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The Hospital Price Transparency Rule: Is it Worth the Cost of Compliance?

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This post is part one of two in a series on new transparency requirements impacting both health plans and health care providers.

In an effort to assist patients in understanding the cost of hospital services, the Hospital Price Transparency rule at 45 C.F.R. § 180.10 *et. seq.*, effective January 1, 2021, requires all hospitals to make public the following pricing information:

1. A comprehensive machine-readable file containing the following:
   a. A description of each item or service provided by the hospital.
   b. The gross charge that applies to each individual item or service.
   c. Payer-specific negotiated rates that apply to each item or service for which a payer negotiated rate has been established. Each payer negotiated price must be clearly associated with the name of the applicable third-party payer and plan.
   d. De-identified minimum negotiated rates that apply to each item or service.
   e. De-identified maximum negotiated rates that apply to each item or service.
   f. Discounted cash prices that apply to each item or service.
   g. CPT, HCPCS or other billing codes used by the hospital for purposes of accounting or billing for the item or service.

Note that in the regulations, CMS uses the word “charges” rather than the word “rates” that we use above. The statutory provision which serves as the basis for these regulations require hospitals to post “a list of the hospital’s standard charges for items and services provided by the hospital…” However, CMS convinced the courts that affirmed the rule that the statutory use of “standard charges” included negotiated “rates” and consistent therewith, it used the phrase “negotiated charges” instead of “negotiated rates.” Herein, for ease of understanding, we use the more common term used by providers and payers —“negotiated rates” — in (c)-(e) above.

2. A consumer-friendly list of standard rates for a limited set of “shoppable services.” Under this requirement, hospitals must publish their charges and the four types of rates listed in 1(c)-1(f) above for the hospital’s 300 most “shoppable services,”

defined as “service[s] that can be scheduled by a healthcare consumer in advance.” CMS has specified 70 shoppable services that must be included in this list, but left it to each hospital to select the remaining 230 (or as many shoppable services as the hospital provides if the hospital does not provide 300 shoppable services).

Both lists must be updated on an annual basis. As noted, the regulations were effective on January 1. Numerous independent studies have shown generally limited compliance to date. CMS has stated that it is monitoring compliance with these requirements, but we are not aware of any investigations or other regulatory actions by CMS related to non-compliance. If a hospital is identified as noncompliant and fails to respond to or comply with CMS’ request to submit a corrective action plan, CMS may impose a civil monetary penalty of up to $300 per day (adjusted annually).

These requirements are extremely burdensome and costly for hospitals and critics have claimed, and there would appear little doubt, that CMS vastly underestimated the cost of compliance. The hospital industry challenged the rule, but their challenge has been rejected at the appeals level.

In part two of this series, we intend to provide a summary of the transparency rules implemented by the Consolidated Appropriations Act, 2021, which are effective on January 1, 2022 and impose additional requirements on health care plans and providers.

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