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CMS Releases Final Hospital Price Transparency Rule and Proposes Transparency Rule for Health Plans

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Health Care

On November 27, the Centers for Medicare & Medicaid Services ("CMS") published in the Federal Register a final rule and proposed rule that each aim to increase the transparency of hospital and insurer prices. The Medicare and Medicaid Programs: CY 2020 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates. Price Transparency Requirements for Hospitals to Make Standard Charges Public Final Rule ("Final Rule"), effective January 1, 2021, requires hospitals to provide patients with easily accessible information about standard charges, including payer-specific negotiated rates for items and services offered. The companion Transparency in Coverage Proposed Rule ("Proposed Rule") would require issuers and health plans to publish provider-specific negotiated rates and give members personalized out-of-pocket cost estimates.

The two regulations represent the latest effort in the Administration's push to increase price transparency in the healthcare sector. They were issued in response to the President's June 2019 executive order entitled "Improving Price and Quality Transparency in American Healthcare to Put Patients First," which called for an end to "opaque pricing structures" and advocated for "[m]aking meaningful price and quality information more broadly available to more Americans."

Mandated Disclosure Requirements for Hospitals

Publication of All Standard Charges (45 C.F.R. § 180.50)

Every hospital in the United States must publish a machine-readable list of "standard charges" for each item or service provided in the hospital inpatient setting or outpatient department setting. "Standard charges" include:

- Gross charge;
- Payer-specific negotiated charge (with third party payer and plan identified);
- De-identified minimum negotiated charge;
- De-identified maximum negotiated charge; and
- Discounted cash price, if applicable.

Final Rule §§ 180.50(b)(2)-(6). Hospitals must also include a description of each item or service provided and any code used by the hospital for the purposes of accounting or billing for the item or service. Final Rule § 180.50(b)(7).

The data file must be "easily accessible," meaning available free of charge, accessible without having to register or establish a user account or password, accessible without having to submit personal identifying information, and digitally searchable. Final Rule § 180.50(d)(3).

Publication of Charges for "Shoppable Services" (45 C.F.R. § 180.60)

In an effort to empower consumers, the Final Rule also mandates that hospitals display payer-specific negotiated rates and discounted cash prices for a limited set of 300 "shoppable services" in an easy-to-read format.

"Shoppable services" are those that can be scheduled by a consumer in advance, such as spinal fusion and major joint replacement. 84 Fed. Reg. 65571-72 tbl.3, § 180.20. They include 70 CMS-specified services, plus as many additional hospital-selected shoppable services as necessary for at least 300 services total. Final Rule § 180.60(a)(1). If a hospital does not provide 300 shoppable services, it must provide standard charges for whatever services it does provide. Final Rule § 180.60(a)(1)(ii). Charge information must include charges for corresponding "ancillary services" provided in conjunction with each shoppable primary service. Final Rule § 180.60(b). If the hospital does not offer a discounted cash price, it must list its undiscounted gross charge. Final Rule § 180.60(b)(4).

Hospitals can meet the requirements of Section 180.60 by offering an easily accessible, consumer-friendly list that is searchable by service description, billing code, and payer. Final Rule § 180.60(d)(3). Alternatively, hospitals can offer an online price estimator tool that allows patients to instead "obtain an estimate of the amount they will be obligated to pay." Final Rule § 180.60(a)(2)(ii). This tool must be "prominently displayed" on the provider's website. Final Rule § 180.60(a)(2)(iii).

Monitoring, Enforcement, and Appeals (45 C.F.R. §§ 180.70-180.110)

If CMS concludes that a hospital is noncompliant with one or more of these requirements, CMS may provide a written warning notice, request a corrective action plan, or impose a civil monetary penalty of up to $300 per day and publicize the penalty on a CMS website.

Proposed Transparency Rule for Health Plans

In addition to the above Final Rule, the Administration released a proposed rule, which, if finalized, would require health plans, including employer-based plans and group and individual plans, to make cost sharing information available to consumers before they visit a provider. Insurers would need to create online tools to allow consumers to calculate the amount of their estimated out-of-pocket costs for all services, including any deductible they may owe. Proposed Rule 26 C.F.R. § 54.9815-2715A(b); 29 C.F.R. § 2590.715-2715A(b); 45 C.F.R. § 147.210(b). Plans would also be required to disclose in-network provider negotiated rates and historical out-of-network allowed amounts on their public websites. Proposed Rule 26 C.F.R. § 54.9815-2715A(c); 29 C.F.R. § 2590.715-2715A(c); 45 C.F.R. § 147.210(c).

Comments to the proposed rule are due on January 27, 2020.

For More Information

HHS published a press release summarizing the two regulations. CMS also published fact sheets on the Final Rule and the Proposed Rule.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our Health Privacy practice:

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