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Healthcare Alert

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CMS issues first Civil Monetary Penalty Notices to hospitals for violating Hospital Price Transparency Regulations

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First US hospitals face CMS fines for price transparency violations



What's the Impact

- / Until recently, CMS had not penalized any hospitals for noncompliance with the Hospital Price Transparency Final Rule, which requires hospitals to disclose payer-specific negotiated charges.
- / CMS's enforcement actions reflect that the federal agency is now actively monitoring hospital websites for compliance with price transparency regulations.
- / Hospitals should be aware of recently updated CMS guidance to ensure compliance.

The Centers for Medicare & Medicaid Services ("CMS") is beginning to enforce its hospital price transparency regulations. Earlier this month, CMS penalized two hospitals for violating the federal [Hospital Price Transparency Final Rule](#).

Background

CMS's Hospital Price Transparency Final Rule went into effect on January 1, 2021.¹ The Rule requires every hospital operating in the United States to provide clear, accessible pricing information for consumers by requiring that hospitals: (i) publish a single machine-readable file containing a list of standard charges for all items and services and (ii) display a consumer-friendly list of standard charges for a limited set of "shoppable services" (i.e., services that a healthcare consumer can schedule in advance).² Importantly, under the Hospital Price Transparency Final Rule, hospitals must disclose to the public payer-specific negotiated charges, including contracted rates with Medicare Advantage and Medicaid managed care plans.

Several months after the Hospital Price Transparency Final Rule went into effect, CMS issued written warnings to over 350 hospitals for noncompliance, along with over 150 requests for Corrective Action Plans ("CAPs"). On November 16, 2021, CMS revised the hospital price transparency regulations to increase the penalties associated with noncompliance (current regulations provide that the penalty for a full year of noncompliance ranges from \$109,500 to \$2,007,500 pursuant to a sliding scale based on hospital bed count).³ On May 6, 2022, CMS issued an updated [Hospital Price Transparency FAQ](#) as additional guidance for hospitals to encourage and facilitate compliance.⁴

Enforcement

Until recently, CMS had not actually penalized any hospitals for noncompliance with the Hospital Price Transparency Final Rule. However, on June 7, 2022, CMS issued its first [Hospital Price Transparency Notice of Imposition of a Civil Monetary Penalty \(CMP\) letters](#), penalizing two Georgia hospitals, Northside Hospital Atlanta and Northside Hospital Cherokee, for \$883,180 and \$214,320, respectively, for failing to comply with hospital price transparency regulations.⁵ The notices provide that penalties will continue to accrue until CMS determines that the hospitals are fully compliant. CMS had issued written warnings and requests for CAPs to both hospitals in advance of issuing penalties, but the hospitals had not responded to CMS.

¹ CMS, 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, 84 Fed. Reg. 65524-65606 (Nov. 27, 2019).

² 45 CFR § 180.40 et seq.

³ Medicare Program: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; Price Transparency of Hospital Standard Charges; Radiation Oncology Model, 86 Fed. Reg. 63458-63998, 63941-63957 (Nov. 16, 2021); see also 45 CFR § 180.90(c)(providing how civil penalties are determined for hospital price transparency violations).

⁴ CMS, Hospital Price Transparency Frequently Asked Questions (FAQs) (Rev. May 6, 2022), available [here](#).

⁵ CMS, Hospital Price Transparency: Enforcement Actions, available [here](#).

Northside Hospital Atlanta and Northside Hospital Cherokee have 30 days to appeal CMS's CMP determinations, or 60 days to pay the assigned CMPs in full.

What This Means

In the Hospital Price Transparency Final Rule, CMS outlined its plan to ensure hospital compliance with price transparency regulations by monitoring complaints of hospital noncompliance, reviewing third-party analyses of noncompliance, and auditing hospital websites. CMS's Notices of Imposition of CMP Letters to Northside Hospital Atlanta and Northside Hospital Cherokee demonstrate that CMS remains committed to its price transparency initiatives and is actively auditing hospital websites. These federal requirements layer on top of existing state law requirements regarding disclosure of healthcare costs. Hospitals should be conscious of this development, and those seeking to avoid penalties should make sure to review CMS's May 6, 2022, updated Hospital Price Transparency FAQ, as well as the many [resources](#) published by CMS containing guidance, to ensure that they are fully compliant with CMS's price transparency regulations.

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