Price Transparency – Penalty for Noncompliance Just Got Steep

HFMA Texas Lone Star Chapter – 11.10.21

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Our Topics for Today

1. Review Requirements
2. CMS Enforcement
3. Price Transparency Updates
4. BKD Key Takeaways
5. Questions

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CMS Price Transparency Final Rule

Where do I locate the final rule?

› Final Rule is CMS-1717-F2

What is the effective date of the final rule requirements?

› Effective January 1, 2021

Hospitals Required to Comply

A **"hospital"** is defined as an institution in any state in which state or applicable local law provides for the licensing of hospitals, where the institution 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 established for such licensing.

- **All licensed hospitals** (e.g., general acute hospitals, including critical access hospitals [CAHs] and sole community hospitals [SCHs], psychiatric hospitals, rehabilitation hospitals and others previously identified in CMS guidance) are covered under this requirement.
- Requirement **does not apply to federally owned or operated hospitals** that do not typically provide services to the general public and for which the established payment rates for services are not subject to negotiation (e.g., Veterans Affairs [VA], Department of Defense [DOD] or Indian Health Service [HIS] facilities).
- Requirement also **does not apply to entities such as ambulatory surgical centers (ASCs) or other nonhospital sites** of care from which consumers may seek healthcare items & services.

Items & Services

All items & services - including **individual items & services & service packages - that could be provided by a hospital** to a patient in connection with an inpatient admission or an outpatient department visit for which the hospital **has established a standard charge**

Example items & services include, but are not limited to:

- Procedures, supplies & pharmaceuticals
- Room & board
- Use of the facility & other items (generally described as facility fees)
- Services of employed physicians & employed nonphysician practitioners (generally reflected as professional charges)
- Any other items or services for which a hospital has established a charge

Five Types of Standard Charges

CMS uses the terms “rate” & “charge” interchangeably throughout the final rule.

1. **Gross charge:** The charge for an individual item or service that is reflected on a hospital’s charge master (or outside the CDM in the case of pharmaceuticals), absent any discounts.
2. **Payor-specific negotiated charge:** Charges that the hospital has negotiated with third-party payors for an item or service.
3. **Discounted cash price:** The standard charge offered by the hospital to a group of individuals who are self-pay. The discounted cash price reflects the discount rate published by the hospital (the self-pay “walk-in” rate), unrelated to any charity care that a hospital may choose to apply to an individual’s bill .
4. **De-identified minimum negotiated charge:** The lowest charge that a hospital has negotiated with all third-party payors for an item or service.
5. **De-identified maximum negotiated charge:** The highest charge that a hospital has negotiated with all third-party payors for an item or service.

Payors to Include

- Third-party payors with which the hospital has negotiated the reimbursement for an item or service, including service packages
  - If the hospital does not negotiate payor rates (e.g., FFS Medicare, Medicaid), do not have to display rates
- Each payor-specific negotiated charge must be clearly associated with the name of the third-party payor and plan. If a payor has different plans with varied terms, each plan must be separately reported.
- The final rule does not indicate a hospital should report only specific payors or high-volume payors.

Professional Charges

- Services of ***employed*** physicians & ***employed*** nonphysician practitioners (generally reflected as professional charges) are to be included in the machine-readable and shoppable services files.
- CMS does not define “employed,” so it will be up to the hospital to determine based on its organizational structure.
  - Consideration to include professional charges could include whether the hospital establishes and negotiates the charges for the professional service and bills and retains the payment for the professional services.

