



June 29, 2020

The Honorable Alex M. Azar
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

The Honorable Seema Verma
Administrator
Centers for Medicare & Medicaid Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Washington, DC 20201

Dear Secretary Azar and Administrator Verma:

On behalf of America's hospitals and health systems, **we urge you to delay the effective date of the hospital price transparency rule – given the burden it would pose to hospitals and health systems in the midst of responding to the COVID-19 public health emergency – until the matter is settled by the courts.**

The last several months have required all hospitals and health systems to dedicate significant resources to managing the COVID-19-surge and adapting to new ways of caring for patients. The challenges that hospitals and health systems have faced – rapid bed capacity increases, overnight telehealth system overhauls and implementation, and personal protective equipment (PPE) and other supply acquisition – have been nothing short of extraordinary, requiring the redeployment of both personnel and financial resources from departments across each organization. Meanwhile, hospitals and health systems are facing dramatic reductions in revenue from patients forgoing both non-emergent and emergent care. We anticipate the challenges associated with COVID-19 will continue for the foreseeable future, and perhaps until we develop and deploy a vaccine or reliable treatment. Resources of hospitals and health systems at this critical time must be devoted to patient care.

While we disagree with the agency on the value of public disclosure of negotiated rate information (as opposed to estimated out-of-pocket costs), we hope that you will agree that advancing this policy is not essential at this moment. Even attempting to comply with the rule will require a significant diversion of financial resources and staff time that hospitals and health systems cannot afford to spare as they prepare to or care for patients with COVID-19. Asking information technology and clinical care departments to refocus their efforts at this juncture is, at best, unwise, as the past week has

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demonstrated that significant new outbreaks of the virus can occur in locations that were previously unaffected or had very few cases.

Given the current set of circumstances, we urge you to delay implementation of this rule until the issue is settled by the courts. The Administrative Procedure Act (APA) specifically contemplates an agency's postponing the effective date of action taken by it pending judicial review.

In addition, the Centers for Medicare & Medicaid Services (CMS) has recognized a need to relax implementation deadlines for new rules in light of COVID-19 and has said that exercise of its enforcement discretion is not subject to the procedural requirements of the APA. In April, CMS [stated](#): "Due to the public health emergency posed by COVID-19, CMS is exercising ... enforcement discretion ... to adopt a temporary policy of relaxed enforcement in connection to implementation of the *Interoperability and Patient Access final rule*. We believe that the announcement of the exercise of enforcement discretion is a statement of agency policy not subject to the notice and comment requirements of the . . . APA." A similar exercise in enforcement discretion is requested here.

Moreover, we note that, as a result of COVID-19, CMS has waived statutory deadlines that apply to its rulemaking. CMS explained that, "due to CMS prioritizing efforts in support of containing and combatting the COVID-19 [Public Health Emergency], and devoting significant resources to that end, we are hereby waiving the 60-day delay in the effective date of the IPPS and LTCH PPS final rule" 85 Fed. Reg. 32,460, 32,889 (May 29, 2020). CMS should provide hospitals and health systems struggling to meet the needs of patients during the COVID-19 public health emergency the same flexibility the agency itself has needed by delaying the implementation date of the hospital price transparency rule.

We appreciate the support and assistance that the Department of Health and Human Services has regularly provided hospitals and health systems during this pandemic so that they are best positioned to care for their patients and communities. The health and well-being of our nation is our top priority, and we look forward to continuing to work with you to serve that goal.

Sincerely,

American Hospital Association
Federation of American Hospitals
Association of American Medical Colleges
Children's Hospital Association