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CMS Issues Final Rule on Price Transparency by Healthcare Facilities

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On November 15, 2019, CMS issued a final rule pursuant to President Trump's June 24, 2019, Executive Order to ensure price transparency by healthcare facilities. This price transparency rule will go into effect January 1, 2021, and will require hospitals operating within the United States to establish, update, and publicize all standard charges for all items and services provided by the hospital. Hospitals will also be required to display, in a consumer-friendly manner, standard charges for at least 300 shoppable services provided by the hospital. The stated purpose of this rule is to "increase market competition, and ultimately drive down the cost of healthcare services, making them more affordable for all patients."

The regulation includes the following key provisions:

1. **Definition of a "hospital."** Under the new rule, a facility's Medicare participation or designation is not relevant to whether it is considered a "hospital" and subject to the rule. A "hospital" is defined as any institution in any State or U.S. territory licensed as a hospital under State, territorial, or local law or approved by a State, territorial, or local agency that licenses hospitals as meeting the standards for licensing as a hospital.
2. **Definition of "standard charges."** The "standard charges" subject to disclosure and publication include gross charges, discounted cash prices, payer-specific negotiated charges, de-identified minimum negotiated charges, and de-identified maximum negotiated charges.
3. **Definition of "items and services."** The rules intend the phrase "items and services" to encompass any item, service, or service package that could be provided to a patient for which the hospital has established a "standard charge," including room and board, supplies, facility fees, and professional charges.
4. **Publication requirements.** Hospitals will be required to publish the required standard charges in a machine-readable format and must also include a description of each item or service and corresponding accounting or billing codes; provide the data free of charge and in a clear, prominent, and accessible manner; and update the data annually at a minimum. Hospitals must also display standard charges for at least 300 "shoppable services," which is defined as a service that can be scheduled by a healthcare consumer in advance. CMS will specify 70 specific shoppable services, and hospitals are expected to populate the remaining 230

based upon criteria specified in the rule.

5. **Enforcement.** A non-compliant hospital could be required to adhere to a "corrective action plan" or pay civil fines of \$300/day. To ensure compliance, CMS issues a written warning notice, requests a corrective action plan if the hospital's noncompliance constitutes a material violation of one or more requirements, and imposes a civil penalty on the hospital and publicizes the penalty on a CMS website. During the enforcement process, CMS provides multiple opportunities for hospitals to take corrective action over a period of time so that they may avoid imposition of a penalty.

Additional rules pertaining to price transparency are expected to follow the issuance of this final rule. The Department of Health and Human Services, Department of Labor, and Department of the Treasury have already jointly proposed rules pertaining to "Transparency in Coverage," which would require group health plans and health insurance issuers in the individual and group markets to disclose price and cost-sharing information to participants, beneficiaries, and enrollees up front.

In addition to analyzing the final rule applicable to hospitals and related rules to come, interested parties may also wish to monitor litigation relating to the movement toward price transparency. Specifically, the American Hospital Association (AHA), Association of American Medical Colleges (AAMC), Children's Hospital Association (CHA), and Federation of American Hospitals (FAH) have all announced an intention "to file a legal challenge to the [final] rule on grounds including that it exceeds the Administration's authority."

The final rules on price transparency applicable to hospitals may be accessed [here](#).

The "Transparency in Coverage" proposed rules may be accessed [here](#).

CMS FAQs Regarding List of Standard Charges may be accessed [here](#).

For questions regarding this update, please contact:

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