital and insurer transparency rules without significant help and translation. While we would like to believe that third parties will step forward to use this data to help consumers, we recognize that this will be difficult without an unbiased data aggregator that can collect and house all of the data. This is an ideal role for All Payer Claims Databases. These databases could add available quality and utilization data and make it available at a reasonable cost to all stakeholders who want information to improve health care value.

We encourage CMS to continue to foster the development of APCDs, or better still, develop a national APCD, to facilitate the sharing of data and promote the use of high value care. Relying on states to develop this critical data infrastructure has, thus far, resulted in an inadequate patchwork of information.

Some states, like Colorado, require mandatory participation in their APCD's, resulting in a robust data resource. Other states, like Wisconsin, have voluntary APCD's that face challenges related to participation and funding. APCD's create transparency and accountability, and many potential health plan data contributors, who benefit from the status quo, prefer to maintain health care opacity. Still other states, like Illinois, have no APCD at all.

In conclusion, we ask CMS to accelerate the steps outlined in these comments that are necessary to achieve actionable transparency in health care in the final rules. We applaud you for the efforts put forward in the proposed rules and appreciate your continued attention to this important matter.

If we can be of further assistance to you or you wish to set up a meeting with us, please do not hesitate to contact Melissa Duffy at mduffy@dcstrategies.org or (608) 334-0624.

Sincerely,

Cathy Mahaffey, CEO
Common Ground Healthcare Cooperative

Cheryl DeMars, CEO
The Alliance