



January 29, 2020

The Honorable Seema Verma  
Administrator, Centers for Medicare and Medicaid Services  
Hubert Humphrey Building  
200 Independence Avenue, S.W. 445-G  
Washington, D.C. 20201

Re: CMS-9915-P

Dear Administrator Verma:

The Healthcare Leadership Council (HLC) appreciates the opportunity to submit comments in response to the notice of proposed rulemaking entitled “Transparency in Coverage (CMS-9915-P).”

HLC is a coalition of chief executives from all disciplines within American healthcare. It is the exclusive forum for the nation’s healthcare leaders to jointly develop policies, plans, and programs to achieve their vision of a 21st century healthcare system that makes affordable high-quality care accessible to all Americans. Members of HLC – hospitals, academic health centers, health plans, pharmaceutical companies, medical device manufacturers, laboratories, biotech firms, health product distributors, post-acute care providers, home care providers, and information technology companies – advocate for measures to increase the quality and efficiency of healthcare through a patient-centered approach.

**Proposed Requirements for Disclosing Cost-Sharing Information to Participants, Beneficiaries, or Enrollees**

HLC supports increased transparency in healthcare that helps patients, their clinicians, their family members, and other key stakeholders access important information about the potential cost and quality of care. Patients and employers need actionable data that can help them become more informed and engaged healthcare consumers. However, we ask the Centers for Medicare and Medicaid Services (CMS) to consider the unintended consequences of mandating the disclosure of competitively negotiated rates between insurers and hospitals. These rates do not reflect a patient’s out-of-pocket costs and are not helpful in giving a meaningful picture of the costs associated with certain types of care, nor do they allow for meaningful comparisons among similar services.

Exposing negotiated rates could undermine the ability of insurers and hospitals to negotiate payments, which could have a counterproductive impact on price competition. As the Federal Trade Commission noted in a 2015 blog post, “We believe it is possible to give consumers the specific kinds of information they need to make better health care choices, while avoiding broad

disclosures of bids, prices, costs, and other sensitive information that may chill competition among health care providers.”<sup>1</sup> We agree that consumers should be equipped with information on cost and quality that allows informed healthcare decisions without stifling price competition.

We commend CMS for its commitment to reduce unnecessary administrative burdens across the healthcare industry, as excessive administrative tasks divert time and focus from ensuring that Americans have access to the high-quality healthcare they deserve. However, the volume of negotiated rates that insurers will have to publish under the proposed requirements of the rule would create confusion among patients and impose a substantial administrative burden, as insurers offer several health plans and often contract with a number of hospitals.

### **Request for Information: Disclosure of Pricing Information Through a Standards-Based API**

HLC is encouraged by CMS’s efforts to make healthcare data more accessible through interoperable Fast Healthcare Interoperability Resources (FHIR)-based Application Programming Interfaces (APIs). We believe that adoption and implementation of FHIR-based APIs by providers, payers, and other healthcare organizations will help to accelerate interoperability, data access, and information sharing. We agree that access to cost-sharing information through standards-based APIs could have a number of benefits for patients, providers, and the public, as third-party applications could use this information in innovative ways to benefit consumers.

While we are excited about the possibilities that FHIR-based APIs can unlock for plan members, we want to raise important privacy and security concerns related to using APIs to provide access to third-party applications of an individual’s choice. While HLC supports efforts to make it easier for members to obtain access to cost-sharing information, third-party applications selected by plan members are not consistently subject to the Health Information Portability and Accountability Act’s (HIPAA) Privacy and Security Rules because many of these applications are not offered by or on behalf of covered entities, but are rather offered as direct to consumer services. We agree that the use of third-party applications access to price information is likely to introduce privacy risks, and many individuals will not fully appreciate that the protections of HIPAA do not extend to these applications. We are concerned that individuals will not have enough information to be educated consumers, and that they may not understand that they are assuming the risk of the security practices by their chosen application. April 2019 guidance from Office for Civil Rights (OCR) clarified that healthcare providers and health plans are not responsible under the HIPAA Security Rule for verifying the security of a patient or member’s chosen third party application, however this “safe harbor” does not address the potential vulnerability of individuals’ health information when sent to the application.

Should CMS issue future rulemaking that requires group health plans and health insurance issuers make available as discrete data elements through a standards-based API the cost-sharing information proposed in this rule, we ask that CMS, the Office of the National Coordinator for Health Information Technology (ONC), the Federal Trade Commission (FTC) and OCR develop or recognize existing private sector privacy and security trust or certification frameworks that could be used to assess third-party applications seeking to connect to APIs of healthcare providers and health plans. Such programs could foster innovation, while providing better assurance to individuals of the privacy and security of their health information. CMS,

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<sup>1</sup> Tara Isa Koslov & Elizabeth Jex, *Price Transparency or TMI?*, FED. TRADE COMM’N (July 2, 2015, 2:31 PM), <https://www.ftc.gov/news-events/blogs/competition-matters/2015/07/price-transparency-or-tmi>.

ONC and OCR should establish safe harbor provisions that allow and encourage healthcare organizations to share threat information about security risks and incidents linked to third-party applications.

**Request for Information: Provider Quality Measurement and Reporting in the Private Health Insurance Market**

HLC has long held that any pricing information should include accurate quality information. There is a risk that consumers, when only given pricing information, could make erroneous assumptions about quality based on cost – defeating our efforts to drive toward better outcomes and enhanced value. We acknowledge that existing provider-level metrics from CMS and nationally recognized accrediting entities such as, the National Committee for Quality Assurance, the Joint Commission, and the National Quality Forum, informs consumers on the quality of prospective healthcare services. Health plans and issuers should be afforded the flexibility to leverage provider quality information from any nationally recognized accrediting entity of their choosing to pair with any cost-sharing information.

Thank you for the opportunity to comment on the proposed rule. If you have any questions, please contact Tina Grande at (202) 449-3433 or [tgrande@hlc.org](mailto:tgrande@hlc.org).

Sincerely,

A handwritten signature in cursive script, appearing to read "Mary R. Greal".

Mary R. Greal  
President