

Health Care Price Transparency Update – New Rules and Recent Enforcement

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Enforcement of the Transparency in Coverage Final Rule's (Coverage Rule) cost disclosure requirement for health plans and health insurance issuers will begin effective July 1, 2022. The Coverage Rule was issued in January 2022, but the responsible agencies delayed enforcement of these requirements to provide additional time for regulated parties to develop and implement the infrastructure and processes necessary to comply.

However, that enforcement delay period ends this month, and as of July 1, 2022, the Coverage Rule requires that **health plans and health insurance issuers must publicly disclose pricing information for covered items and services in specified formats for plan or policy years beginning on or after January 1, 2022**. Specifically, most group health care plans and issuers of a group or individual health insurance must disclose pricing information through machine-readable files made available on the plan's or issuer's website. The files must include (1) rates for all covered items and services between the plan or issuer and in-network providers, and (2) allowed amounts for, and billed charges from, out-of-network providers. The detailed requirements for machine-readable files to be made available to the public are extensive and may be found at *26 C.F.R. § 54.9815-2715A3(b)(1)*.

The Coverage Rule also requires that the website for accessing the files must be publically available and free. Additionally, there must not be any other conditions on accessing the website or files, including any requirements that users create a user account, password, or other credentials or requirements that they submit any personal information.

According to the Centers for Medicare and Medicaid Services (CMS) Transparency in Coverage Final Rule Fact Sheet, "[t]he requirements in this rule will give consumers the tools needed to access pricing information through their health plans." The impending July 1, 2022 enforcement date means that health insurance issuers as well as plan sponsors and third-party administrators (e.g., for self-funded plans) must now be prepared for

compliance and/or the consequences for non-compliance. For health plans and issuers who do not comply, CMS may take several enforcement actions, including requiring corrective actions and/or imposing a civil monetary penalty up to \$100 per day (adjusted annually) for each violation and for each individual affected by the violation.

As CMS notes in the Coverage Rule Fact Sheet, these requirements build upon previous actions the federal government has taken to increase price transparency by giving patients access to hospital pricing information through already-effective requirements for hospitals to disclose their standard charges, including negotiated rates with third-party payers. Our team's previous articles on these rules are available here. As an example of CMS' commitment to enforcing, and the potential severity of non-compliance with, these new price transparency rules, we note that there has recently been substantial enforcement action against hospitals for violation of the January 1, 2021, Hospital Price Transparency Final Rule, the existing hospital corollary to the Coverage Rule for health insurance issuers and plans. On June 6, 2022, Northside Hospital Atlanta and Northside Hospital Cherokee, both hospitals in Georgia, were fined nearly \$1.1 million (collectively) by CMS predominantly for failing to publish standard charges for the hospitals' items and services and also failing to provide access to a machine-readable searchable tool related to such information. Additionally, according to CMS, these substantial civil monetary penalties were levied only after the hospitals failed to appropriately respond to prior notices of noncompliance and requests for Corrective Action Plans issued by CMS. According to CMS, it repeatedly warned the providers of their noncompliance, and it appears that these fines were levied to send an example to these providers and the hospital industry in general.

Health insurance issuers and plans, which will soon be subject to Coverage Rule enforcement, as well as hospitals, who are already subject to enforcement under the Hospital Price Transparency Final Rule, should see these substantial fines as a cautionary example of how important it is to timely comply with these new price transparency rules. Pricing agreements between providers and health plans have always been confidential and one of the most protected pieces of information in the health care industry. Now that this information will be public and can be collected and analyzed by third parties, we expect the further impact of these new transparency rules on the health care industry could be significant.

Health care has been central to the work of Nexsen Pruet for more than 60 years. We represent numerous hospitals, several hundred physicians as well as major provider networks. For more information about how Nexsen Pruet can put our deep experience to work for you, please contact Chandler Martin at (803) 540-2161 or Matthew Roberts at (803) 253-8286.