

Hospital Price Transparency Rule Finalized; Health Plan Transparency Rule Proposed

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by Ross C. D'Emanuele

The Centers for Medicare and Medicaid Services (CMS) has issued a final rule to require every hospital licensed in the United State to make public a robust set of standard charges for every item or service that the hospital bills. In addition, CMS and other agencies have issued a proposed rule to require group health plans and health insurance issuers to: (1) disclose in-network negotiated rates and out-of-network allowed amounts for every health care item or service; and (2) offer a real-time tool to provide a plan enrollee with an estimate of cost-sharing and out-of-pocket expenses associated with plan covered items and services.



The hospital price disclosure rule is effective January 1, 2021.

Hospitals and hospital trade associations have stated that they will bring a legal challenge against the final rule as exceeding CMS' legal authority.

The rule will require every licensed hospital to provide two separate sets of standard charge lists: (1) a

list of standard charges for at least 300 "shoppable" hospital services that a consumer can schedule in advance; and (2) a comprehensive list of standard charges for all items and services for which the hospital establishes a charge. Both lists must be updated at least annually and placed on a publicly-accessible website. Only hospitals are regulated under the final rule; ambulatory surgery centers or other clinics or facilities that may provide items and services that are also performed in hospitals are not required to report pricing.

For the comprehensive charge list the hospital must report seven data elements for each item or service: (1) description; (2) code used to bill the item or service; (3) hospital's

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gross charge; (4) negotiated rate with every third party payer (linked by name to the third party payer and plan); (5) highest charge the hospital has negotiated with any third party payer; (6) lowest charge the hospital has negotiated with any third party payer; and (7) charge applicable to an individual who pays cash. The “shoppable” charge list must include similar data elements, with the addition of the hospital location(s) at which the “shoppable” service is provided. The resulting report will be an exceedingly dense data set of hundreds of thousands of line items for a typical hospital.

The biggest change the final rule would effect is that payment rates that a hospital negotiates with third party payers would no longer be confidential or proprietary, and would in fact be public information under the final rule.

CMS made clear that a hospital must report data on all items or services the hospital provides and charges, including the professional services of its employed physicians or other clinicians. This appears to apply only to the hospital itself (presumably identified by NPIs associated with the hospital) and not to separate corporate entities, formed for the purpose of operating physician group, that do not operate the hospital but may be owned by the same entity (or corporate affiliate) that operates the hospital.

The health plan proposed rule would require every group health plan or health insurance issuers to make available on a website a negotiated rate file that lists: (1) the name and Employer Identification Number (EIN) or Health Insurance Oversight System (HIOS) identifier for each plan option or coverage offered; (2) codes and plan language description for each item or service; and (3) negotiated rate for each item or service furnished by every in-network provider (linked by National Provider Identifier (NPI) to each in-network provider) along with the last date of contract term for that rate. A separate file that lists out-of-network allowed amounts for each items or service furnished by out-of-network providers must also be posted. These lists must be updated monthly under the proposed rule.

In addition, health plans must offer a tool to allow plan enrollees to obtain real-time information about cost-sharing information with regard to specific items or services.

Unless halted by courts, hospitals will need to begin the considerable work of compiling and formatting the data files required under the final rule. And, although it is unclear how the hospital pricing data will be analyzed and used (and by whom), hospitals should analyze their own pricing data and begin anticipating and preparing for the questions and critiques that will arise.