Insights

CMS's Dramatic Price Transparency Rule Set to Take Effect January 1, 2021

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Effective January 1, 2021, all hospitals that operate in the United States will be required to comply with CMS's Price Transparency Requirements detailed in its **Final Rule** (the "Rule"). The Rule mandates that hospitals establish, update, and make public a list of their standard charges for the services they provide. These requirements are a part of CMS's larger initiative to promote price transparency in health care and provide consumers with more information to make health care decisions. The Rule is not without controversy and there is **litigation** pending filed by the **American Hospital Association**, among others, challenging CMS' authority with respect to the Rule. The Court of Appeals for the District of Columbia Circuit held oral arguments on October 15, 2020. It is not clear whether the Court will decide the case prior to the January 1, 2021 implementation date.

Definition of a Hospital

The Rule defines a "hospital" as an institution in any State in which State or applicable local law provides for the licensing of hospitals and that is (1) licensed as a hospital pursuant to such law; or (2) approved, by the agency or such State or locality responsible for licensing hospitals, as meeting the standards established for such licensing. Note, all hospital locations operating under a hospital's single license, such as a hospital's outpatient department, located at an off-campus location from the main hospital, are required to comply with the Rule.

According to CMS's FAQ regarding the Rule, federally owned or operated hospitals, such as Indian Health Service facilities, Veterans Affairs facilities, and Department of Defense Military Treatment facilities, that do not treat the general public, and whose prices are not subject to negotiation, are deemed to be in per se compliance with the Rule.

CMS noted that ambulatory surgical centers ("ASCs") and other non-hospital sites-of-care are not included in the definition of "hospital", however, CMS nonetheless has encouraged non-hospital facilities to publicize their lists of standard charges.

Price Transparency Requirements

By January 1, 2021, all hospitals subject to the Rule are required to provide clear, accessible pricing information online about the items and services they provide in two ways: (1) a comprehensive machine-readable file with all items and services and (2) a display of shoppable services in a consumer-friendly format.

The machine-readable file must contain a description of each item or service**[1]** provided by the hospital, any code used by the hospital for purposes of account or billing, and the following "Standard Charge" information (whether the service was provided in an inpatient or outpatient setting):

- the gross charge;
- the discounted cash price;
- the payer-specific negotiated charge;
- the de-identified minimum negotiated charge; and
- the de-identified maximum negotiated charge.

A hospital may meet the requirements of displaying its shoppable services**[2]** by means of a price estimator tool if:

- it provides estimates for as many of the 70 CMS-specified shoppable services that are provided by the hospital, and as many additional hospital-selected shoppable services, as is necessary for a combined total of at least 300 shoppable services;
- it allows healthcare consumers to, at the time the price-estimator tool is used, obtain an estimate of the amount they will be obligated to pay the hospital for the shoppable services; and
- it allows healthcare consumers to search for shoppable services by service description, billing code, and payer.

If a hospital does not use a price estimator tool, it may meet the requirement of displaying its shoppable services by disclosing its Standard Charge information, which requires a hospital to make public:

- the Standard Charges for as many of the 70 CMS-specified shoppable services that are provided by the hospital, and as many additional hospital-selected shoppable services, as is necessary for a combined total of at least 300 shoppable services;
- a plain-language description of each shoppable service;
- an indicator when one or more of the CMS-specified shoppable services are not offered by the hospital;
- the location where the shoppable service is provided and whether the Standard Charges apply in the inpatient setting, outpatient setting, or both; and
- the billing code for the shoppable services.

The machine-readable file and display of shoppable services must be displayed on a prominently-available website and clearly identify the hospital location. Further, access to the information must be free of charge, may not require a password or login, and/or the submission of personally identifiable information. Hospitals are required to update their machine-readable file and display of shoppable services at least annually.

Monitoring and Penalties for Noncompliance

CMS may monitor compliance with the Rule by: (1) evaluating complaints made by individuals or entities to CMS; (2) reviewing individuals or entities analyses of noncompliance; and (3) auditing hospitals' websites.

If CMS determines that a hospital is not compliant with the Rule, CMS has the authority to: (1) provide a written warning notice to the hospital of the specific violation(s); (2) request a corrective action plan if a hospital's noncompliance constitutes a material violation of the Rule; and (3) impose a civil monetary penalty of not more than $300 per day, and publicize the penalty on CMS's website, if the hospital does not comply with any corrective action plan imposed by CMS.

Although the Rule has received mixed criticism, hospitals should act promptly to comply with CMS's forthcoming price transparency requirements. Hospitals should also carefully review the Rule in its entirety and utilize CMS's compliance resources available **here**. For questions regarding the Rule or other health care compliance questions, please contact **Robert A. Anderson, Alexandria M. Foster**, or your regular Krieg DeVault health care attorney.

[1] "Items and services" are defined as all items, including individual items and services and 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. Such items and services include: (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; and (5) any other items or services for which a hospital has established a standard charge.

[2] CMS defines a "shoppable service" as a service that can be scheduled by a health care consumer in advance, such as joint replacement, physical therapy, and certain laboratory and imaging services. Additionally, the administration of medications, such as a flu shot or infusions for chronic conditions are considered shoppable services.