On April 24, 2018, the Centers for Medicare & Medicaid Services ("CMS") announced a new proposed rule (CMS-1694-P) ("Proposed Rule"). In an attempt to "empower patients through better access to hospital price information," CMS plans to alter the requirements previously established by Section 2718(e) of the Affordable Care Act.[1]

Under Section 2718(e), "each hospital operating within the United States shall for each year establish (and update) and make public...a list of the hospital’s standard charges for items and services provided by the hospital." CMS has previously interpreted Section 2718(e) to require hospitals to either make public a list of standard charges or implement policies for allowing the public to view a list of the standard charges by individual request. It was originally believed by CMS that patients could use such information to compare charges for similar services across hospitals, just as someone "shops around" for the best price in plumbing services. However, CMS contends that Section 2718(e), as is currently written, is insufficient to establish the necessary hospital price transparency.

The Proposed Rule takes Section 2718(e) a step further, and provides that beginning January 1, 2019, CMS will update the guidelines to require hospitals to make available a list of their current standard charges via the Internet in a machine readable format, which requirement a hospital may satisfy by publishing its chargemaster (i.e., a hospital’s comprehensive list of services and charges billable to a hospital patient). In addition to the publication requirement, the Proposed Rule further requires hospitals to update the standard charges they publicize at least annually.

Recently, some states, such as California and Colorado, have also taken steps to promote hospital price transparency. Under California’s “Payers’ Bill of Rights,”[2] California hospitals are required to either post an electronic copy of the charges for its services on the hospital’s website, or make a written or electronic copy available at the hospital’s location. Under Colorado law,[3] a healthcare provider must make available to the public, either electronically or by posting on the provider’s website, the healthcare prices of at least the 15 most common services rendered by the provider. Nevertheless, despite the move toward transparency at the state level, many states still lack extensive hospital price transparency statutes.

In addition to the Proposed Rule’s push toward price transparency, CMS has asked for public comments on a series of questions regarding price transparency, including the following:

- Should “standard charges” be defined as the average rates for the items on the chargemaster; average rates for groups of services commonly billed together; or the average discount off the chargemaster amount across all payers?

- What types of information would be most beneficial to patients; how can hospitals best enable patients to use charge information in their decision-making; and how can CMS and providers help third parties create patient-friendly interfaces with these data?

- Should healthcare providers be required to inform patients how much their out-of-pocket costs for a service will be before those patients are furnished that service?

- What is the most appropriate mechanism for CMS to enforce price transparency requirements? Should CMS
impose civil monetary penalties on hospitals that fail to comply with the publication requirement?

Comments on the Proposed Rule are due by June 25, 2018.


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