Insights

Court of Appeals Clears the Way for CMS's Hospital Price Transparency Rule

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Yesterday, the D.C. Court of Appeals (the "Appeals Court") issued its ruling affirming summary judgment in favor of the Department of Health and Human Services ("HHS") and against the American Hospital Association ("AHA"). The ruling clears the way for CMS's Price Transparency Rule ("Rule") which is effective January 1, 2021. Generally, the Rule requires hospitals to provide accessible pricing information online about the items and services they provide, which must include:

- 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.

The AHA, and other associations and hospital systems (collectively, the "Association") argued that the Rule violated section 2718(e) of the Public Health Service Act ("section 2718(e)"), the Administrative Procedures Act ("APA"), and the First Amendment. The Association argued against CMS's requirement to include negotiated rates among its standard charges. Moreover, the Association interpreted section 2718(e) as only requiring hospitals to publish already-public Medicare charges. In response, the Appeals Court ruled that limiting hospital's publication of charges to solely Medicare charges would be redundant of Medicare's statute, and also conflict with section 2718(e), which requires a hospital to publish each of its charges, rather than just charges set by the Secretary of HHS (the "Secretary").

The Association's APA argument rested on the Rule's infeasibility and administrative burdens. Specifically, the Association provided that many negotiated rates are "unknown" or even "unknowable", making compliance with the Rule potentially "impracticable, and often impossible." To this point, the Appeals Court emphasized that the Rule "does not require hospitals to disclose all possible permutations of costs based on hypothetical care," but, rather, hospitals must disclose base rates for an item or service.

Among several other arguments, the Association also challenged the Secretary's position that the Rule will provide consumers with "factual price information to facilitate more informed health care decisions." Instead, the Association believes the Rule will "misinform consumers" and "facilitate anticompetitive effects." However, the Secretary stood firmly and expressed his position that the Rule will help fill the "information gap" and allow patients to have easy access to health care pricing.

Despite the Association's challenges to the Rule, the Appeals Court affirmed the District Court's grant of summary judgment. What does this mean for hospitals? Compliance with the Rule will be required at the start of the new year. Because the Rule requires information to be available in a machine readable format, it may open the door for consumer apps designed to shop for medical services much in the same way that apps shop for travel services. For a more detailed overview of the Rule's requirements, readers can view our previous alert 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.