

MEMORANDUM

To: Powers Clients and Friends

From: Powers Law Firm

Date: December 13, 2018

Re: CMS Issues Revised Guidance on Hospital Price Transparency Requirements

Effective January 1, 2019, the Centers for Medicare and Medicaid Services (“CMS”) is imposing new hospital price transparency requirements, which require that hospitals make publicly available a list of their current standard charges via the internet in a machine readable format and update this information at least annually. CMS published these new guidelines in [FY 2019 Inpatient Prospective Payment System final rule](#) (“FY 2019 IPPS Final Rule”).¹ This memorandum provides background information on the PPACA’s price transparency requirements, summarizes the revised guidelines under the FY 2019 IPPS Final Rule, offers guidance on compliance with these requirements, and outlines CMS’s potential enforcement mechanisms.

Background on Hospital Price Transparency Requirements and Guidelines

The hospital price transparency provisions require that:

“Each hospital operating within the United States shall for each year establish (and update) and make public (in accordance with guidelines developed by the Secretary) a list of the hospital’s standard charges for items and services provided by the hospital, including for diagnosis-related groups established under section 1886(d)(4) of the Social Security Act.”²

CMS first issued guidelines to implement this requirement in the FY 2015 IPPS proposed rule (“FY 2015 IPPS Proposed Rule”) and final rule (“FY 2015 IPPS Final Rule”).³ Under the 2015 guidelines, hospitals were required to either make public a list of their standard charges (in the form of the chargemaster itself or in another form of their choice) or make public their policies for allowing individuals to view a list of the hospital’s standard charges in response to an

¹ FY 2019 IPPS Final Rule, 83 Fed. Reg. 41,144 (Aug. 17, 2018).

² 42 U.S.C. § 300gg-18(e).

³ FY 2015 IPPS Proposed Rule, 79 Fed. Reg. 27,978, 28,169 (May 15, 2014); FY 2015 IPPS Final Rule, 79 Fed. Reg. 49,854, 50,146 (Aug. 22, 2014).

inquiry.⁴ CMS also stated that it expected hospitals to update the information at least annually, or more often as appropriate, to reflect current charges.⁵

FY 2019 Changes to Hospital Price Transparency Requirements Guidelines

In the FY 2019 IPPS proposed rule (“FY 2019 IPPS Proposed Rule”), CMS expressed concerns about insufficient price transparency.⁶ As a result, CMS revised its guidelines to state that, effective January 1, 2019, hospitals must make available a list of their current standard charges via the internet in a machine readable format and update this information at least annually, or more often as appropriate.⁷ This information can be presented as an upload of the chargemaster or another form of the hospital’s choice, as long as it is in machine readable format.⁸ This change to CMS’s guidelines removes the option for hospitals to comply with the statutory hospital price transparency requirements by providing access to the charges in response to an inquiry. Instead, all hospitals must now make public a list of standard charges on their website in a machine readable format and update this list at least annually.

Compliance with the Revised Hospital Price Transparency Requirements Guidelines

The price transparency requirements apply to all hospitals operating within the United States.⁹ CMS published a set of [Frequently Asked Questions](#) (“FAQs”) to assist hospitals in complying with the hospital transparency requirements. We address two key compliance questions below.

A. What information must hospitals provide?

CMS requires that hospitals provide “current standard charges” either “in the form of the chargemaster itself or another form of the hospital’s choice.”¹⁰ This requirement applies to “all items and services provided by the hospital.”¹¹ CMS has stated hospitals are not required to publish different charge amounts if they charge payers different amounts.¹² Hospitals are free to provide additional information voluntarily and CMS encourages hospitals to provide context surrounding the chargemaster information.¹³

⁴ FY 2015 IPPS Final Rule, 79 Fed. Reg. at 50,146.

⁵ *Id.*

⁶ FY 2019 IPPS Proposed Rule, 83 Fed. Reg. 20,164, 20,548 (May 7, 2018).

⁷ FY 2019 IPPS Final Rule, 83 Fed. Reg. at 41,686-88.

⁸ *Id.* at 41,686.

⁹ 42 U.S.C. § 300gg-18(e); CMS, Frequently Asked Questions Regarding Requirements for Hospitals to Make Public a List of Their Standard Charges via the Internet (“FAQs”), (“There are no hospitals operating within the United States with exemptions from this requirement under the current policy.”), <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/Downloads/FAQs-Req-Hospital-Public-List-Standard-Charges.pdf>.

