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September 27, 2019

BY ELECTRONIC DELIVERY

The Honorable Seema Verma
Administrator
Centers for Medicare & Medicaid Services
7500 Security Blvd
Baltimore, MD 21244-8013

RE: Proposed Changes to Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; Price Transparency of Hospital Standard Charges - CMS-1717-P

Dear Administrator Verma:

The National Health Council appreciates the opportunity to comment on the proposed changes to the Medicare Outpatient Prospective Payment System and Ambulatory Surgical Center Payment System (the Proposed Rule). Our comments focus primarily on the Centers for Medicare & Medicaid Services' (CMS') proposal on price transparency of hospital standard charges.

Founded in 1920, the NHC brings diverse organizations together to forge consensus and drive patient-centered health policy. The NHC provides a united voice for the more than 160 million people with chronic diseases and disabilities and their family caregivers. Made up of more than 125 diverse national health-related organizations and businesses, the NHC's core membership includes the nation's leading patient advocacy organizations, which control its governance and policy-making process. Other members include health-related associations and nonprofit organizations including the provider, research and family caregiver communities; and businesses representing biopharmaceutical, device, diagnostic, generic, and payer organizations.

The NHC fully supports policy changes and refinements that increase the availability and accessibility of relevant information to enable treatment decisions that best align with each patient's health care needs and goals. For people with chronic diseases and disabilities, the cost of health care can be an important factor in determining what care to receive and where to receive it. We therefore appreciate CMS' continuing efforts toward greater system-wide transparency for both the cost and quality of care.

Last year, CMS acknowledged that “for providers and suppliers that maintain a list of standard charges, the charge data are not helpful to patients for determining what they are likely to pay for a particular service or facility encounter.” The Agency sought stakeholder feedback on ways to improve “accessibility and usability of current charge information.” As CMS acknowledges in the Proposed Rule, the most important cost-related information for patients is the out-of-pocket cost for treatment.

[W]e know through our stakeholder engagement and research conducted over the past year that consumers of health care services simply want to know where they can get a needed health care service and what that service will cost them out-of-pocket. There are many barriers to achieving this simple desire to make price comparisons for health care services, including that the data necessary for such an analysis are not available to the general public.¹

Stakeholders have voiced significant concerns that required disclosure of plan-specific negotiated rates would have a chilling effect on the negotiations between plans and providers that could reduce price elasticity and result in higher costs for plans and patients. A 2015 Federal Trade Commission article entitled “Price Transparency or TMI?” noted that, while health care consumers need better information about the health care services they might buy, too much transparency can harm competition in any market, including in health care markets.² The authors stated that:

But transparency is not universally good. When it goes too far, it can actually harm competition and consumers. Some types of information are not particularly useful to consumers, but are of great interest to competitors. We are especially concerned when information disclosures allow competitors to figure out what their rivals are charging, which dampens each competitor’s incentive to offer a low price, or increases the likelihood that they can coordinate on higher prices.³

Although disclosure of negotiated rates moves a step closer to enabling patients to assess and compare hospital-specific out-of-pocket costs associated with a particular service, we share CMS’ concern that “the impact resulting from the release of negotiated rates is largely unknown.”⁴

The NHC supports CMS’ goal of promoting meaningful transparency on price and cost sharing.

The NHC supports creation of national standards for providers and insurers to display billing information in a concise, accessible, and consumer-friendly format. Patients should be empowered with the information needed to gauge the value of their care,

¹ 84 Fed. Reg 39398 at 39574.

² <https://www.ftc.gov/news-events/blogs/competition-matters/2015/07/price-transparency-or-tmi>

³ Id.

⁴ Id at 39579.

including cost information for the products and services they receive, e.g., charges by provider, negotiated rates for their particular plan, and cost-sharing information. We believe, however, that these standards should be guided by the patient perspective and supported with consumer testing.

CMS' transparency proposal contains many elements and goals that represent improvements in information currently available to patients, including:

- Requiring the information be disclosed in machine-readable format with common billing codes and a plain-language description of an item or service;
- Moving toward more relevant information on real-world patient costs that enable patients to make “apples-to-apples” comparisons across hospitals;
- Focusing on a set of “shoppable” services, and identifying a subset of shoppable services for which cost disclosure is required; and
- Requiring disclosure of costs associated with services that are commonly ancillary to identified shoppable services. For example, a patient seeking comparative cost information for a prescribed colonoscopy should be aware of costs of anesthesia and other services commonly performed with the primary service.

