COMMUNITY ONCOLOGY ALLIANCE
Innovating and Advocating for Community Cancer Care

1225 New York Avenue, NW, Suite 600
Washington, DC 20005
(202) 729-8147 | communityoncology.org

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March 23, 2021

The Honorable Diana DeGette
Chair, Energy & Commerce Subcommittee on Oversight and Investigations
2111 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Morgan Griffith
Ranking Member, Energy & Commerce Subcommittee on Oversight and Investigations
2202 Rayburn House Office Building
Washington, D.C. 20515

Re: *Hospital Transparency Data*

Dear Chair DeGette and Ranking Member Griffith:

I am writing this letter on behalf of the Board of Directors of the Community Oncology Alliance (COA) **respectfully requesting that the Energy & Commerce Subcommittee on Oversight and Investigations look into hospitals' noncompliance with the latest HHS/CMS ruling that hospitals must report their drug and services pricing data effective January 1, 2021.**

As I will briefly explain in this letter, this data is instrumental in better understanding the cost and pricing of prescription pharmaceuticals, especially cancer drugs and other expensive specialty medications. An analysis I reference below shows that hospitals are making extreme mark-ups of 250 percent on expensive drugs. Although pharmaceutical companies set the price of their drugs, hospitals are excessively profiting off of drugs, costing patients, employers, and taxpayers more. Unfortunately, 65 of the top 100 hospitals are not complying with the new HHS/CMS regulation for hospital pricing transparency. And hospitals that are posting the data are going to great lengths to hide the data from online search engines, according to an investigative report published yesterday in the Wall Street Journal. Although HHS/CMS is auditing compliance, there is a very small financial penalty ($300 per day) that hospitals have to pay for not being in compliance, and it is unclear at this time if HHS/CMS is administering the penalty. And the revelation by the Wall Street Journal that hospitals are trying to block access to their data when posted is startling.

As background, per the CMS.gov website, *"Most institutions in the United States that are licensed as hospitals or otherwise approved as meeting applicable licensing requirements must post their standard charges prominently on a publicly available website."* Per CMS, the information must be provided in a *"Single machine-readable digital file containing the following standard charges for all items and services provided by the hospital: gross charges, discounted cash prices, payer-specific negotiated charges, and de-identified minimum and maximum negotiated charges. For additional details on this requirement refer to 45 CFR §180.50."* Further, hospitals must provide the information in a *"Display of at least 300 "shoppable services" (or as many as the hospital provides if less than 300) that a health care consumer can schedule in advance. Must contain plain language descriptions of the services and group them with ancillary services, and provide the discounted cash prices, payer-specific negotiated charges, and de-identified minimum and*

maximum negotiated charges. For additional details on this requirement, including the use of price estimator tools, refer to 45 CFR §180.60."

Although HHS/CMS will be auditing and monitoring compliance, and taking appropriate corrective action for hospital noncompliance, including imposing civil penalties, we are concerned that the financial penalties are so low that many hospitals will not comply given what transparency data is already showing.

We call your attention to the attached report from Sanford Bernstein on an analysis of pricing transparency data from a sample of 150 hospitals, of which only 30 posted a reasonable amount of drug pricing data. Among other findings from the report, the analysis yielded some of the following insights:

- Hospitals charge 250 percent over what they pay for drugs based on published average sales price (ASP). We note that this mark-up is, in reality, much higher for hospitals with 340B drug pricing discounts, which typically are 40-50 percent.
- Hospitals are incentivized to use the most expensive drugs and, in cases for biologics where a biosimilar is available, they are disincentivized from using biosimilars. The analysis found that only 30-43 percent of hospitals carry only the innovator drugs in cases where biosimilars are available.
- Administering drugs to commercial patients is "20X more profitable" than Medicare patients.

I also call your attention to a study just published in Health Affairs about the new HHS/CMS hospital drug pricing transparency regulation that found that *"65 of the nation's 100 largest hospitals are clearly noncompliant with this regulation."* And even in cases where hospitals are complying with the price transparency regulation, they are going to extraordinary lengths to hide the information from Google and other search engines. According to the Wall Street Journal, *"Hospitals that have published their previously confidential prices to comply with a new federal rule have also blocked that information from web searches with special coding embedded on their websites… Among websites where the Journal found the blocking code were those for some of the biggest U.S. healthcare systems and some of the largest hospitals in cities including New York and Philadelphia."*

Just this morning, I heard from an oncology practice in the Philadelphia area where the large hospital system was freezing out independent oncology practices by directing referrals to the hospital's own oncology center. This is a common tactic of hospitals to either force independent practices to sell out to the hospital or to close. This is because of the excessive profits that hospital systems are making off of expensive drugs. Yet, hospitals cost patients, Medicare, commercial plans, employers, and all taxpayers more money when they deliver and consolidate cancer care.

I respectfully request that the Subcommittee on Oversight and Investigations look into this matter and even hold a hearing on hospital drug pricing and transparency compliance. It is simply unrealistic for Congress to tackle the very complex issue of drug pricing, including fostering a viable, healthy biosimilar market, without consideration to how hospitals are profiting off of expensive cancer drugs and other specialty medications and fueling drug costs higher for Americans.

Sincerely,



Ted Okon
Executive Director

CC: The Honorable Frank Pallone, Jr.
The Honorable Cathy McMorris Rodgers