

United States Senate

WASHINGTON, DC 20510

August 8, 2022

The Honorable Xavier Becerra
Secretary
U.S. Department of Health & Human Services
200 Independence Ave S.W.
Washington, D.C. 20201

The Honorable Marty Walsh
Secretary
U.S. Department of Labor
200 Constitution Ave N.W., C-2318
Washington, D.C. 20210

Dear Secretary Becerra and Secretary Walsh,

I firmly believe transparency brings accountability and fosters competition. I appreciate your Departments' commitment to implementing health care price transparency rules on hospitals and health insurance companies. I have heard people argue that price information is too administratively difficult to provide, too complicated for consumers to understand, or incomplete, therefore the information should be hidden far away from sunshine. They must not believe in accountability. It's long past time for Americans to have access to prices in our health care system. Final regulations have gone into effect over the past two years, yet prescription drug pricing and cost information have gotten a pass. I request an update from your Departments on the specific efforts you will be taking to publish prescription drug pricing and cost information.

I co-authored the Physician Payment Sunshine Act that became law in 2010,¹ which required public disclosure of payments between drug companies and doctors in a Centers for Medicare & Medicaid Services (CMS) Open Payments Database.² In 2018, I helped expand the Sunshine Act to include other health care professionals (i.e., physician assistant, nurse practitioner, clinical nurse specialist, certified nurse anesthetist, or certified nurse-midwife).³ To date, over 78 million records have been published totaling a value of over \$63 billion.⁴ Information that can withstand public scrutiny and the broad light of day has the added benefit of helping to deter wrongdoing, improving accountability, and promoting competition.

I have continued to establish greater transparency in our health care industry to ensure it's held accountable on behalf of taxpayers and patients. Most recently, I have cosponsored the Health Care PRICE Transparency Act that would codify federal regulations establishing price transparency for hospitals and health insurance companies.⁵ Furthermore, I have taken on Big Pharma to require

¹ Office of Senator Chuck Grassley, "Q&A: A Healthy Dose of Disclosure, December 23, 2010, <https://www.grassley.senate.gov/news/commentary/q-healthy-dose-disclosure-0>.

² Centers for Medicare & Medicaid Services, Open Payments, <https://openpaymentsdata.cms.gov/>.

³ Public Law (P.L.) 115-271, Sec. 3201; Office of Senator Chuck Grassley, "Grassley, Blumenthal Introduce Bill to Apply Payment Sunshine to Nurse Practitioners, Physician Assistants," October 13, 2015; <https://www.grassley.senate.gov/news/news-releases/grassley-blumenthal-introduce-bill-apply-payment-sunshine-nurse-practitioners>.

⁴ Centers for Medicare & Medicaid Services, Open Payments, <https://openpaymentsdata.cms.gov/>.

⁵ Health Care PRICE Transparency Act, S.1524, <https://www.congress.gov/bill/117th-congress/senate-bill/1524>.

price disclosures on advertisements for prescription drugs.⁶ As you know, hospitals began reporting the cost of items and services in January 2021⁷ and health insurance companies began reporting prices of covered items and services in July 2022.⁸ In August 2021, your Departments delayed prescription drug price disclosure because, “regulators were considering whether that part of the rule remains appropriate, after passage of a subsequent law and ‘stakeholder concerns.’”⁹ The Department of Health and Human Services (HHS) and the Department of Labor (DOL) guidance¹⁰ stated, due to duplicative guidance, that the “Departments will defer enforcement of the requirement in the TiC Final Rules that plans and issuers must publish machine-readable file related to prescription drugs while it considers, through notice-and-comment rulemaking, whether the prescription drug machine-readable file requirement remains appropriate.”¹¹

While the pharmaceutical industry initially got a pass, I was pleased to read in an interim final rule issued later in 2021¹² that your Departments will require health plans to submit prescription drug data to your Departments and you plan to produce a report on prescription drug spending beginning in June 2023.¹³ This is encouraging news, but I remain concerned the information publicly released may not provide the complete picture to patients and policymakers. Furthermore, I remain concerned about the lack of additional timely guidance. As your interim final rule indicates,¹⁴ regulated entities will use every excuse not to provide this information timely or completely. Your Departments’ timely efforts are critical to compliance.

With less than six months from the compliance date for regulated entities to report prescription drug pricing information (December 27, 2022), I respectfully ask you to address the following questions in writing:

1. Throughout the interim final rule,¹⁵ your Departments indicated you will seek further comments. Based on comment received, have the Departments released updated comprehensive guidance?

⁶ Office of Senator Chuck Grassley, “Durbin, Grassley, King Introduce Bill to Require Price Transparency in Prescription Drug Advertisements,” June 24, 2021, <https://www.grassley.senate.gov/news/news-releases/durbin-grassley-king-introduce-bill-to-require-price-transparency-in-prescription-drug-advertisements>.

