

September 14, 2023

The Honorable Kevin McCarthy
U.S. House of Representatives
Speaker of the House
2468 Rayburn House Office Building
Washington, DC 20515

The Honorable Hakeem Jeffries
U.S. House of Representatives
Democratic Leader
2433 Rayburn House Office Building
Washington, DC 20515

Dear Speaker McCarthy and Democratic Leader Jeffries:

On behalf of our nearly 5,000 member hospitals, health systems and other health care organizations, our clinician partners — including more than 270,000 affiliated physicians, 2 million nurses and other caregivers — and the 43,000 health care leaders who belong to our professional membership groups, the American Hospital Association (AHA) writes regarding H.R. 5378, Lower Costs, More Transparency Act, provisions.

The AHA supports the suspension of the Medicaid disproportionate share hospital (DSH) reductions for two years and appreciates your work to include this provision, however hospitals and health systems strongly oppose efforts to include permanent site-neutral payment cuts. In addition, the AHA has serious concerns about the added regulatory burdens on hospitals and health systems from the provisions to codify the Hospital Price Transparency Rule and to establish unique identifiers for off-campus hospital outpatient departments (HOPDs).

All sites of care are not created equal, they do not provide equal levels of care and should not be reimbursed in the same manner. Unfortunately, Section 203 of the Lower Costs, More Transparency Act would do just that by implementing harmful site-neutral payment cuts for the administration of drug services furnished in off-campus provider-based departments. This policy would result in a cut of over \$4 billion over 10 years by our estimates to HOPDs that provide essential drug administration services, including for vulnerable cancer patients, who may require a higher level of care than is available at other care settings. Expanding site-neutral cuts would endanger the critical role hospitals and health systems play in their communities, including providing access to care for patients.

This legislative proposal fails to account for the fundamental differences between HOPDs and other sites of care. Hospitals and health systems are held to higher regulatory standards than other settings, including for drug administration services.



Current payment rates support this higher standard of care to ensure that drugs are safely prepared and administered. For example, unlike independent physicians' offices, hospitals must take steps to ensure drug preparation is supervised by a licensed pharmacist, employees are protected from exposure to hazardous drugs and rooms are sterilized to prevent contamination, in addition to compliance with other standards such as those required by the Food and Drug Administration, U.S. Pharmacopeia and Joint Commission.

Additionally, the cost of care delivered in hospitals and health systems takes into account the unique benefits they provide to their communities, and which are not provided by other sites of care. This includes investments made to maintain standby capacity for natural and manmade disasters, public health emergencies and unexpected traumatic events, as well as delivering 24/7 emergency care to all who come to the hospital.

Existing site-neutral payment cuts have already had a significantly negative impact on the financial sustainability of hospitals and health systems and have contributed to Medicare's chronic failure to cover the cost of caring for its beneficiaries. This proposal would expand upon these shortfalls, further exacerbating the financial challenges facing many hospitals and threaten patients' access to quality care. Therefore, the AHA urges Congress to reject Section 203 of the Lower Costs, More Transparency Act.

The AHA is also concerned that Section 101, which would codify the Hospital Price Transparency Rule that went into effect on Jan. 1, 2021, would unfairly penalize hospitals that have spent significant capital to comply with the regulation. While the AHA supports efforts to provide clarity about hospital prices, this section would no longer recognize price estimator tools as a method to meet the shoppable services requirement. Hospitals that have invested considerable time and resources in developing these tools to provide patients with a user-friendly summary of their potential out-of-pocket costs would no longer be compliant. In addition, hospitals will have the burden of aligning their existing posted information in a new format as determined by the Centers for Medicare and Medicaid Services (CMS). The legislation also greatly increases to \$10 million the maximum civil monetary penalty for hospitals that are deemed to be out of compliance with the statute, which is well in excess of the current maximum of \$2 million set by CMS. The AHA urges changes to this legislation to deem the use of price estimator tools as eligible to meet the shoppable services requirement and allow CMS to continue to determine the maximum penalty assessed to noncompliant hospitals.

Section 204, which would require that each off-campus HOPD of a provider be assigned a separate unique health identifier from its provider is also concerning. This provision is unnecessary since hospitals are already transparent about the location of care delivery on their bills. Hospitals and other providers bill according to federal regulations, which require them to bill all payers — Medicare, Medicaid and private payers — using codes

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that indicate the location of where a service is provided. As a result, this provision would impose an unnecessary and onerous administrative burden on providers and needlessly increase Medicare program administrative costs. The AHA urges the committees to remove this section of the Lower Costs, More Transparency Act.

Finally, we oppose provisions included in Section 202, to require 340B entities to report the difference between their acquisition cost and payments from Medicaid managed care organizations (MCOs). Such reporting would not only overstate how much 340B hospitals save from the program for their Medicaid beneficiaries but would also be unnecessarily burdensome and costly to 340B entities. The addition of burdensome reporting requirements is problematic, and we urge Congress to strike this language.

Thank you for your consideration of these proposed changes to the Lower Costs, More Transparency Act. We look forward to working with you to ensure patients continue to have access to quality care in their communities.

Sincerely,

/s/

Stacey Hughes
Executive Vice President
Government Relations and Public Policy

cc: Members of the U.S. House of Representatives