



January 29, 2024

The Honorable Joseph F. Vitale
Chair, Senate Health, Human Services and Senior Citizens
New Jersey Senate
125 W State Street
Trenton, NJ 08608

Dear Chair Vitale:

Thank you for the opportunity to provide written comments in advance of the January 29, 2024 New Jersey Senate Health, Human Services and Senior Citizens Committee hearing on legislation, including your legislation, S1984. We write today to express our strong support of S1984, which codifies the federal hospital price transparency rule into State law, helping to achieve meaningful price transparency in the health care system in the State of New Jersey.

For more than 40 years, Families USA has been a leading national, non-partisan voice for health care consumers working to achieve our vision of a nation where the best health and health care are equally accessible and affordable to all. In October 2022, we launched the Center for Affordable Whole Person Care in affirmation of our commitment to revolutionize America's health care system to hold the health care industry accountable for delivering affordable, equitable, high-quality health care.

The U.S. Health System in Crisis

Our health care system is in crisis, evidenced by a lack of affordability and poor quality.¹ At its core, our nation's affordability crisis is driven by a fundamental misalignment between the business interests of the health care sector and the health and financial security of our nation's families – a business model that allows industry to set prices that have little to do with the quality of the care they offer. These high and irrational prices are largely due to trends in health care industry consolidation that have eliminated competition and allowed monopolistic pricing to push our nation's families to the brink of financial ruin.²

Almost half of all Americans have reported having to forgo medical care due to the cost, almost a third have indicated that the high cost of medical care is interfering with their ability to secure basic needs like food and housing,³ and over 40 percent of American adults – 100 million people – face medical debt.⁴ High and rising health care costs are a critical problem for national and state governments, and affect the economic vitality of middle-class and working families – crippling the ability of working people to earn a living wage. Today's real wages – wages after accounting for inflation – are roughly the same as four decades ago, while employer health insurance premiums have risen dramatically.⁵ At the same time, nearly 90 percent of large employers say that rising health care costs will threaten their ability to provide health care benefits to employees over the next five to 10 years if costs are not lowered.⁶

Notably, the excessive cost of health care does not generally buy Americans higher-quality care or even higher volumes of care. In fact, the opposite is true. Despite spending two to three times more on health care than other industrialized countries, the United States has some of the worst health outcomes, including some of the lowest life expectancy and highest infant mortality rates.^{7,8,9} These health outcomes are even worse for people of color who experience higher rates of illness and death across a range of health conditions compared with their white counterparts.¹⁰

These abysmal health outcomes and extraordinarily high prices are the product of broken financial incentives within the U.S. health care system. Our current system rewards building local monopolies and price gouging instead of rewarding success in promoting the health, well-being and financial security of the community.¹¹ And hospital prices in particular have become highly problematic as the role of hospitals in our economy has shifted over the last 60 years from charitable institutions to corporate entities, resulting in a fundamental misalignment between the business interests of the hospital sector and the interests of the patients they serve.¹² These higher prices result in \$240 billion annually coming out of workers' paychecks and instead becoming profits for large health care corporations.^{13,14,15}

Health Industry Consolidation Driving High Prices

America's health care affordability crisis stems from high, rising, and variable prices across a wide range of health care goods and services. For example, the average price of a hospital-based MRI in the United States is \$1,475.¹⁶ That same scan costs \$503 in Switzerland and \$215 in Australia.¹⁷ These higher prices for an identical service are the main driver of the dramatic increase in per capita health care spending in our country, where health care accounted for nearly 20% of the nation's GDP in 2020, far exceeding health care spending by any other industrialized country.¹⁸

These irrational and unjustifiable prices are largely due to trends in health care industry consolidation that have eliminated competition and allowed monopolistic pricing to flourish.¹⁹ This consolidation has taken place without meaningful regulatory oversight or intervention, and is becoming more acute.²⁰ In fact, there are few truly competitive health care markets left, with 95% of metropolitan statistical areas (MSAs) having highly concentrated hospital markets, nearly 80% of MSAs having highly concentrated specialist physician markets, and 58% of MSAs having highly concentrated insurer markets.²¹

