

Health Care Price Transparency: CMS Says No Hiding the Ball Containing Pricing Information

HEALTH CARE | APRIL 19, 2021



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CMS Hospital Price Transparency Rule

After years of policy debate on health care price transparency, the Centers for Medicare & Medicaid Services (CMS) has issued a game-changing hospital price transparency regulation. The rule went into effect on January 1, 2021, and applies to any hospital licensed by a state or local authority.

The rule implements a section of the Public Health Service Act (PHSA) that requires hospitals to publish a list of their standard charges each year. Previously, hospitals could comply with the PHSA by publishing their chargemaster list online. Now, the rule tells hospitals precisely what they must publish, and how they must publish it, to comply with the PHSA.

The rule requires hospitals to publish five types of charges online:

- Gross Charges: non-discounted rate reflected in the hospital's chargemaster
- Discounted Cash Prices: rate the hospital charges individuals who pay cash or a cash equivalent
- Payer-Specific Negotiated Charges: rate the hospital has negotiated with a payer for an item or service
- De-Identified Minimum Negotiated Rates: lowest rate the hospital has negotiated with all third-party payers for an item or service
- De-Identified Maximum Negotiated Rates: highest rate the hospital has negotiated with all third-party payers for an item or service

The rule requires hospitals to publish a machine-readable file containing the above charges for all "items and services" for which the hospital has established a standard charge. Additionally, hospitals must publish a consumer-friendly list of these charges for their 300 most "shoppable services," defined as services that can be scheduled in advance. The rule designates 70 shoppable services that must be included in the consumer-friendly list but allows hospitals to select the remaining 230 shoppable services.

Hospitals' Use of Blocking Code and CMS' Reaction

A recent *Wall Street Journal* study of more than 3,100 hospital webpages, which provided standard charge data intended to comply with the rule, revealed that hundreds of these websites contained "blocking code." This prevents the hospitals' webpages containing pricing information from appearing in search engine results, and may require consumers to click through multiple pages to find pricing information.

Prompted by this study and a letter from House Energy and Commerce Committee members, on March 23, 2021, CMS issued guidance for health insurers, who are subject to a similar price transparency rule, informing that their webpages should "allow for search engine discoverability."

While CMS' recent guidance does not apply to hospitals, it reveals CMS' position that price transparency data required to be published online must be searchable by consumers and that the use of blocking code is not acceptable. CMS stated that it intends to provide hospitals with guidance in this area going forward.

Enforcement of the Price Transparency Rule

The rule requires hospitals to publish applicable charges online in an "easily accessible" and "digitally searchable" format, which CMS believes is thwarted by the use of blocking code. Hospitals should expect CMS guidance in the near future.

If CMS determines that a hospital fails to comply with the rule, CMS has three options: (1) provide a written warning notice; (2) request a corrective action plan; or (3) impose a publicized civil monetary penalty of up to \$300 per day. CMS began auditing hospitals for compliance with the rule in January 2021. Consequently, hospitals and insurers should evaluate whether their transparency efforts regarding price comply with the rule and the new CMS guidance.

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