Illinois Health and Hospital Association

January 29, 2020

Seema Verma
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Avenue SW, Room 455-G
Washington, DC 20201

Re: CMS-9915-P, Transparency in Coverage (84 FR 65464)

Dear Ms. Verma:

On behalf of our more than 200 member hospitals and nearly 40 health systems, the Illinois Health and Hospital Association (IHA) appreciates the opportunity to comment on the Departments of Treasury, Labor, and Health and Human Services' (the Departments) proposed rule to establish new coverage transparency requirements for group health plans and health insurance issuers in the individual and group markets.

IHA strongly supports providing patients with meaningful and relevant information about their health coverage to make informed decisions about their care. As such, we appreciate the Departments' first proposal to require health plans and issuers to disclose cost-sharing information to participants, beneficiaries, or enrollees, upon request, for covered items and services from a particular provider. **IHA has significant concerns, however, with the Departments' second proposal to require plans and issuers to publicly disclose in-network provider negotiated rates. IHA believes this requirement would not achieve the Departments' goal of improving transparency in coverage, but rather create significant confusion for patients and lead to instability in the healthcare market. Moreover, IHA believes the second proposal exceeds the Departments' statutory authority.**

<u>Disclosing Cost-Sharing Information to Participants, Beneficiaries, or Enrollees</u>

IHA shares the Departments' desire to "improve access to the information necessary to empower consumers to make more informed decisions about their health care costs" (84 FR 65468). Although Illinois hospitals work diligently to provide patients with accurate information on cost-sharing obligations, **IHA believes health plans and issuers are in the best position to provide estimated cost-sharing amounts prior to the provision of items and services because they dictate the patients' financial obligations.** We generally agree that the Departments' proposal to require health plans to develop price estimator tools that include standard elements, similar to those

provided on an Explanation of Benefits (EOB), will provide patients with sufficient estimates of their cost-sharing liabilities and effectively further coverage transparency efforts.

One of the standard elements proposed is a disclosure notice regarding balance billing. The Departments specifically requested comments on how state laws might affect the accuracy of this notice. Illinois law protects patients from surprise medical bills by banning the practice of balance billing and removing the patient from disputes between providers and insurance plans. Specifically, Illinois Public Act 96-1523 holds insured patients harmless for any increased out-of-pocket obligations from certain facility-based out-of-network practitioners who provide services at an in-network hospital. The law explicitly defines an "out-of-network practitioner" as one who provides radiology, anesthesiology, pathology, neonatology or emergency department services in a participating hospital or ambulatory surgical treatment center. In light of Illinois law, IHA recommends section II, number 1 of the Transparency in Coverage Model Notice specifically state that the Departments' language may be modified if a state has a law prohibiting balance billing.

IHA also encourages the Departments to require health plans to make the same benefit and coverage information available to providers via a secure website. As the point of entry to the healthcare system, patients commonly turn to hospitals for assistance in understanding their out-of-pocket costs. To assist patients, hospitals invest significant staff and financial resources contacting health plans on their behalf. However, due to often insufficient, inaccurate or outdated information from health plans, hospitals face significant barriers (and increased costs) to providing patients with the information they need. For example, hospitals are not able to determine where patients stand with respect to meeting their plan-specific deductibles; only health plans have this information. Giving providers access to such benefit and coverage elements would support IHA members' ongoing efforts to better serve their patients and enhance price transparency.

Public Disclosure of Negotiated Rates

IHA believes the Departments' second proposal to require plans and issuers to disclose in-network provider negotiated rates would not advance their stated goal of providing insured and uninsured patients with the information they need to consider and compare coverage options, encouraging health care market competition, and slowing health care cost growth (84 FR 65477).

Public disclosure of in-network negotiated rates for specific items or services, identified by complicated billing codes (e.g., HCPCS, CPT, DRG codes) in technical data files, would only serve to confuse patients as they attempt to navigate an already complex system. The Departments even acknowledge this issue in the preamble to the proposed rule, stating "consumers do not fully comprehend the basics of health coverage, much less the more complex facets of our health care system that can affect an individual's out-of-pocket cost for items and services, including its specialized billing codes and payment processes…" (84 FR 65478). While IHA agrees that all patients should be equipped to make informed health care decisions, **we believe**

the Departments' first proposal to require health plans and issuers to disclose cost-sharing information to participants, beneficiaries, or enrollees for covered items and services effectively achieves this objective.

The Departments also posit that negotiated rates will encourage market competition, allowing self-insured health plans and government-sponsored health care programs to effectively negotiate coverage and potentially lower the overall cost of care. IHA is concerned that publication of negotiated payment rates would have unintended consequences that conflict with the Departments' stated intent. For example, prices may actually increase as hospitals with lower negotiated rates demand the higher payments made to other hospitals. Additionally, hospital and payer contracts are kept confidential, which permits arms-length negotiation with other health plans. Making negotiated rates public could actually limit hospitals' willingness to contract with health plans, thus limiting provider networks.

Finally, in addition to the practical reasons stated above, IHA believes this proposal violates the Administrative Procedure Act. The Departments' justifications for requiring public disclosure of negotiated rates are unreasonable under the law because they are premised on broad *assumptions* about the effect on consumers, market competition, and the healthcare cost curve. By compelling hospitals to make public the privately negotiated payment rates, the Departments would also violate the First Amendment. Government regulation of non-misleading commercial speech is unlawful unless it "directly advances" a "substantial" governmental interest and is no "more extensive" than is necessary to serve that interest. The payment rates negotiated between hospitals and health plans are confidential, and their disclosure would violate contracts and cause substantial harm to hospitals and health plans. Thus, the Departments' proposal would not advance any substantial government interest.

IHA urges the Departments to retract their proposal to require plans and issuers to disclose payer-specific negotiated payment rates and instead focus on their proposal to require plans and issuers to disclose cost-sharing information to participants, beneficiaries, or enrollees, upon request, for covered items and or services from a particular provider or providers. This latter proposal would much more effectively achieve the goal of empowering patients to make informed, cost-conscious decisions about their care.

Ms. Verma, thank you again for the opportunity to comment on the Departments' proposals to enhance transparency in health care coverage.

Sincerely,

A.J. Wilhelmi
President and CEO
Illinois Health and Hospital Association