Clinic Charges

- Clinics operating under a consolidated state hospital license would be included in the requirements. This could include:
  - Hospital outpatient departments
    - On-campus and off-campus
  - Provider-based rural health clinics
  - Include facility charges as well as professional charges if employed providers

File Requirements

Two primary requirements to publicize standard charges

1 COMPREHENSIVE MACHINE-READABLE FILE

A comprehensive single machine-readable file that makes public all standard charge information for all items & services provided by the hospital

Five Standard Charges

1. Gross charges
2. Payor-specific negotiated charges
3. Discounted cash prices
4. De-identified minimum negotiated charge
5. De-identified maximum negotiated charge

2 CONSUMER-FRIENDLY SHOPPABLE SERVICES

A consumer-friendly list of 'standard charges' for 300 (70 CMS-specified + 230 hospital-selected) "shoppable" services provided by the hospital

Additional Considerations

- Hospitals must group primary shoppable service with ancillary services, *e.g.*, laboratory, radiology, drugs, room & board charges, employed professional charges, etc., customarily provided by hospital
- Hospitals can meet shoppable services requirement by offering an **internet-based price estimator** if the tool meets specific requirements

Data Elements for a Machine-Readable File

- **ALL** hospitals required to produce and make public a machine-readable file
- Include the five standard charges for all items and services provided by the hospital (provide modeled/calculated charges/rates vs. the contract term – e.g., charge = $100, contract rate is 80% of charge, report $80).
- Format could include .XML, JSON, & .CSV; PDF format is not machine-readable
- Easily accessible & without barriers (free of charge, no password)
- CMS specified a naming convention that must be used

Shoppable Services Requirement Options

Shoppable Services Requirement: Hospitals will either prepare the Shoppable Services File **OR** make available a compliant Price Estimator Tool

Shoppable Services File Option

- Primary service, ancillary services, primary billing code, standard charges by plan (four types)
  - Will likely require claims analysis to determine ancillary services commonly provided with primary service
- Hospitals have flexibility with format
- Does not require the calculation of patient out-of-pocket amount

Price Estimator Tool Option

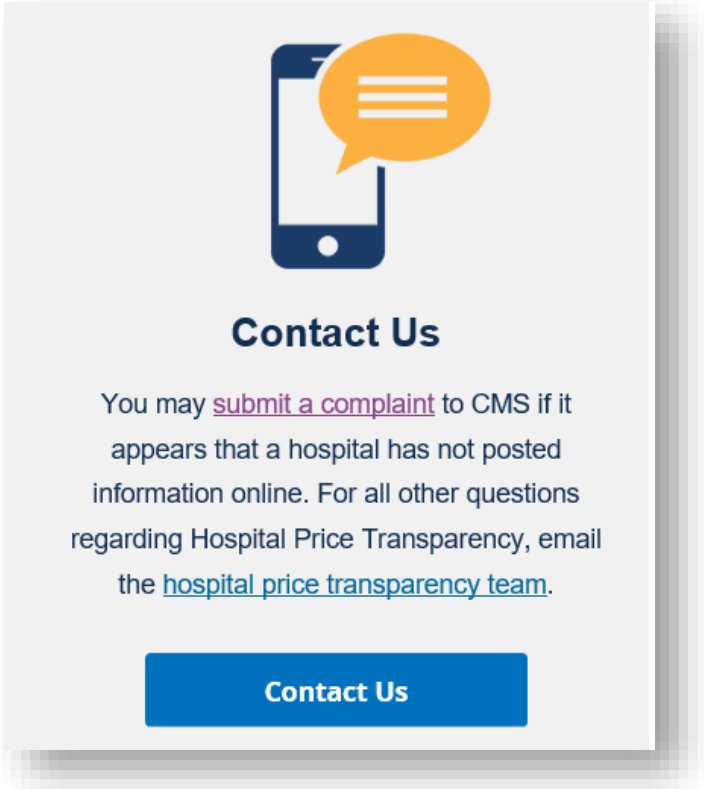
- Provides consumers with estimate of out-of-pocket amount
- Provides estimates for 70 CMS-specified shoppable services and at least 300 shoppable services
- Prominently displayed on website & accessible without charge & without registering or user account
- Numerous vendors offer a tools (ex. Epic, Experian, Recondo/Waystar, many other “bolt on” options)