We are, however, concerned that the proposed hospital disclosure requirements could fall short of sufficiently arming patients with the information they need to make informed decisions, or even lead to confusion and inaccurate out-of-pocket cost estimates. We urge CMS to address the following concerns:

- The requirement that hospitals use “plain language” descriptors of all services is not sufficiently specific to ensure that patients will be able to make cost comparisons between hospitals. Unless all providers use the same descriptors, and all of the descriptors are sufficiently intuitive to be meaningful to patients, the proposal will fall short of achieving its goal of informing patients on the cost of care;
- Even when hospitals use the same or similar terminology to describe specific services, imaging studies and other services can be very specific in ways that patients may not understand, and associated out-of-pocket costs can vary a great deal. Unless patients are familiar with coding and standard descriptors, it is likely that many patients will compare cost estimates for services that are substantially different from what they will receive;
- The cost-data requirements CMS proposes fall short of providing patients with the bottom-line information on out-of-pocket costs that is most meaningful when choosing among hospital providers;
- The proposal does not give providers sufficient specificity on what they must do to ensure that information is presented in a consumer-friendly manner. Lack of uniformity in search functions and information presentation will inject a layer of complexity for patients using more than one source of information that could be eliminated with greater specificity from CMS. In addition, consistency may encourage the development of consumer-friendly tools to help patients navigate this information; and

- The proposal may not protect patients from surprise medical bills associated with out-of-network clinicians. Unless patients are able to obtain information that is specific to their plan and the clinicians likely to provide a specific service in-network, out-of-pocket estimates at the time patients are “shopping” for a hospital provider would be far lower than actual costs disclosed at the time of the appointment or when they receive a bill.

Many of these issues can be addressed with a robust patient engagement strategy as outlined below.

Increased patient engagement would aid CMS in ensuring that greater transparency improves the ability of patients to make better-informed decisions.

The NHC appreciates CMS’ outreach to Medicare beneficiaries on increased pricing transparency, and agree with the Agency’s conclusions that (1) information on hospital charges is not particularly helpful to patients, and (2) patients seeking information on the costs of medical care want to know what their out-of-pocket costs are going to be. We are concerned that patients may not view the calculation of out-of-pocket cost estimates from disclosed plan-specific negotiated rates as sufficiently reliable to influence decisions on where to seek care.

Similarly, while disclosure of negotiated rates may bring patients a step closer to understanding their likely out-of-pocket costs, without sufficient consumer testing on the real-world utility of this information, it is not possible to determine whether the increased cost data will inform, confuse, or misinform patients as they make important health care decisions. The NHC is concerned that this informational gap impedes CMS’ ability to adequately balance the benefits of this transparency initiative against the concerns expressed by stakeholders on the potential impact these disclosures would have on a functioning, competitive provider/payer price negotiation framework. We believe that CMS’ continued patient engagement efforts, including engaging patients in development and testing of search functions and information display, could better inform a cost transparency initiative that provides patients with a consumer-friendly means of getting the out-of-pocket cost information they need.

As a voice for people with chronic diseases and disabilities, the NHC devotes significant attention to devising and improving mechanisms for engaging and co-developing with patients, incorporating their perspectives into policies and decisions likely to impact availability of and access to high-quality medical care. We believe that effective, meaningful patient engagement and outreach requires inclusion of patients, caregivers, advocates, and advocacy organizations, that are representative of the target patient community. Patient engagement strategies that fail to focus on securing perspectives of the various sub-populations CMS seeks to serve will likely fall short of delivering sufficient insight into a consumer-friendly means of enabling patients to compare out-of-pocket costs at various hospitals.

The NHC urges CMS to ensure that provider-specific quality information is presented to patients accessing information on provider-specific health care costs.

The NHC agrees that increased information enables better patient decisions on health care. Out-of-pocket costs associated with receiving specific services is an important consideration, that, if viewed in a vacuum can confuse rather than inform decisions that align with an individual's health care needs and goals. Patients need information not only on cost but also on quality.

CMS and its providers collect and maintain information on quality of care that is subject to public disclosure. We urge the Agency to ensure that patients are able to appropriately balance financial considerations as one, but not the only, relevant factor in determining where to receive needed health care services. CMS should ensure that patient-friendly quality of care information is displayed alongside cost information when people search for information on a particular service.

We urge CMS to identify transparency mechanisms that enable patients to easily determine out-of-pocket cost and health care quality differences among providers in their communities without risking unintended consequences of creating new impediments to negotiations between providers and payers. Ideally, hospitals and payers would be incentivized to provide potential patients with clear, meaningful information on "how their prices are linked to quality and outcomes, and what an individual with insurance is likely to actually pay."⁵

Conclusion

The NHC supports CMS' efforts to increase price transparency and equip patients with the information they need to make important health care decisions. We encourage the Agency to continue and strengthen its stakeholder engagement initiatives as it seeks to craft mechanisms that increase patient access to meaningful information without impeding competitive forces that function to contain or reduce health care costs.

If you would like to discuss our comments or have any questions, please do not hesitate to contact Eric Gascho, Vice President of Policy and Government Affairs. He is reachable by phone at 202-973- 0545 or via e-mail at egascho@nhcouncil.org.

Sincerely,



Marc Boutin, JD
Chief Executive Officer
National Health Council

⁵ <https://healthpayerintelligence.com/news/verma-price-transparency-rule-a-first-step-for-consumerism>