

TYPES NOT MAPPED YET August 23, 2022 | TTR not mapped yet | Nicole K. Jobe

# Civil Monetary Penalties for non-compliance with the Hospital Price Transparency Rule have arrived

The Hospital Price Transparency Rule (the “Rule”) became enforceable as of January 1, 2021 and is designed to make it easier for Americans to compare the costs of care before going to the hospital by requiring hospitals to make certain information about prices publicly available. While enforcement has been slow to take off, as of June 2022, two hospitals - Northside Hospital Atlanta and Northside Hospital Cherokee, both part of the same system in Georgia - now face \$883,180 and \$214,320, respectively, in civil monetary penalties under the Rule.

The Rule requires all hospitals (Medicare-enrolled institutions and non-Medicare enrolled institutions) to make public their standard charges for items and services provided by the hospital. The term “standard charges” is defined to include each of the following:

1. Gross charge - The charge for an individual item or service that is reflected on a hospital's chargemaster, absent any discounts
2. Discounted cash price - The charge that applies to an individual who pays cash, or cash equivalent, for a hospital item or service
3. Payor-specific negotiated charge - The charge that a hospital has negotiated with a third party payor for an item or service
4. De-identified minimum negotiated charges - The lowest charge that a hospital has negotiated with all third-party payors for an item or service
5. De-identified maximum negotiated charges - The highest charge that a hospital has negotiated with all third-party payors for an item or service

“Items and services” is broadly defined to encompass “all items and services, including individual items and services and service packages, that could be provided by a hospital to a patient in connection with an inpatient admission or an outpatient department visit for which the hospital has established a standard charge.”

Under the rule, hospitals are required to make the standard charges for their items and services public in two ways (generally described):

1. By making a single digital “**comprehensive machine-readable file**” publicly available online in an easily accessible manner, free of charge, that includes each type of standard charge for all items and services provided by the hospital, updated annually, and
2. A “**consumer-friendly**” list of shoppable services, including 70 CMS-specified shoppable services and 230 hospital-selected shoppable services, written in plain language, easily accessible by the public, and updated annually.

CMS can enforce the Rule in a number of ways, including by reviewing complaints and analyses of noncompliance made by entities or individuals directly to CMS and/or by auditing hospitals' websites. If CMS determines a hospital is noncompliant with any of the requirements of the Rule, it may assess a monetary penalty to such hospital.

CMS issued a “Hospital Price Transparency Notice of Imposition of a Civil Monetary Penalty (CMP)” to both Northside Hospital Atlanta and Northside Hospital Cherokee (the “Notices”) for five alleged violations of the Rule: (1) failure to make standard charges public for each separate hospital location under a single hospital license; (2) failure to make public a machine-readable file with the list of all standard charges for all items and services provided at the hospital; (3) failure to make such machine readable file available as one single file; (4) failure to follow CMS’ file naming convention; and (5) failure to make a consumer-friendly list of standard charges for “a limited set of” shoppable services publicly available online.

These Notices, however, were not the first time these hospitals had heard from CMS on the matter of non-compliance, which is worth noting for other hospitals not yet in compliance with the Rule. Consistent with regulation, multiple opportunities were provided to these hospitals to take corrective action. Over a year prior to the issuance of these Notices, CMS issued each hospital a warning notice with an “opportunity to respond and provide supporting documentation to CMS regarding the cited violations.” Neither hospital responded. Between 4-6 months later, CMS completed a review of each hospitals’ website and noted continued non-compliance, after which point CMS issued a “Request for Corrective Action Plan (CAP)” to each hospital. CMS then conducted a technical assistance call with each hospital and provided another opportunity to submit a CAP (or revised CAP) before imposing the CMPs for the above-described violations. Each hospital had 30 calendar days from the issuance of their notice to request a hearing before an Administrative Law Judge and appeal these CMP determinations.

Some hospitals until this point may have been weighing the costs of compliance with the Hospital Price Transparency Rule. It is now apparent, however, that non-compliance can come with a hefty price tag. Hospitals should take any communication from CMS regarding Hospital Price Transparency violations seriously and take steps to demonstrate a willingness to take corrective action.

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