



**Ohio Hospital Association and Ohio Children's Hospital Association  
Ohio House Insurance Committee  
Opponent Testimony  
March 29, 2023**

Chairman Lampton, Vice Chair Barhorst, Ranking Member Miranda and members of the Ohio House Insurance Committee, on behalf of the Ohio Hospital Association and the Ohio Children's Hospital Association, we are testifying as opponents of the current version of House Bill 49.

Please know that Ohio hospitals support efforts for increased price transparency. Prior to the effective date of federal price transparency requirements, our members were committed to providing patients with useful and meaningful pricing information for services provided in our facilities. Additionally, hospitals have worked diligently to become compliant with the federal rules that went into effect in January 2021.

The bill has been characterized as simply codifying federal regulations into Ohio law. The suggested need for this bill is based on claims that only 25 percent of hospitals are in compliance with the federal regulations. However, both the characterization of what the bill does, and the premise on which the bill is based, are misleading and incorrect. Furthermore, despite statements to the contrary, the state proposal is inconsistent with the federal law in significant ways.

**Hospital Compliance with Federal Transparency Regulations**

The federal Centers for Medicare and Medicaid Services (CMS) has spent years studying effective ways to enhance health care price transparency and developing the federal rules that went into effect in January 2021. In February 2023, CMS published its findings regarding hospital compliance stating that 70 percent of hospitals were fully compliant as of 2022, up from less than 30 percent in 2021. Stated another way, by 2022, there was a 133 percent increase in compliance.

Federal enforcement and penalties have proven very effective at motivating compliance. In fact, CMS has announced plans for enhanced enforcement activity in 2023. These efforts are in addition to an increase in the maximum penalty for non-compliance from approximately \$100,000 annually, in 2021, to \$2 million in 2022.

To be clear, there is room for improvement, but this significant bump in compliance demonstrates hospitals' commitment to fully adhering to federal requirements. Further demonstrating the growth in hospital compliance, CMS' recent analysis concluded that 82

percent of hospitals meet at least one of the two major prongs of the requirements of the rule – indicating continued movement toward full compliance. The complexity of these rules, the resources hospitals are required to devote to compliance and the timing of the rules coinciding with the flood of patients during the pandemic, contributed to lower than desired compliance at the outset, but hospitals are proving their desire to comply and have made notable progress to that end. CMS’ analysis demonstrates that desire and calls into question the premise on which the state legislation is based.

### **Differences Between HB 49 and Federal Transparency Regulations**

HB 49 has been characterized as codifying existing federal price transparency requirements in Ohio law. However, we believe it is important to highlight the very clear differences between the requirements under federal law and the provisions of this bill:

- 1) **Under federal law, CMS is the designated arbiter of compliance.** The proposed bill tasks the Ohio Department of Health (ODH) with creating an additional enforcement structure based on duplicative regulation and inefficient use of state resources when an effective federal enforcement mechanism already exists.
- 2) **Under federal law, a hospital is deemed to meet the shoppable services requirement if the hospital maintains an internet-based price estimator tool that meets certain requirements.** The proposed bill does not recognize this tool as a means to comply. The elimination of the price estimator tool is unfortunate because hospitals have dedicated considerable time and resources to standing up price estimator tools to both comply with the federal requirements and provide patients with meaningful price transparency.
- 3) **Under federal law, a hospital is required to comply with the shoppable services requirements for 300 of the most common shoppable services provided, but the proposed bill requires, effective January 1, 2025, that hospitals provide a list of charges for *all* shoppable services.** Based on years of expertise and study in this area, CMS has stated that it “continues to believe that a total of 300 services strikes a balance between the need for consumer-friendly presentation of shoppable services and hospital burden...” A requirement that goes far beyond the federal requirement imposes a substantial administrative burden on hospitals for virtually no additional benefit to patients.
- 4) **Under federal law, the CMS regulations provide some flexibility to hospitals in how the information is displayed.** HB 49 requires ODH to create a standardized template for the reporting of hospital price information. Currently, CMS is “exploring how to further drive standardized reporting of price transparency information.” Allowing the federal government to develop a template that applies nationally will avoid the unnecessary burden on Ohio providers to comply with two different standards, one established by the state and the other by CMS.

A requirement in Ohio law that compels ODH to create a unique, standardized format that differs from the national template being developed by CMS will create confusion and duplication. For example, an Ohio hospital will be forced to either create two different templates with the same information or find themselves in a situation in which they comply with federal law and violate state law, or vice versa. Devoting limited state resources to duplicative and inconsistent requirements is not helpful to patients.

While we do not believe the bill's goal is to create inconsistent and duplicative federal and state laws, rules and penalties, that is the current reality as this bill exists today.

- 5) **Under federal law, a hospital's charge information must be updated at least annually.** HB 49 requires the same, but also requires annual submission of the lists to ODH, as well as submission to ODH anytime a change is made to the lists. OHA and OCHA question the rationale for submitting voluminous lists (with potentially tens of thousands of fields) to ODH, including each time a price changes, when such information is readily accessible on the hospital's website? **The submission of these lists to a regulator is not required by the federal law because the information is available on a hospital's website.** This requirement simply adds administrative burden with no discernable benefit to patients.
  
- 6) **Under federal law, CMS has discretion in establishing timelines for hospitals to meet certain requirements, such as submission of corrective action plans and deadlines for meeting said corrective actions.** CMS has articulated its intent to establish federal timelines. Thus, state-established timelines have the potential to be inconsistent with the federal timelines to be developed. We are concerned that the establishment of state-level enforcement timelines not consistent federal timelines for the same conduct will lead to duplication and contradiction.

We appreciate the bill sponsors' intention to codify federal law to ensure Ohio hospitals are in full compliance—and believe there is a path forward to reach that shared goal. It was our hope to work with members of the House toward achieving the bill's objectives without creating a duplicative, complex and costly state regulatory regime. However, the timelines for passage did not allow for further discussion.

We remain open to compromise and further discussion with members of the committee.

Thank you for your time and consideration.