¹⁰ FY 2019 IPPS Final Rule, 83 Fed. Reg. at 41,686.

¹¹ CMS, FAQs, <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/Downloads/FAQs-Req-Hospital-Public-List-Standard-Charges.pdf>.

¹² FY 2019 IPPS Final Rule, 83 Fed. Reg. at 41,687; CMS, FAQs, <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/Downloads/FAQs-Req-Hospital-Public-List-Standard-Charges.pdf>.

¹³ *Id.*

In the FY 2019 IPPS Final Rule, commenters asked that CMS provide a clear definition of “standard charges.”¹⁴ CMS declined to adopt a definition and did not clarify what it means by “standard charges” in the FAQs. CMS indicated that it plans to consider defining “standard charges” in future rulemaking and the following potential definitions:

- Average or median rates on the chargemaster;
- Average or median rates for groups of services commonly billed together (such as for an MS-DRG), as determined by the hospital based on its billing patterns; or
- The average discount off the chargemaster amount across all payers, either for each item on the chargemaster or for groups of services commonly billed together.¹⁵

Absent additional guidance from CMS on the definition of “standard charges,” hospitals have to decide how to provide information for items for which multiple prices exist. Stakeholders have suggested this could be accomplished by providing the average price by code across all fee schedules, the most commonly charged price by code, or a listing of all prices by code.

B. How must hospitals provide this information?

The new guidelines require that this information be made available via the internet in a machine readable format.¹⁶ CMS has clarified that a machine readable format “is a digitally accessible document but more narrowly defined to include only formats that can be easily imported/read into a computer system (e.g., XML, CSV).”¹⁷ Importantly, a PDF is not “machine readable” because it “cannot be easily imported/read into a computer system”. As a result, providing charge information in a PDF does not meet CMS’s requirements.¹⁸

In the FY 2019 IPPS Final Rule, commenters asked that CMS not require hospitals to duplicate or replace existing publically available resources, including resources available through state price transparency initiatives.¹⁹ In the FAQs, CMS clarified that “participation in an online state price transparency initiative does not exempt a hospital from the requirements.”²⁰ As a result, even if a hospital makes its standard charge information through a publicly available state resource, CMS still requires that the hospital provide this information on the hospital’s website.

Enforcement of Hospital Price Transparency Requirements

Currently, CMS does not have a clear mechanism to enforce the hospital price transparency requirements. In the FY 2019 IPPS Proposed Rule, CMS stated that it is considering making information regarding noncompliance with the price transparency requirements public and will consider additional enforcement mechanisms in future

¹⁴ FY 2019 IPPS Final Rule, 83 Fed. Reg. at 41,687.

¹⁵ FY 2019 IPPS Proposed Rule, 83 Fed. Reg. at 20,548-59.

¹⁶ FY 2019 IPPS Final Rule, 83 Fed. Reg. at 41,686.

¹⁷ CMS, FAQs, <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/Downloads/FAQs-Req-Hospital-Public-List-Standard-Charges.pdf>.

¹⁸ *Id.*

¹⁹ FY 2019 IPPS Final Rule, 83 Fed. Reg. at 41,687.

²⁰ CMS, FAQs, <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/Downloads/FAQs-Req-Hospital-Public-List-Standard-Charges.pdf>.

rulemaking.²¹ CMS specifically indicated that it may consider the following enforcement mechanisms:

- Requiring hospitals to attest in their provider agreements that they comply with the price transparency requirements;
- Publicizing complaints regarding access to price information or posting the results of CMS compliance reviews;
- Imposing civil money penalties on hospitals that fail to make standard charges publically available; and/or,
- Applying civil penalties similar to those that apply to insurers that fail to pay rebates related to medical loss ratios.

CMS will consider comments that it receives on enforcement of the hospital price transparency requirements and assessing hospital compliance in future rulemaking.

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We anticipate that CMS will continue to update its FAQs on this topic. If you have any questions about the hospital price transparency requirements, please contact the Powers attorney with whom you normally work.

²¹ FY 2019 IPPS Proposed Rule, 83 Fed. Reg. at 20,548-59.