

Update: Enforcement of Hospital Price Transparency Rules

Related Professionals

Shannon V. Lipham
803.540.2155
SVLipham@nexsenpruet.com

Practices

Health Law

Industries

Health Care

Insurance

Article

11.02.2021

Time for transition is over – the Centers for Medicare and Medicaid Services (CMS) has moved into enforcement mode on the federal price transparency rules finalized in 2020. As at least 250 hospitals can attest, CMS has begun issuing written warnings to hospitals found not meeting transparent pricing requirements. As a reminder, the price transparency rules require hospitals to generate a machine-readable file that identifies the payer-negotiated payment rates for certain services or procedures. The file must be published online and in a format that allows consumers to search and view the prices for at least 300 “shoppable” medical services. See more about the new rules in our earlier note available here.

Reports released to date indicate low compliance on behalf of hospitals throughout the country. In March, one report showed that 65 of the 100 largest hospitals were “unambiguously non-compliant,” with some of the other 35 hospitals varying in levels of compliance.^[1] Between May 15 and July 8, 2021, a group called Patient Rights Advocate found that less than 6% of hospitals were fully compliant with the price transparency rules, and 80% of hospitals did not publish payer-specific negotiated charges.^[2]

CMS has made it known that audits of hospital websites are underway and it is following up on complaint submissions received since the January 1 effective date for the new rules, which has led to some hospitals receiving warning letters as early as April of this year. The warning provides non-compliant hospitals with a 90-day window to address the deficiencies described in the letter, after which CMS may deliver a second warning letter or request a corrective action plan from the hospital if compliance is not reached. In addition to a written warning, hospitals could also face a monetary penalty of up to \$300 per day. As of this writing, while CMS continues to send warning letters, it does not appear that any money penalties have been issued to date.

In the face of industry pushback, the current administration has doubled down and recently proposed tougher sanctions than originally proposed in the rules, suggesting greater money penalties for non-compliant hospitals—

to at least \$300 a day for smaller hospitals (defined as fewer than 30 beds in size), and \$10 per bed per day for larger hospitals (up to \$5,500 a day). If finalized, this rule change would take effect in 2022. According to CMS, the total annual penalty for noncompliance would range from \$109,500 for a small hospital to \$2,007,500 for larger hospitals.^[3]

As the transparency in pricing trend continues to push forward, there could be negative public implications with respect to patient rights and other groups for hospitals who fail to come into compliance with the rules in addition to increased penalties. Hospitals should also be on the lookout for other rules meant to increase transparency, including the No Surprises Act, passed under the 2020 Consolidated Appropriations Act of 2021, which creates a detailed statutory framework aimed at combating the practice of surprise billing and will come into effect January 1, 2022.^[4] Hospitals should consider analyzing their compliance with these rules in order to avoid the consequences.

[1] <https://www.healthaffairs.org/doi/10.1377/hblog20210311.899634/full/>

[2] https://www.washingtonpost.com/context/advocacy-group-faults-hospitals-for-failing-to-comply-with-price-transparency-rules/deb667d4-3de8-4c54-b468-6ed994f985a7?itid=ik_inline_manual_2

[3] <https://www.cms.gov/newsroom/press-releases/cms-proposes-rule-increase-price-transparency-access-care-safety-health-equity>

[4] <https://www.nexsenpruet.com/publication-trend-toward-transparency-in-pricing-continues>