- **Hospital consolidation:** Hospital mergers are occurring more frequently both within and across health care markets, leading to higher prices in both cases. According to the American Hospital Association, there were 1,577 hospital mergers from 1998 to 2017.^{22,23} An estimated 40% of those mergers took place from 2010 to 2015.²⁴
- **Vertical Integration:** The number of hospital-acquired physician practices grew from 35,700 in 2012 to more than 80,000 in 2018.²⁵ Over this same time period, the percentage of physicians employed by a hospital or health system nearly doubled, from 25% to 44%.²⁶ Recent research found that over 55% of physicians are now employed in hospital-owned practices.²⁷ This trend was accelerated by the COVID-19 pandemic, which exacerbated the financial vulnerabilities of independent and smaller physician practices and threatened the near collapse of entire sectors of the health care system — particularly primary care.²⁸

Nearly 23,000 physicians left independent practice to work for a hospital or other corporate entity after the onset of the COVID-19 pandemic, while hospitals and other corporate entities acquired nearly 21,000 additional physician practices from 2019 to 2020, representing a 25% increase in corporate-owned practices.²⁹

Hospital Pricing Abuses

Nowhere is the negative impact of consolidation more evident than the rising cost of hospital stays and services, which have increased dramatically in the last decade and make up a large portion of increasing health care costs overall.^{30,31,32} These cost increases have occurred despite lower hospital utilization and are largely due to escalating prices, which are the result of hospitals buying other hospitals and community doctors to eliminate competition and form big health care corporations and medical monopolies.^{33,34}

Americans in many communities have watched as their local hospitals became health systems, and those health systems were bought by large health care corporations. What most in the public and policymaking community have not realized is how much this has destroyed any real competition in our health care sector, allowing hospitals to dramatically increase their prices every year.^{35,36} Between 1990 and 2023, hospital prices have increased 600% – and just since 2015, hospital prices have increased as much as 31% nationally, now accounting for nearly one-third of U.S. health care spending, and growing more than four times faster than workers' paychecks.^{37,38,39,40}

These high prices, combined with intentionally opaque billing practices, often hit consumers at their most vulnerable moments. Consider the story of Nikki Pogue:

In August 2018, Pogue ran a high-altitude trail race with a chest cold. After returning home she started having difficulty breathing, rapid pulse, tingling in her extremities, dizziness, and had difficulty walking. Her neighbor rushed her to the closest hospital where they ran multiple tests—an EKG, chest X-rays, and blood tests – but they could not pinpoint what was wrong with her. Luckily after four hours she stabilized and was sent home. A month later, a \$13,000 bill arrived. When she reviewed her bill, she noticed that the biggest charge was a mysterious line item for “ER EX/TX RM LEVEL V,” which came with a fee of more than \$11,000. She had no idea what this charge was and did not get any transparency or explanation from the hospital. She spent the next five months working to decipher the bill on her own, only to discover the hospital had miscoded her Emergency Severity Index and severely over-charged her.⁴¹

High and Irrational Prices Fueled by a Lack of Transparency

Importantly, hospital prices are not only high, but have become essentially irrational:

- In 2020, across all hospital inpatient and outpatient services, employers and private insurers paid on average 224% of what Medicare pays for the same services.⁴²
- Prices at hospitals in concentrated markets are 12% higher than those in markets with four or more rivals without any demonstrated improvement in the quality or access to care.^{43,44,45} All the while, the workforce in these concentrated markets suffers – wages for

nurses and other health care workers decrease significantly after mergers and acquisitions.⁴⁶

- Prices for the exact same service vary widely, sometimes even within a single hospital system:
 - A colonoscopy at a single medical center in Mississippi can range from \$782 to \$2,144 depending on insurance.⁴⁷
 - At one health system in Wisconsin, an MRI costs between \$1,093 and \$4,029 depending on level of insurance.⁴⁸
 - Across the country, the average price for a knee replacement ranges from \$21,976 in Tucson, Arizona to \$60,000 in Sacramento California.⁴⁹
 - The price of an MRI at Mass General Hospital in Boston Massachusetts ranged from \$830 to \$4,200 depending on the insurance carrier.⁵⁰

What's more, consumers and employers, who are the ultimate purchasers of health care, have limited insight into what the prices of health care services are until after they've received a bill. For the majority of Americans – 66% – who receive health care through private insurance,⁵¹ health care prices are established in closed-door negotiations between large hospital corporations and health plans based on who has more market power.⁵² These health care prices, often referred to as the negotiated rate, are buried in proprietary contracts without allowing for insight into or oversight over the price of health care services by the public and policymakers.⁵³

