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Healthcare Cost Transparency Rules Already Affecting Hospital Pricing

In the United States, the single largest component of healthcare expenditures in recent years has been hospital spending. $1.3 trillion was spent at hospitals in 2020, but there are efforts to reduce this number. Recent years have seen a flurry of changes in healthcare transparency and reporting regulations, which are intended to increase price transparency for healthcare services, empower consumers and plan sponsors to make informed decisions, promote price competition among providers, and ultimately reduce the costs of healthcare. Two of these regulations, the Hospital Price Transparency Rule ("HPT") and the Transparency in Coverage Rule ("TiC") have now taken partial or full effect, and early data shows that they are already working to reduce hospital pricing.

Overview of Healthcare Cost Transparency Rules and Enforcement

HPT applies to hospitals, while TiC applies to non-grandfathered group health plans and health insurance issuers. However, the transparency requirements in the two rules are similar. Broadly speaking, HPT required each hospital operating in the United States to provide, by **January 1, 2021**, clear, accessible pricing information online about the standard charges for the items and services they provide, both (a) as a comprehensive machine-readable file with all items and services and (b) in a display of 300 shoppable services in a consumer-friendly format.

While all of HPT's provisions went into effect at the same time, TiC's implementation and enforcement has occurred in stages. By **July 1, 2022**, plans and issuers were required to publicly provide machine-readable files containing certain in-network and out-of-network pricing data. A third file with prescription drug cost information was also contemplated by TiC, but enforcement for this data file has been delayed until the regulators issue new regulations. Then, beginning on **January 1, 2023**, providers and issuers will be required to provide an Internet-based price comparison tool allowing an individual to receive a real-time estimate of their cost-sharing responsibility for 500 specific items and services covered by their plan. By **January 1, 2024**, the comparison tool must be updated to include all covered items and services.

Noncompliance is subject to civil enforcement action by the Centers for Medicare & Medicaid Services ("CMS"), with monetary penalties for hospitals of up to $300 (or up to $10 per bed) per day per violation, and penalties for TiC violations of up to $100 per day per violation,

per person affected. CMS has already demonstrated its enforcement intent with relation to HPT. CMS began hospital audits in January 2021, shortly after HPT took effect; by October 2021 CMS had issued 335 warning notices and 98 requests for a corrective action plan to non-compliant hospitals, and by June 2022 CMS had fined two hospitals: Northside Hospital Atlanta ($883,180.00) and Northside Hospital Cherokee ($214,320.00). Each hospital had failed to post a consumer-friendly, searchable list of standard charges in a single machine-readable file. We expect CMS to follow a similar enforcement pattern and timeline with respect to TiC's requirements.

Early Data Shows Hospital Pricing Reductions

Hospital pricing data remains incomplete – one study conducted by PatientRightsAdvocate.org showed that only 5.6% of the 500 surveyed hospitals were in full compliance with all of HPT's requirements, although roughly 85% of the surveyed hospitals were partially compliant (i.e., the hospitals provided machine-readable files and/or price-estimator tools, but the files or tools were deficient in one or more respects). Despite these shortcomings, the early data shows that many plans pay hospitals significantly more than Medicare does for the same services.

In some cases, this discrepancy has caused friction between hospital groups and payers. For example, the data in Indiana showed that in 2020, plans there paid the fourth-highest hospital prices (329% of Medicare rates) but had the fourth-lowest prices for physician services (126% of Medicare rates). Higher hospital prices were directly correlated with higher profits. Consequently, several insurers successfully renegotiated their hospital contracts, and advocacy groups called on the Indiana Legislature to implement price ceilings for hospital services. By contrast, data in Texas also revealed high prices related to Medicare rates, but further investigation showed that spiking labor costs were the primary contributor to the increase in prices, and that profit margins were lower than in previous years despite higher prices.

Plan sponsors will need to monitor the compliance obligations for their plans to ensure their plan participants have access to the information required by the regulations. In addition, sponsors should work with their consultants to use the public data available as a result of these regulations to identify opportunities to lower healthcare costs when possible, either through plan design structures (e.g., reference-based pricing) or vendor negotiations.

If you have questions about the price transparency requirements imposed by HPT or TiC or the potential compliance and enforcement impacts of these regulations, please reach out to a member of the Kutak Rock Employee Benefits and Executive Compensation practice group.

Centers for Medicare & Medicaid Services / Health Plan Transparency, available here.

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