



November 19, 2019

Price Transparency Requirements for Hospitals to Make Standard Charges Public

On November 15, 2019, the Centers for Medicare and Medicaid Services (“CMS”) issued the following final rule: Medicare and Medicaid Programs: CY 2020 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates, Price Transparency Requirements for Hospitals to Make Standard Charges Public (the “Price Transparency Final Rule”).¹ The Price Transparency Final Rule revises and finalizes certain requirements for hospitals proposed in the Price Transparency of Hospital Standard Charges proposed rule, published August 9, 2019,² including finalizing the requirement that hospitals create and publicize a list of their standard charges for the items and services that they provide, as well as disclosing the prices for certain additional “shoppable services.” Such list must be made available in a single digital machine-readable file.

The Price Transparency Final Rule will be codified at 45 C.F.R. Part 180 and is effective beginning January 1, 2021.

The Price Transparency Final Rule

Applicability

The Price Transparency Final Rule applies to hospitals³ in any state, including critical access hospitals, inpatient psychiatric facilities, sole community hospitals, and inpatient rehabilitation facilities and any other type of institution licensed as a hospital. At this time ambulatory surgical centers or other non-hospital sites-of-care from which consumers may seek healthcare items and services are not subject to this rule.

Standard Charges

The Price Transparency Final Rule requires hospitals to make public the following “standard charges”: gross charges,⁴ payer-specific negotiated charges,⁵ the discounted cash price,⁶ the de-identified minimum negotiated charge and the de-identified maximum negotiated charge.⁷

¹ The text for the final rule can be found here: <https://www.hhs.gov/sites/default/files/cms-1717-f2.pdf>.

² See 84 FR 39398.

³ “Hospital” is defined as “an institution in any state in which state or applicable local law provides for the licensing of hospitals, that is licensed as a hospital pursuant to such law or is approved by the agency of such state or locality responsible for licensing hospitals, as meeting the standards for such licensing.” This includes all Medicare-and non-Medicare enrolled institutions that are licensed as hospitals. Federally owned and/or operated hospitals that do not treat the general public (except for emergency services) and whose rates are not subject to negotiation, are deemed to be in compliance with the requirements to make public standard charges.

⁴ CMS defines “gross charge” as “the charge for an individual item or service that is reflected on a hospital’s chargemaster, absent any discounts.”

⁵ “Payer-Specific Negotiated Charge” is defined as “the charge negotiated with a third-party payer for an item of service. This does not include non-negotiated payment rates (such as those payment rates for FFS Medicare or Medicaid) but does include charges negotiated by third-party managed care plans such as Medicare Advantage plans, Medicaid MCOs.”

⁶ The “discounted cash price” is defined as “the price the hospital would charge individuals who pay cash (or cash equivalent) for an individual item or service or service package.”

⁷ “De-identified minimum negotiated charge” means “the lowest charge that a hospital has negotiated with all third-party payers for an item or service.” “De-identified maximum negotiated charge” means “the highest charge that a hospital has negotiated with all third-party payers for an item or service.”

The Price Transparency Final Rule requires hospitals to post a list of their standard charges for all items and services⁸ provided by the hospital to a patient in connection with an inpatient admission or an outpatient department visit. Additionally, hospitals must make available their standard charges for service packages, or bundles of services, negotiated with third party payers. According to CMS, hospitals have the flexibility to display their standard charge for service packages that are unique to each of their payer-specific contracts.

Machine-Readable File

The single machine-readable digital file must contain a description of each item or service, the corresponding gross charge, the corresponding payer-specific negotiated charge, any code used by the hospital for purposes of accounting or billing, and the revenue code, as applicable. The file must be prominently displayed on a publicly-available webpage that clearly identifies the hospital location with which the file is associated, and makes the standard charge data easily accessible and digitally searchable.

Shoppable Services

Hospitals must post payer-specific negotiated charges, discounted cash prices, the de-identified minimum negotiated charge, and the de-identified maximum negotiated charge for at least 300 “shoppable services.”⁹ CMS will require hospitals to list 70 specific shoppable services that CMS will designate. The hospital may choose the remaining 230 shoppable services it will post based on the hospital’s utilization or billing rate of the services in the past year. Hospitals that offer Internet-based price estimator tools will be deemed to have met this requirement.¹⁰

Non-Compliance with Price Transparency Final Rule

CMS plans to monitor hospitals for non-compliance with the requirements of the Price Transparency Final Rule. CMS may address noncompliance by issuing a written warning notice, requesting a corrective action plan, and/or imposing civil monetary penalties of up to Three Hundred Dollars (\$300.00) per day for each violation and publicizing such penalties on a CMS website.

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If you have any questions related to this Client Alert or the Price Transparency Final Rule, please contact a member of the Kutak Rock [National Healthcare Practice Group](#).

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⁸ Examples of items and services include, but are not limited to: (1) supplies and procedures; (2) room and board; (3) use of the facility and other items; (4) services of employed physicians and non-physician practitioners (generally reflected as professional charges); and (5) any other item or service for which a hospital has established a standard charge.

⁹ A “shoppable service” is “a service that can be scheduled by a healthcare consumer in advance.”

¹⁰ The price estimator must allow healthcare consumers to obtain an estimate of the amount they will be obligated to pay the hospital for the shoppable service; provide estimates for at least 300 shoppable services; be prominently displayed on the hospital’s website; and be accessible without charge or having to register or establish a user account or password.