In other words, big hospital corporations are leveraging the market power they garnered by buying up local doctors to increase prices and then leverage that market power to keep the price of health care services hidden from the public. Importantly, while health plans are directly negotiating prices with hospitals, it is consumers and employers who ultimately pay for health care through insurance premiums, deductibles, and copays.⁵⁴ Health care is one of the only markets in the U.S. economy in which consumers are blinded to the price of a service until they receive a bill after the services is delivered.⁵⁵ It is the epitome of a broken market that threatens the financial security of American families and fails to serve their needs.

As a result, these large health care corporations have destroyed competition in the health care sector, and hospitals are dramatically increasing their prices year after year without any oversight from policymakers.⁵⁶ This practice has become a central strategy in the business model of health care corporations: generate profit by buying up other hospitals and doctors' offices to become large corporate health care systems that can increase health care prices, and then block policymakers and the public from seeing those prices, while maximizing service volumes of the highest-priced services.⁵⁷ **The ability of hospitals to increase prices year over year is the direct result of their ability to keep the underlying price of health care service hidden from public oversight and scrutiny.** The imperative to price gouge and hide prices is in direct conflict with ensuring that consumers and patients have the affordable health care they deserve.

Fortunately, many policymakers are awakening to the role of abusive health care prices, particularly hospital prices, and are working to implement policy solutions, such as the new federal Hospital Price Transparency rule. This regulation requires hospitals to post health care prices — including negotiated rates between hospital corporations and health plans — publicly for the first time. Unveiling health care prices, and specifically negotiated rates, is an essential tool to rein in abusive

pricing practices and to infuse competition back into U.S. health care markets. Transparency of the price of health care services in the U.S. health care system will help unveil — and uproot — irrational health care prices and low-quality care, and empower consumers, researchers, policymakers, and other purchasers with critical information to rein in prices and improve health care quality for our nation’s families.

Unsurprisingly, however, large hospital corporations have mostly subverted the federal requirements and are actively working to keep their health care prices hidden.⁵⁸ More than three years after the Hospital Price Transparency rule took effect, far too many hospitals across the country remain out of compliance with the federal rule. Recent estimates suggest as few as one in five hospitals are in full compliance with the rule.⁵⁹ Other estimates have found up to 45% of hospitals are not in full compliance with the rule.⁶⁰ Hospitals are deploying various tactics to either buck the requirements outright or make the information they disclose very hard to understand.⁶¹ Many hospitals have posted no information on negotiated rates at all.⁶² Others hospitals post prices in the form of a percentage of Medicare payment (for example, 120% of Medicare) or as a percentage of gross charges, even though the Hospital Price Transparency rule explicitly requires hospitals to list the standard charges, including negotiated rates, for each individual item or service, rather than listing those prices as a percentage of a second value such as a Medicare payment rate wherever possible.⁶³ And other hospitals post incomplete required information (that is, using “NA” or blanks).⁶⁴

Posting prices in these ways not only fails to list an actual price but also fails to uphold the intent of the price transparency rule, which is to disclose meaningful pricing information to help consumers and other payers negotiate a better deal and be more informed purchasers of health care. With so many hospitals still failing to comply with the regulation, more work is needed to achieve meaningful transparency of health care price data. As a result of growing pressure from consumer advocates, employers, labor, and other health care stakeholders, federal lawmakers are now actively considering and advancing important reforms to codify and strengthen the federal price transparency regulation to ensure health care corporations can’t secretly set any price for their health care services at the expense of the health and financial security of our nation’s families.⁶⁵ Most notably, the U.S. House of Representatives passed H.R. 5378, Lower Costs, More Transparency Act (LCMT) in December of 2023, which includes important improvements to existing health care transparency rules that will improve hospital compliance and finally achieve meaningful price transparency within the health care system. Championed by the U.S. House Energy and Commerce Ranking Member Frank Pallone (D-NJ) and U.S. House Energy and Commerce Chairwoman Cathy McMorris Rodgers (R-WA), this legislation would finally ensure hospitals and large hospital corporations post their prices in dollars and cents (not in algorithms or percentages, such as a percent of Medicare), strengthen compliance and enforcement measures such as by requiring hospitals to attest to the accuracy and completeness of the prices they publicize, and institute a uniform and standard format for how hospitals are required to post their prices so health care prices can be easily compared across hospitals and hospital systems.⁶⁶ Similar price transparency proposals have also been introduced in the U.S. Senate, for example the Health Care PRICE Transparency Act 2.0, which like LCMT includes transparency provisions that strengthen existing hospital price transparency regulations.⁶⁷

