ENHANCED ENFORCEMENT OF HOSPITAL TRANSPARENCY RULE

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WHAT IS THE PRICE TRANSPARENCY RULE?

- **45 CFR §180.40**
- Requires **Hospitals** to provide clear, accessible pricing information online about **items and services** in two ways:
- 1. As a comprehensive **machine-readable** file with all **items and services**
- 2. A consumer-friendly list of **standard charges** for a limited set of **shoppable services**

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KEY TERMS

- **45 CFR §180.20**
- **Hospital**- U.S. institution licensed by State or local law as a hospital
- **Items and Services-** all items and services and service packages that could be provided by a hospital to a patient in connection with inpatient admission or outpatient department visit for which hospital has a standard charge.
- **Machine-readable format-** means a digital representation of data or information in a file that can be imported or read into a computer system for further processing. Examples of machine-readable formats include, but are not limited to, .XML, .JSON and .CSV formats.

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KEY TERMS

- **Shoppable Service**: a service that can be scheduled by a healthcare consumer in advance.
- **De-identified maximum negotiated charge**: the highest charge that a hospital has negotiated with all third party for an item or service
- **Deidentified minimum negotiated charge**: the lowest charge that a hospital has negotiated with all third party payers for an item or service
- **Discounted cash price**: the charge that applies to an individual who pays cash for a hospital item or service

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KEY TERMS

- **Service package:** an aggregation of individual items and services into a single service with a single charge.
- **Ancillary service:** an item or service a hospital customarily provides as part of or in conjunction with a shoppable primary service
- **Gross Charge:** the charge for an individual item or service that is reflected on a hospital's chargemaster, absent any discounts
- **Standard Charge** the regular rate established by the hospital for an item or service provided to a specific group of paying patients.

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WHAT IS THE PRICE TRANSPARENCY RULE?

- **45 CFR 185.50(b)**

(1) Description of each item or service provided by the hospital.

(2) Gross charge that applies to each individual item or service when provided in, as applicable, the hospital inpatient setting and outpatient department setting.

(3) Payer-specific negotiated charge that applies to each item or service when provided in, as applicable, the hospital inpatient setting and outpatient department setting. Each payer-specific negotiated charge must be clearly associated with the name of the third party payer and plan.

(4) De-identified minimum negotiated charge that applies to each item or service when provided in, as applicable, the hospital inpatient setting and outpatient department setting.

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WHAT IS THE PRICE TRANSPARENCY RULE?

- (5) De-identified maximum negotiated charge that applies to each item or service when provided in, as applicable, the hospital inpatient setting and outpatient department setting.
- (6) Discounted cash price that applies to each item or service when provided in, as applicable, the hospital inpatient setting and outpatient department setting.
- (7) Any code used by the hospital for purposes of accounting or billing for the item or service, including, but not limited to, the Current Procedural Terminology (CPT) code, the Healthcare Common Procedure Coding System (HCPCS) code, the Diagnosis Related Group (DRG), the National Drug Code (NDC), or other common payer identifier.

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WHAT IS THE PRICE TRANSPARENCY RULE?

- **45 CFR §180.60**
- Shoppable Services Must Include the Following Data Elements:
- (1) A plain-language description of each shoppable service.
- (2) An indicator when one or more of the CMS-specified shoppable services are not offered by the hospital.
- (3) The payer-specific negotiated charge that applies to each shoppable service (and to each ancillary service, as applicable). Each list of payer-specific negotiated charges must be clearly associated with the name of the third party payer and plan.
- (4) The discounted cash price that applies to each shoppable service (and corresponding ancillary services, as applicable). If the hospital does not offer a discounted cash price for one or more shoppable services (or corresponding ancillary services), the hospital must list its undiscounted gross charge for the shoppable service (and corresponding ancillary services, as applicable).

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WHAT IS THE PRICE TRANSPARENCY RULE?

(5) The de-identified minimum negotiated charge that applies to each shoppable service (and to each corresponding ancillary service, as applicable).

(6) The de-identified maximum negotiated charge that applies to each shoppable service (and to each corresponding ancillary service, as applicable).

(7) The location at which the shoppable service is provided, including whether the standard charges identified in paragraphs (b)(3) through (6) of this section for the shoppable service apply at that location to the provision of that shoppable service in the inpatient setting, the outpatient department setting, or both.

(8) Any primary code used by the hospital for purposes of accounting or billing for the shoppable service, including, as applicable, the Current Procedural Terminology (CPT) code, the Healthcare Common Procedure Coding System (HCPCS) code, the Diagnosis Related Group (DRG), or other common service billing code.

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COMPLIANCE BEST PRACTICES

- Determine whether you are a "Hospital"
  - Licensed by state
  - Includes
    - off-campus locations
    - CAHs
    - Specialty hospitals
    - Etc.

