

## Insights

### Beware the Ides of March - New Price Transparency Requirements Take Effect(?)

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By: and

While the federal **Hospital Price Transparency Rule** went into effect on January 1, 2021, a similar Indiana price transparency law is also set to go in effect later this month. By March 31, 2021, all hospitals and ambulatory surgical centers (“ASCs”) must post on their website certain state specific information. However, several bills are currently making their way through the Indiana General Assembly that, if passed, would retroactively apply to remove hospitals from these requirements - leaving some tricky compliance questions for providers that will need to be addressed this month.

#### Current Law

Ind. Code 16-21-17-1 requires that all hospitals and ASCs post on their website by March 31, 2021 prices for the following services:

1. As many of the 70 shoppable services specified in the CMS Final Rule that are provided by the ASC; and
2. The 30 most common services that are provided by the ASC not included in the category above.

In addition, the statute requires the following information also be included on the provider’s website:

1. A description of the shoppable and common service.
2. The weighted average negotiated charge per service per provider type for each of the following categories:
  - (A) Any nongovernment sponsored health benefit plan or insurance plan provided by a health carrier in which the provider is in the network.
  - (B) Medicare, including fee for service and Medicare Advantage.
  - (C) Self-pay without charitable assistance from the hospital or ambulatory outpatient surgical center.
  - (D) Self-pay with charitable assistance from the hospital or ambulatory outpatient surgical center.
  - (E) Medicaid, including fee for service and risk based managed care.

#### Potential Legislative Changes

There are currently two bills moving through the Indiana General Assembly that would alter the scope of these requirements. **HB 1421** and **SB 325** would each remove hospitals from being required to comply with the state specific transparency statute in deference to the Hospital Price Transparency Rule. However, the bills would also add a trigger, such that compliance with the federal rules is required as a matter of state law if either: (1)

the Hospital Price Transparency Rule is repealed; or (2) federal enforcement of the Hospital Price Transparency Rule is stopped.

At this time, both bills have taken substantially the same form and have each been passed out of their respective chambers unanimously. However, the bills, which would have a retroactive effective date back to March 31, 2021, have not reached the Governor's office for signature yet, leaving many anxious compliance officers to wait.

For clarification, the proposed legislation has no impact on ASCs, which will continue to be subject to Indiana's price transparency requirements regardless of the passage of the current legislation.

### **Penalties for Non-Compliance**

Providers may also be curious to know what penalties are at play for non-compliance with federal and state price transparency requirements. Under the federal rules, CMS has 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 rules; 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.

Indiana Department of Health (IDH) also has statutory authority to apply a number of remedies for general violations of Indiana law, such as conducting investigations of reports of non-compliance, and issuing letters of correction and civil penalties. Unlike the specific penalties set forth by CMS, we are not currently aware of any state specific penalties that will be issued by IDH for violations of Indiana's price transparency law. Nonetheless, providers should be aware of the federal and state requirements and understand potential consequences for non-compliance.

If you have any questions regarding price transparency at the state or federal level, including the interplay between the two, or the status of the current state legislation, please contact **Amanda K. Schipp**, **Alexandria M. Foster**, or any member of the **Krieg DeVault Health Care** or **Governmental Affairs** practice groups.