Growing State Action

As momentum grows to take action to codify and strengthen hospital price transparency rules in the U.S. Congress, State governments have also taken important steps towards codifying and strengthening federal price transparency rules using their own state authority, and we are grateful for this Committee's leadership in moving the conversation forward in New Jersey. Over 12 other states, including Florida, Illinois, Kentucky, Massachusetts, Minnesota, Missouri, New York, Ohio, Oklahoma, Vermont, Virginia, and Wisconsin, have likewise proposed or enacted legislation that strengthens and codifies, or complements existing federal hospital price transparency rules.⁶⁸ For instance, state legislatures in Missouri and Oklahoma introduced proposals to strengthen compliance with existing federal transparency rules by prohibiting hospitals from collecting patient medical debt if they are found not in compliance with federal hospital price transparency rules, while other proposals, such as those introduced in Wisconsin and Kentucky, codify federal price transparency rules into state statute and thereby independently requiring hospitals to post their standard charges in a machine-readable file format as a matter of state law.⁶⁹

The Need for Meaningful Transparency in New Jersey

In the State of New Jersey, like states across the nation, meaningful price transparency in the health care system is sorely needed. People should know the price of health care services at a hospital or health care facility before they receive care. Yet, in New Jersey, consumers, and their families – the actual purchasers of health care – don't have access to basic health care pricing information that they need and deserve to make informed health care decisions. A recent survey of New Jersey residents found over half (53 percent) were not confident they could find the cost a medical procedure ahead of time, and among those who tried to find the price for a future hospital visit, approximately a quarter could not find the information they needed.⁷⁰ These results are not surprising as the vast majority of New Jersey hospitals are still not fully complying with federal hospital price transparency rules. Seventeen of the 29 hospital systems were found to be non-compliant with hospital price transparency rules.⁷¹ Too often hospitals are not posting complete or usable pricing information, for example listing "average" negotiated prices as was done by Virtua Voorhees Hospital in Voorhes, New Jersey, or not posting discounted cash prices so patients planning to self-pay could not see the price before deciding to seek care. In other instances, hospitals did not post files that were machine-readable at all, severely limiting the extent to which hospital prices could be easily compared across hospitals and hospital systems.⁷² While compliance with the federal hospital price transparency regulation has modestly improved since its initial implementation in early 2021 there is clearly still much work to be done in improving hospital compliance with price transparency rules and ensuring patients, employers, and other stakeholders have the pricing information they need in New Jersey and across the nation.⁷³

In the context of the severe health care affordability and quality crisis in New Jersey (as is experienced across the nation), it is critical that we achieve meaningful price transparency in the health care system and not allow large hospital corporations to secretly set their prices to price gouging levels at the expense of the health and financial security of New Jersey residents. Nearly half of New Jersey residents reported delaying or foregoing needed medical care due to the cost, while four in five New Jersey residents reported being "worried" or "very worried" about affording the health care they may need in the future.⁷⁴ As described above, a leading driver of this

affordability crisis is the high and rising price of hospital care, which accounts for a growing proportion of our health care spending⁷⁵ and is causing millions of Americans to go into debt, all while suppressing workers' wages through rising health care premiums. In New Jersey, these trends are no different, where over the past two decades spending on hospital care increased a staggering 287%, increasing from \$8.48 billion in 1991 to \$32.86 billion in 2020.⁷⁶ Hospital care has also consistently made up the largest source of health care spending in the State.⁷⁷ At the same time, hospital utilization largely stayed the same and even at times decreased in the past decade, suggesting that increases in health care spending are largely driven by rising hospital prices.⁷⁸

