

CMS Releases Updates to Hospital Pricing Transparency Rule

Article By:

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On April 26, 2023, the Centers for Medicare and Medicaid Services (CMS) released a fact sheet on Hospital Price Transparency Enforcement Updates^[1] (the Fact Sheet) under the Hospital Price Transparency Rule (the Rule).^[2] CMS' updates were targeted at increasing compliance by hospitals with the Rule and providing a more streamlined enforcement process for violations of the Rule.

The changes include decreasing the average time that hospitals have to comply with the hospital price transparency requirements after a deficiency has been identified to no more than 180 days, and no more than 90 days in cases with no warning notice. Under the current enforcement process, the case cycle consists of a warning notice with instructions to correct the deficiencies within 90 days. The hospital then proposes a completion date for CMS approval, ranging from 30 to 90 days on average. To date, the average time to complete a case cycle is 195 to 220 days.

History of Hospital Price Transparency Enforcement and Current Requirements

The Rule stems from the Executive Order on Improving Price and Quality Transparency in American Healthcare to Put Patients First, signed by President Trump on June 24, 2019 (the Executive Order).^[3] The Executive Order was signed in an effort to increase the availability of and access to meaningful price and quality information for patients. The Executive Order directed the Secretary of the Department of Health and Human Services to propose regulations requiring hospitals to publicly post their standard charge information.^[4]

Since January 2021, the Rule has required hospitals to make their standard charges available to the public through the following means:

1. A machine-readable digital file containing gross charges, discounted cash prices, payer-specific negotiated charges, and de-identified minimum and maximum negotiated charges for all items and services provided by the hospital; and
2. A consumer-friendly display of shoppable services (*i.e.*, shoppable services list/price estimators), which includes descriptions of the services and the discounted cash prices, payer-specific negotiated charges, and de-identified minimum and maximum negotiated charges.

The Rule also requires each hospital operating within the United States to establish, update, and

make available to the public yearly a list of the hospital's standard charges for items and services provided by the hospital, including by diagnosis-related groups.[5]

CMS' Current Enforcement Under the Rule

If CMS concludes that a hospital is noncompliant with the transparency requirements under the Rule, CMS will first issue a warning notice to the hospital directing the hospital to correct the deficiencies identified by CMS within 90 days ([Warning Letter](#)). If the hospital does not comply within the 90-day period, CMS will require the hospital to prepare and submit a corrective action plan ([CAP](#)) which identifies how the hospital will correct and address the deficiencies issued under the Warning Letter. The hospital has 45 days to submit the CAP to CMS. Under the current process, as part of the CAP process, hospitals must provide a completion date for correcting the deficiencies identified by CMS. The proposed completion date requires CMS approval. To the extent that the hospital does not comply with the obligations regarding the submission of a CAP or compliance with the terms set forth in the CAP and other applicable obligations under the Rule, CMS will issue civil monetary penalties ([CMPs](#)) to the noncompliant hospital.

According to the Fact Sheet, CMS has conducted, on average, over 200 comprehensive reviews per month of hospitals' compliance with the Rule. As of April 2023, CMS has issued more than 730 warning notices and 269 CAP requests to hospitals identified as having deficiencies related to the Rule. CMS has also imposed CMPs on four hospitals for non-compliance, with monetary penalties ranging from \$102,660.00 to \$883,180.00.[6]

CMS may also issue subsequent notices imposing additional CMPs for continuing violation(s) of the Rule as further described at 45 C.F.R. §180.90(b)(2)(iv)(f). Under the Rule, CMS may continue to impose CMPs on a deficient hospital until CMS determines such hospital fully complies with sections 180.40 – 180.60.

Updates to the Enforcement Process Under the Rule

The Fact Sheet effectuates the following changes to the enforcement process under the Rule:

1. **Shortened Timeframe.** CMS will now require a noncompliant hospital to submit a CAP within 45 days of receipt of the CAP request. A hospital must also fully comply with price transparency guidelines within 90 days of CMS issuing the request.
2. **Automatic CMPs.** Failure by a hospital to submit a CAP to CMS within the 45-day deadline or failure by a hospital to comply within 90 days with price transparency guidelines will now result in the automatic imposition by CMS of CMPs. If a hospital submits a CAP to correct the identified deficiency but fails to comply with the CAP by the 90-day deadline, CMS will conduct another review of the hospital's files to evaluate whether any previously cited violations continue to exist and, if so, impose an automatic CMP tied to such deficiencies.
3. **Skipping the Warning Notice.** For hospitals that have not attempted to comply with hospital pricing transparency requirements, CMS will no longer issue a warning notice before CMS requests a CAP.

Hospitals should be aware of the shortened time frames to respond to CMS' requests related to noncompliance with the Rule and the heightened potential for increased CMPs for failure to comply with the Rule.

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FOOTNOTES

[1] [Hospital Price Transparency Enforcement Updates | CMS](#)

[2] [Federal Register :: 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](#) ; see also [eCFR :: 45 CFR Part 180 — Hospital Price Transparency](#)

[3] [2019-13945.pdf \(govinfo.gov\)](#).

[4] *Id.*

[5] *Id.*

[6] [Enforcement Actions | CMS](#)

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