⁷ Centers for Medicare & Medicaid Services, Hospital Price Transparency, <https://www.cms.gov/hospital-price-transparency>.

⁸ *Id.*

⁹ Wall Street Journal, “Health-Insurance Providers Begin Publishing Prices for Medical Care,” July 1, 2022, <https://www.wsj.com/articles/health-insurance-providers-begin-publishing-prices-for-medical-care-11656685249>.

¹⁰ U.S. Department of Labor, “FAQS ABOUT AFFORDABLE CARE ACT AND CONSOLIDATED APPROPRIATIONS ACT, 2021 IMPLEMENTATION PART 49,” August 20, 2021, <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-49.pdf>.

¹¹ *Id.*

¹² Prescription Drug and Health Care Spending, 86 FR 66662-66704 (5 CFR 890, 26 CFR 54, 29 CFR 2590, 45 CFR 149); This interim final rule is implementing the No Surprises Act and transparency requirements of the Consolidated Appropriations Act (CAA), 2021.

¹³ Centers for Medicare & Medicaid Services, “Biden-Harris Administration Improves Transparency and Oversight of Prescription Drug and Medical Costs,” November 17, 2021, <https://www.cms.gov/newsroom/press-releases/biden-harris-administration-improves-transparency-and-oversight-prescription-drug-and-medical-costs>

¹⁴ “In their responses to the RFI, regulated entities and other interested parties indicated that they would need significant time to come into compliance after final rules implementing the requirements in section.”; Prescription Drug and Health Care Spending, 86 FR 66681 (5 CFR 890, 26 CFR 54, 29 CFR 2590, 45 CFR 149).

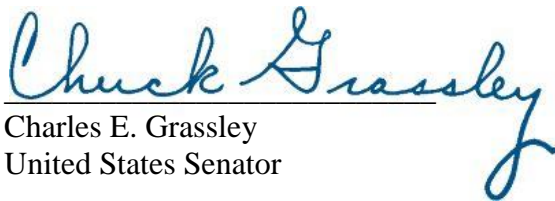
¹⁵ Prescription Drug and Health Care Spending, 86 FR 66662-66704 (5 CFR 890, 26 CFR 54, 29 CFR 2590, 45 CFR 149).

2. By December 27, 2022, the regulated entities are required to submit data complying with the statute through a section 204 data submission for the 2020 and 2021 reference years. Have the Departments released the 204 data submission guidance that is referenced throughout the interim final rule?
3. Throughout the interim final rule, the Departments indicate a federal data collection system will be built by federal agencies and specifications for regulated entities will need to be released. Is the federal data collection system operational as of August 8, 2022? Have regulated entities received the data collection system specifications and guidance?
4. Given the poor compliance of hospitals with existing price transparency rules,¹⁶ I remain concerned the Departments non-enforcement of the existing rules set the precedence for poor compliance. What steps are the Departments taking to ensure complete, accurate, and reliable data that will inform 2023 reporting outlined by the Departments? Will you be issuing a compliance audit?
5. As the interim final rule and statute indicate, the Departments are required to publish biannual section 204 public reports. I will note the statute requires “no confidential or trade secret information submitted to the Secretary under subsection (a) shall be included in the report under subsection (b).”¹⁷ Will the Departments be publicly releasing any raw data submitted by regulated entities?

I urge the Departments not to further delay prescription drug data transparency requirements for health plans. Any further delay will cheat Americans out of critical information and give our prescription drug industry a pass. If your Departments cannot move forward in a timely manner to require this transparency, I request in writing specific reasons why and what Congress can do to empower you to do so.

It’s long past due that our health care industry operates in sunlight. I agree with what former Obama and Trump administration officials recently wrote about health care price transparency rules, “the status quo is unacceptable” and “a more transparent marketplace...will give everyone the information they need and deserve to make better decisions about their care.”¹⁸ I stand ready to ensure your efforts and future congressional action bring this necessary prescription drug price data to light.

Sincerely,


Charles E. Grassley
United States Senator

CC: The Honorable Janet Yellen, Secretary, Department of the Treasury
The Honorable Chiquita Brooks-LaSure, Administrator, CMS

¹⁶ Roll Call, “Many hospitals don’t fully comply with price transparency rules,” June 2, 2022, <https://rollcall.com/2022/06/02/many-hospitals-dont-fully-comply-with-price-transparency-rules/>.

¹⁷ Public Law 116-260, Division BB, Title I and Title II.

¹⁸ Verma, S., Chopra, A. “New price transparency regulations for hospitals, insurers empower patients,” STAT News, July 22, 2022, <https://www.statnews.com/2022/07/22/new-price-transparency-regulations-for-hospitals-insurers-empower-patients/>.