These high and rising hospital prices are largely due to trends in health care industry consolidation that have eliminated competition and allowed monopolistic pricing to flourish. In New Jersey, these trends are no different. Large health care corporations continue to consolidate and become large medical monopolies so they can increase their market power and price gouge New Jersey residents, while at the same time hiding their prices from public scrutiny or oversight.⁷⁹ A significant number of hospital markets in New Jersey are now highly concentrated, such as those in Trenton, Atlantic City, and Hammonton.⁸⁰ At the same time, hospital prices in the state continue to increase significantly, while also varying widely across the state. For instance, inpatient hospital prices rose 38% between 2012 and 2016, despite utilization decreasing by 19%.⁸¹ Moreover, prices for common medical services have become essentially irrational in the state. For instance, an MRI costs as much as \$3,598 or as little as \$91 depending on which hospital you go to – a 40 times difference.⁸² While large hospital corporations use their market power to charge high and irrational prices, it's New Jersey residents and taxpayers that are paying the price. On top of significant numbers of New Jersey residents delaying or foregoing needed medical care due to the high cost and taking on high levels of medical debt when they do seek care⁸³, the State of New Jersey is losing billions of dollars due to high and rising premiums associated with their state employee benefit plans.⁸⁴ In fact, as a result of hospitals price gouging, New Jersey has lost billions of dollars -- \$1.2 billion between 2016 and 2018 alone – which is money that otherwise could be spent on public interest projects for New Jersey residents.⁸⁵

Codifying strengthened federal price transparency laws into New Jersey law is a critical step to hold the health care system accountable for irrational hospital prices. And promoting and achieving meaningful price transparency by strengthening requirements that direct hospitals to disclose their prices, and in particular their negotiated rates, has the power to disrupt the status quo market dynamics and infuse competition back into U.S. health care markets to make health care more affordable for the residents of New Jersey.

To that end, we strongly support New Jersey Senate bill S1984 as it is being considered by the Senate Health, Human Services and Senior Citizens. This critical legislation codifies the federal hospital price transparency regulation into state law, and requires every hospital in the state to publish a machine-readable file containing a list of payer-specific negotiated rates for all of their standard charges for items and services delivered by said hospital, among other data.⁸⁶ In addition, this legislation would strengthen oversight of hospitals' compliance with the price transparency rule by directing the New Jersey Department of Health to monitor and assess compliance with the rule, including by auditing hospitals' websites and investigating any complaints received by individuals or organizations.⁸⁷

S1984 marks a significant step in efforts to achieve meaningful health care transparency in the State of New Jersey. With the vast majority of New Jersey residents supporting government action that requires hospitals to provide up-front costs to consumers, Families USA strongly urges its passage.⁸⁸ Moreover, we encourage policymakers across the state as well as the Governor to build upon this legislation in order to maximize the impact price transparency will have on unveiling high and rising hospital prices and helping achieve true health care affordability in the State of New Jersey. We encourage policymakers, for instance, to continue to build on this legislation and explore efforts to further strengthen existing federal price transparency rules such as by requiring hospitals to post negotiated prices *explicitly* in dollars and cents (with no estimates and no loopholes) and requiring hospital executives to attest to the accuracy and completeness of the data files they post, among other possible reforms.⁸⁹

Conclusion

The American people, including New Jersey residents, are clear about their concerns regarding high and rising hospital prices and their impact on health care affordability. Recent national polling shows voters from both sides of the aisle broadly support.^{90,91}

- **Requiring all health care organizations to publicly disclose their prices (87%)**
- **Preventing hospitals from engaging in business tactics that reduce competition (75%)**
- Limiting outpatient fees to the same price charged by doctors in the community (85%)
- Limiting mergers and acquisitions (74%)

Thank you for holding this hearing on such a critical topic and for considering important reforms to rein in abusive health care prices and make health care more affordable for everyone. The journey to fully transform our health care system is long, but States such as New Jersey hold essential power to take significant steps. Families USA stands ready to support you in this essential and urgently needed work. For further information, please contact Aaron Plotke, APlotke@familiesusa.org.

Sincerely,



Sophia Tripoli
Senior Director of Health Policy

¹ Emma Wager, Jared Ortaliza, and Cynthia Cox, *How Does Health Spending in the U.S. Compare to Other Countries?*, Peterson-KFF Health System Tracker, January 21, 2022, <https://www.healthsystemtracker.org/>. See also, Nisha Kurani, Emma Wager, *How does the quality of the U.S. health system compare to other countries?*, Peterson-KFF Health System Tracker, September 30, 2021. <https://www.healthsystemtracker.org/>.

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