

Price Transparency is Coming: Time to Get Ready

Article By:

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The Centers for Medicare & Medicaid Services (CMS) recently released a [final rule](#), which will require hospitals to publicly disclose pricing information, effective January 1, 2021. Citing an effort to increase market competition and drive down the cost of health care services, hospitals will be obligated to publish gross charges, payer-specific negotiated rates, the de-identified minimum and maximum negotiated rates, and discounted cash price for all items and services in a machine-readable format on the hospitals' websites. Additionally, hospitals will be required to publish negotiated charges for at least 300 "shoppable" services (health care services that can be scheduled by patients in advance, such as imaging and laboratory tests).

The disclosure obligations required under the hospital price transparency rule could have unintended negative consequences on both hospitals and patients and could result in higher prices for health care services. Health care providers with lower negotiated rates will be able to use a competitor's publicly disclosed rates as leverage to obtain higher reimbursement rates with payers in price negotiations. Moreover, the complex administrative burdens associated with compiling the data necessitated by the disclosure obligations will impose high costs of compliance – costs that will be passed along to patients.

Beyond the increased costs, the rule infuses a false sense of transparency into the health care market by providing patients with an overwhelming amount of irrelevant information. Disclosing a hospital's negotiated rates does nothing to inform patients of their out-of-pocket costs. Rather than provide patients with information that would be beneficial in making informed health care decisions, the rule requires disclosure of data that will largely be unhelpful and confusing to patients.

One week after the release of the final rule, four hospital groups, including the American Hospital Association (AHA), filed a lawsuit challenging the hospital price transparency rule, asserting that: (1) CMS exceeded its statutory authority in mandating disclosure of payer-specific negotiated charges; (2) the rule violates the First Amendment because it compels hospitals to reveal confidential and proprietary information without advancing a substantial governmental interest; and (3) the rule is arbitrary, capricious, and lacks any rational basis. The quick filing of the lawsuit reflects the significant impact the final rule will have on hospitals.

Regardless of the outcome of the AHA's lawsuit, it appears price transparency will become a reality one way or another. Ohio passed a price transparency law in 2016 as part of a workers' compensation statute, but in early 2019, a judge in the Williams County Court of Common Pleas

issued a decision blocking the effectiveness of the price transparency component of the statute.^[1] Ohio legislators, however, have continued to pursue a price transparency law and [Senate Bill 97](#), which would require hospitals, upon request, to provide patients with a cost estimate for scheduled services, has been gaining traction.

While hospital price transparency rules strive to lower costs and assist patients in making more informed decisions about their health care, the anticompetitive aspects of the rule, substantial administrative burdens, and failure to provide patients with useful information could result in the unintended consequences of raising health care costs and confusing patients. Given the increasing focus on price transparency regulations, hospitals should start to prepare strategies for addressing these requirements.

[1] *Community Hospitals and Wellness Centers, et al. v. State of Ohio*, Williams C.P. No. 16-CI-128 (February 13, 2019).

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