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UNDERSTAND WHERE TO BEGIN

Sunsetting of Requirement to Post Chargemaster

- FY 2016 IPPS/LTCH Proposed and Final Rules discussed Section 2718(e) of Public Health Service Act (enacted as part of ACA).
- Required hospitals to annually establish, update, and make public, in accordance with guidelines, a list of its standard charges for items and services provided by hospital, including for DRGs established under Section 1886(d)(4) of Social Security Act.
- Comply by posting chargemaster, or another form of hospital's choice, or policies for allowing public to view list of those charges in response to an inquiry

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UNDERSTAND WHERE TO BEGIN

- Hospitals were encouraged to engage in consumer-friendly communication regarding charges to help patients understand their financial liability and compare charges across hospitals
- Of course, the chargemaster only contains "gross" charges and does not reflect negotiated discounts or self-pay and financial assistance policies
- FY 2019 IPPS LTCH proposed rule – CMS indicated concern that there wasn't sufficient price transparency, and patient challenges continued, including "surprise" out of network bills for out of network physicians at in network hospitals and facility fees/physician fees for emergency department visits

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UNDERSTAND WHERE TO BEGIN

- Thus, CMS required the list of standard charges (either chargemaster or another format of choice) to be in "machine-readable" format effective January 1, 2019, and updated at least annually
- CY 2020 OPPS/ASC Policy Changes and Payment Rates Final Rule included Price Transparency Requirements for Hospitals to Make Standard charges Public effective January 1, 2021
  - Added a new Part 180 to the CFR, which is where present regulations are codified.
  - The existing requirement to make public gross charges for items and services as found in the chargemaster online in a machine readable format sunsetted December 31, 2020

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COMPLIANCE WITH MACHINE READABLE FILE (MRF)

- No longer can just post the chargemaster
- Identify each "hospital" if there are multiple facilities
  - Are there multiple locations:
    - With different charges under a single license? Post separate MRF for each
    - With identical charges but different licenses? Post one MRF and identify each
  - Separate MRF means a separate file, not a separate tab within a single file
- Format of MRF is flexible as long as can be read/imported for further processing (e.g., Excel)

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COMPLIANCE WITH MACHINE READABLE FILE (MRF)

- 5 types of standard charges across settings (e.g., IP/OP, facility fees, professional fees, room/board)
  - Gross Charge
  - Discounted Cash Price
  - Payer-Specific Negotiated Charge
  - De-identified Minimum Negotiated Charge
  - De-identified Maximum Negotiated Charge

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COMPLIANCE WITH MACHINE READABLE FILE (MRF)

- When identifying standard charges, refer to the chargemaster
  - Make sure to pull in things not in chargemaster, like rate sheets for service package
- Good opportunity to review and update
  - Remove items/services no longer provided
  - Remove items/services that should no longer be charged
    - e.g., review supplies
  - Service packages – have you developed these for payers?
    - list base rate or per diem rate, for example
    - No need to list out everything that goes into the base rate
  - Do you have time based charges?
    - e.g., OR
  - Do you have complexity based charges?

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COMPLIANCE WITH MACHINE READABLE FILE (MRF)

- Organize and display the standard charges
  - Excel format with columns
  - Start with a description – can use chargemaster description; doesn't have to be "plain language"
  - Then list billing code (e.g., CPT/HCPCS/Revenue Code/DRG)
  - Then complete applicable information for each standard charge
    - Can have column for each payer
    - Columns can be left blank if N/A

Description	Code for Billing	Gross Charge	Payer/Plan A	Payer/Plan B	Discounted Cash Amt	Deidentified Min	Deidentified Max

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COMPLIANCE WITH MACHINE READABLE FILE (MRF)

- Use correct naming convention
  - <ein>-<name of hospital>_<standardcharges>
  - Can add NPI if multiple sets of standard charges based on location under one EIN
- Post in prominent location, free of charge
  - E.g., publicly available home page
- Be sure to update annually
  - Can update more frequently to reflect changes
- Do not:
  - Post only the chargemaster
  - Forget to include plan name
    - Thus, need to break into commercial and Medicare Advantage

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COMPLIANCE WITH MACHINE READABLE FILE (MRF)

- Do:
  - Include employed physicians and non-physician practitioners
  - Refer to contract rate sheets for negotiated rates
  - Include managed Medicaid if negotiate rates
  - Include dollar amounts, not "200% Medicare rate"
- Do Not:
  - Include non-employed providers who bill for their services
  - Make it difficult to locate/search the file (no CAPTCHA)
  - Make up your own naming convention
  - Leave off discounted self-pay rates if you do not have any – list gross charges
  - Display estimates

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COMPLIANCE WITH MACHINE READABLE FILE (MRF)