Data Elements for a Shoppable Services File

- CMS has provided sample layout in final rule, but not comprehensive
- 70 shoppable services identified by CMS in final rule; additional 230 hospital-identified shoppable services
- Four standard charges: Payor-specific negotiated, de-identified min, de-identified max, discounted cash
- Each payor-specific charge must be clearly associated with the name of the third-party payor

CMS Monitoring & Enforcement

- CMS methods for monitoring the charge posting requirements may include, but are not limited to the following:
  - CMS evaluation of complaints made by individuals or entities to CMS
  - CMS audit of hospitals' websites



CMS Monitoring & Enforcement

If a hospital is found to be noncompliant, CMS may take the following steps:

- CMS may provide a written warning notice to the hospital of the specific violation(s)
- CMS requests a corrective action plan (CAP) from the hospital if its noncompliance constitutes a material violation of one or more requirements
- ~~CMS may impose a civil monetary penalty (CMP) on the hospital of up to $300 per day for noncompliance.~~ It may also publicize the penalty on a CMS website

Many Hospitals Not in Compliance

Reports from numerous sources suggest many hospitals and health systems are not in compliance with the price transparency requirements.

CMS Issues Warnings

CMS has issued several rounds of warnings to hospitals that are not in compliance with the price transparency requirements

- CMS has been auditing hospital websites and complaint submissions since January 1
- CMS issued first round of warning letters in April and has issued additional warnings
- Hospitals have 90 days to address price transparency noncompliance
- If initial findings are not rectified, the hospital may receive a second warning letter or may be sent a request for a corrective action plan

CMS Quick Reference Checklist

CMS provides price transparency checklists on its website to help hospitals determine whether compliant with requirements

Table 2: Making Public Standard Charges for All Items & Services[iv]

	Machine Readable File
✓	**General**
	Has your hospital posted a file of all hospital standard charges for all items and services?
	Is the file specific to the hospital location operating under a single hospital license (or approval)? *Note: A separate file must be posted for each hospital if there are multiple hospitals operating under a single hospital license with different sets of standard charges.*

Table 3: Making Public Standard Charges for Shoppable Services[vi]

	Shoppable Services
✓	**General**
	Has your hospital posted a display of standard charges for a set of shoppable services?
	Is the display specific to the hospital location operating under a single hospital license (or approval)? *Note: A separate display must be posted for each hospital if there are multiple hospitals operating under a single hospital license with different sets of standard charges.*

Table 4: Internet-based Price Estimator Tool[viii]

	Estimator Tool
✓	*Alternatively, your hospital can meet the requirements for Making Public Standard Charges for Shoppable Services by maintaining an internet-based price estimator tool.*
	General
	Does the tool allow healthcare consumers to, at the time they use the tool, obtain an estimate of the amount they will be obligated to pay the hospital for the shoppable service?
	Does the tool provide estimates for as many of the 70 CMS-specified shoppable services that are provided by the hospital?
	Does the tool provide additional hospital-selected shoppable services as is necessary for a combined total of at least 300 shoppable services?

https://www.cms.gov/files/document/hospital-price-transparency-final-rule-quick-reference-checklists.pdf

Updates for January 1, 2022

The CY20 OPPS Final Rule stated price transparency requirements must be updated at least annually. Updates required for changes in any of the following:

- **CDM** – new & deleted charges, CPT changes, price changes
- **Payor Contracts** – new or revised contract terms, updated fee schedules, govt. rate changes (ex. Medicare, Medicaid)
- **Shoppable Services** – change in mix of most utilized shoppable services, CDM and payor contract changes

CY 2022 OPPS Final Rule Update

In the CY 2022 OPPS Final Rule, CMS finalized several hospital price transparency policies to further encourage compliance.

The most notable change to the price transparency requirement is an increase to the amount of the monetary penalty for noncompliance using a scaling factor based on hospital bed count. While the current civil monetary penalty for noncompliance would not exceed $300 per day for any hospital, the updated penalty, effective January 1, 2022, will be $10 per day per hospital bed for hospitals with more than 30 beds, which could increase penalties up to $5,500 per day for a hospital with more than 550 beds.

Number of Beds	Penalty Applied per Day	Total Full-Year Penalty
30 or fewer	$300 per hospital	$109,500 per hospital
31 up to 550	$310–$5,500 per hospital (number of beds * $10)	$113,150–$2,007,500 per hospital
More than 550	$5,500 per hospital	$2,007,500 per hospital

Source: CMS CY 2022 OPPS Final Rule

FY22 IPPS Final Rule Update

In the FY22 IPPS Final Rule, CMS removed requirement for hospitals to disclose negotiated MA rates on Medicare cost report

~~**FY21 IPPS Final Rule (CMS-1735-F)**~~

- ~~**Hospital Requirement**: include on the Medicare cost report the median payer-specific negotiated charge that the hospital has negotiated with all of its Medicare Advantage payers, by MS-DRG~~
- ~~**Effective Date to Comply**: beginning with cost reporting periods ending on or after January 1, 2021~~
- ~~**Potential Monetary Penalty for Non-Compliance**: no Medicare payments will be provided~~

Health Plan Price Transparency

On October 29, 2020, CMS issued a final rule requiring health plans to make price transparency information available.

January 1, 2022 - Health plans required to make publicly available three standardized and regularly updated data files. **Enforcement deferred until July 1, 2022 for in-network and out-of-network allowed amounts and billed charges for plan years beginning on or after January 1, 2022; prescription drug pricing deferred pending further rulemaking**

January 1, 2023 - Health plans required to offer an online shopping tool allowing consumers to see the negotiated rate between their provider and their plan, as well as a personalized estimate of their out-of-pocket (OOP) cost for 500 of the most shoppable items and services.

January 1, 2024 - Shopping tools will be required to show the OOP costs for the remaining procedures, drugs, durable medical equipment and any other item or service the consumer may need.

No Surprises Act – Good Faith Estimates

- Under an Interim Final Rule with comment (IFR) released September 30, 2021, providers and facilities must provide a good faith estimate (GFE) of expected charges for items and services to a self-pay individual.
  - Patient is uninsured
  - Patient is insured but plans to pay for own care
- GFE must include expected charges for the items and services that are reasonably expected to be provided with the primary item of service, including items and services that that may be provided by other providers and facilities.
- Patient-Provider Dispute Resolution
  - The IFR implements a dispute resolution process when the provider charges to an uninsured or self-pay patient are substantially in excess of the GFE.
    - Substantially defined as greater than $400 of expected charge
    - Initiate process - Patient submits notification (within120 days of receiving initial bill) through the Federal IDR portal and pays $25 fee

Price Transparency – Key Takeaways

- Payor Contract Terms and Reimbursement
  - Which payors have negotiated terms/rates?
  - Are the current terms known? How are terms maintained?
  - Is the hospital being paid according to negotiated rates?
- Charge Description Master (CDM) Structure and Maintenance
  - Attention to CDM maintenance and structure can support compliance and optimal charge capture

Price Transparency – Key Takeaways

- Price Estimations
  - Price estimation options provide information for consumers
    - On-line estimator tools provide estimate of out-of-pocket
    - Shoppable services “static” file only provides estimate of insurance reimbursement to hospital, not consumer out-of-pocket
- Pricing Strategy
  - Use the CMS price transparency requirement as an opportunity to review & refine the hospital’s pricing strategy

What Should Hospitals Be Doing Now?

- Embrace opportunity to provide what consumers request – “what will it cost me?”
  - Ballpark with high/low is better than no answer
- Prepare staff to answer price questions
  - Educate staff on largest health plans
  - Create “Insurance 101” information to share with patients
- Make the connection between quality and price
  - Add your accolades to Price Transparency website
  - Supply a link to Quality page of your website, if applicable

Questions?

Jackie Nussbaum

Director

jnussbaum@bkd.com

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