- Other Tips:
  - Watch for additional guidance – CY 2024 OPPS/ASC proposed rule has proposals and request for feedback
  - Rental networks are not "Payers" unless they assume responsibility for reimbursement (which in unlikely)
  - Include direct to employer arrangements, not just traditional insurance contracts

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COMPLIANCE WITH SHOPPABLE SERVICES LIST

- Different from machine-readable file
- Must be "consumer friendly" (i.e., plain language description)
- Includes the following standard charges for at least 300 'shoppable' services (or as many as the hospital provides if less than 300) that are grouped with charges for ancillary services that are customarily provided by the hospital:
  - Discounted cash prices
  - Payer-specific negotiated charges
  - De-identified minimum and maximum negotiated charges

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COMPLIANCE WITH SHOPPABLE SERVICES LIST

- In lieu of the consumer-friendly display of shoppable services, hospital can offer internet-based price estimator tool
- Must include the 70 CMS specified shoppable services that the hospital provides plus
- Hospital-selected shoppable services to get to 300 total
- Must be prominently displayed and free of charge
- Can require patient in input insurance, collect PII
- This is helpful tool for large self-insured employers as well
- May, but not required to:
  - Offer additional info, like financial assistance/payment plan availability
  - Include disclaimers (e.g., contact insurer fo deductible info, etc.)

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COMPLIANCE WITH SHOPPABLE SERVICES LIST

- Make sure you understand what is a "shoppable service"
  - Key is can be scheduled in advance
  - Not emergency department visits, for example
- Understand "ancillary items/services"
  - These are "customarily provided with" a shoppable service
  - Anesthesia with surgery if hospital employed (can flag if not employed)
  - Labs/rads
  - Facility fees
- Service packages – list the base rate, do not break out into dollars

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COMPLIANCE WITH SHOPPABLE SERVICES LIST

- You may:
  - Crosswalk codes for 70 shoppable services – e.g., you have a bundle for joint replacement (DRG 470)
  - Include less than 300 if do not provide 300 shoppable services
  - Indicate if non-employed provide services
    - Consider overlap with No Surprises Act
  - Present included ancillaries under CPT/HCPCS with "N/A" if part of package rate or list itemized charges if bill separately
- You must:
  - Update annually

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PROPOSED CHANGES IN CY 2024 OPPS/ASC PROPOSED RULE

- CMS will require hospitals to:
  - Use templates and data dictionary for MRF
  - Attest that information is accurate/complete correct
  - Adhere to required data elements
    - Hospital name, license number, hospital location, date updated, file version number
    - Payer, plan name, type of contract – whether charges are dollars/algorithms/percent and algorithm explanation
    - Drugs – include unit and measurement
    - Note whether IP or OP
    - Codes with modifiers for billing
    - Footer at bottom of hospital home page with link

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PROPOSED CHANGES IN CY 2024 OPPS/ASC PROPOSED RULE

- Changes to Enforcement Efforts:
  - Submission of certification by an authorized hospital official as to the accuracy and completeness of the data in the MRF
  - Submission of acknowledgement of receipt of warning notice in the form and manner and by the deadline specified in the CMS notice of violation.
  - Notifying health system leadership of any action taken against one of its hospitals and working with them to address similar deficiencies for the system's other hospitals.
  - Publicizing information related to a hospital's compliance, and action taken by CMS, the status of such action, and health system leadership notifications.

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PROPOSED CHANGES IN CY 2024 OPPS/ASC PROPOSED RULE

- Transparency in Coverage Act and No Surprises Act Alignment
  - TIC and NSA rules have allowed a more complete release of consumer-friendly pricing information and consumer protections (i.e., a dispute process), if the final bill is significantly different from the estimate.
  - CMS is interested in comments regarding possible future modifications to the pricy transparency regulations in light of these protections.

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WHERE ARE WE NOW?

- High hopes for Price Transparency Impact
- Public Scrutiny regarding Government Enforcement Efforts

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WHERE ARE WE NOW?

- CMS Fact Sheet - April 26, 2023
  - Updated Review Process

Step 1: warning notice with 90 days to correct deficiencies

Step 2: issuing of corrective action plan (CAP) request with 45 days to submit CAP; Hospital proposes completion date

Step 3: CMP's if not completed necessary stepsIf a hospital has not come into compliance after 90 days,

Average time to complete a case cycle is 195 to 220 days.

Hospitals who fail to submit CAP within 45 days will receive automatic CMP's

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WHERE ARE WE NOW?

- Penalties increased from $300 per day to $5500 per day for hospitals with over 551 beds
- List of CMP Enforcement Actions contained in CMS Website:

https://www.cms.gov/priorities/key-initiatives/hospital-price-transparency/enforcement-actions

- 14 Total Settlements Listed thus Far
- Range from $56,940 to $979,000.

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QUESTIONS?

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