Illinois Health and Hospital Association

November 4, 2021

ILLINOIS HEALTH AND HOSPITAL ASSOCIATION
M E M O R A N D U M

SUBJECT: **Updates to Hospital Price Transparency Requirements**

On Nov. 2, the Centers for Medicare & Medicaid Services (CMS) released the calendar year (CY) 2022 Outpatient Prospective Payment System (OPPS) final rule, which made several updates to requirements outlined in the CY 2020 Hospital Price Transparency final rule (IHA summary here). Specifically, CMS finalized:

1. Increased civil monetary penalties (CMPs) for noncompliant hospitals based on hospital bed count;
2. Deeming state forensic hospitals meeting certain requirements as compliant with final rule requirements; and
3. Accessibility requirements for machine-readable files.

CMS also clarified output expectations for hospitals that elect to use online price estimator tools in place of the required consumer-friendly file for 300 "shoppable" services. A summary of these updates follows.

Increased Civil Monetary Penalties

CMS may take the following actions when a hospital is noncompliant with price transparency requirements:

1. Provide a written warning notice of the specific violation(s);
2. Request a corrective action plan from the hospital; and
3. Assess a CMP on the hospital and publicize the penalty on a CMS website if the hospital fails to respond to requests for a corrective action plan or comply with the requirements of said plan.

In the Hospital Price Transparency final rule, CMS finalized a CMP of $300 per day but indicated it intended to adjust the CMP amount in future rulemaking if necessary. In the CY 2022 OPPS proposed rule, CMS expressed concern over high rates of hospital noncompliance through sampling and reviews to date. Due to this concern, CMS finalized an updated CMP policy for noncompliance based on the hospital's bed count. **Beginning Jan. 1, 2022**, the updated policy is as follows:

A) Hospitals with 30 or fewer beds will incur a maximum daily CMP of $300;
B) Hospitals with 31 to 550 beds will incur a daily CMP of $10 multiplied by the number of beds (e.g., if the hospital has 60 beds, the CMP is $10x60=$600 per day); and
C) Hospitals with 551 or more beds will incur a daily CMP of $5,500 per day.

CMS defines "bed" as "an adult bed, pediatric bed, portion of inpatient labor/delivery/postpartum (LDP) room (also referred to as birth room) bed when used for services other than labor and delivery, or newborn ICU bed (excluding newborn bassinets) maintained in a patient care area for lodging patients in acute, long term, or domiciliary areas of the hospitals. Beds in post-anesthesia, post-operative recovery rooms, outpatient areas, emergency rooms, ancillary departments (however, see exception for labor and delivery department), nurses' and other staff residences, and other such areas which are regularly maintained and utilized for only a portion of the stay of patients (primarily for special procedures or not for inpatient lodging) are not termed a bed for these purposes." Using this definition, CMS will determine the number of beds for a Medicare-enrolled hospital using the most recently available finalized Medicare hospital cost report.

CMS also finalized a process to determine the number of beds if such information cannot be determined using Medicare hospital cost report data. This process involves the hospital providing CMS with bed count documentation, in the form and manner prescribed by CMS and within a specified timeline. If the hospital does not provide CMS with such documentation, CMS will impose a daily CMP of $5,500.

State Forensic Hospitals

CMS will consider a state forensic hospital as having met price transparency requirements if it is a public psychiatric hospital that provides treatment exclusively for individuals who are in the custody of penal authorities. CMS notes that a state psychiatric hospital with a forensic wing would not meet the criteria necessary to be deemed compliant.

Accessibility of Machine-Readable Files

In the CY 2020 Hospital Price Transparency final rule, CMS required hospitals to make publicly available a machine-readable file containing standard charge information, as defined by CMS, for all items and services furnished by that hospital. CMS clarified the file must be prominently displayed on the hospital's website with clear identification of the hospital location with which the file is associated. Additionally, the file must be easily accessible without barriers, and CMS specified the file must be free of charge and accessible without having to establish a user account or password, or submitting personal identifying information. Finally, the file must be a digital file that is searchable.

Since implementation of these requirements, CMS found many hospitals took actions to hinder the findability of their machine-readable file. CMS provides examples of such actions in the CY 2022 OPPS proposed and final rules. In response to these actions, CMS finalized an amendment specifying that hospitals must ensure standard charge information is easily accessible, without barriers, including, but not limited to, ensuring the information is accessible to automated searches and direct file downloads through a link posted on a publicly available website. CMS states it believes this additional requirement will prohibit practices such as lack of a link for downloading a single machine-readable file, using "blocking codes" or CAPTCHA, and requiring

the user to agree to terms and conditions or submit other information prior to accessing standard charge information.

Additionally, CMS lists recommendations in response to requests for additional guidance on how to ensure a hospital's machine-readable files are prominently displayed. These recommendations include:

- Review and use, as applicable, the HHS Web Standards and Usability Guidelines;
- Post a link to the machine-readable file on a website that clearly communicates the purpose of the file, such as a website dedicated to price transparency, patient billing or financing healthcare services;
- Refrain from using "breadcrumbs" (for example, secondary navigation aids) to point consumers to the link to the machine-readable file. Instead, the website should include searchable terms such as "price transparency," "standard charges," or "machine-readable file;" and
- Ensure that the link to the machine-readable file is obvious, and that its purpose is to open the single machine-readable file for a clearly indicated hospital location.

Online Price Estimator Output

The Hospital Price Transparency final rule requires hospitals to make public certain standard charges for 300 "shoppable" services in a consumer-friendly file. CMS indicated that hospitals may satisfy this requirement by using an online price estimator tool, so long as the tool meets the following criteria:

- Provides estimates for 70 CMS-specified shoppable services (as applicable) and additional hospital-selected shoppable services for a combined total of at least 300 shoppable services;
- Allows healthcare consumers to estimate the amount they will be obligated to pay the hospital for the shoppable service in real time; and
- Is prominently displayed on the hospital's website and accessible without charge and without having to register or establish a user account or password.

In the CY 2022 OPPS final rule, CMS clarified that price estimator tool output must comply with the following:

- The tool must provide a single out-of-pocket estimate reflecting what the hospital anticipates the individual will be obligated to pay.
- The estimate must be personalized to reflect the individual's insurance status.
    - CMS notes hospitals may develop this estimate using prior claims information.
- In addition to the single, personalized, out-of-pocket estimate, hospitals may provide additional information that may be useful to the individual, including a range of out-of-pocket costs for the same set of items or services provided to medically similar patients.
- Hospitals may require consumers to manually submit insurance information in order to generate the single out-of-pocket estimate.

- CMS encourages hospitals to note best practices for developing accurate and reliable cost estimates and seek to ensure price estimator tools are maximally consumer-friendly.
- CMS encourages, but does not require, that hospitals provide appropriate disclaimers in their price estimator tools. These may include acknowledging the limitation of the estimate and advising the individual to consult with his or her health insurer to confirm individual payment responsibilities and remaining deductible balances.
    - CMS notes its belief that disclaimers should serve to educate the public regarding the estimate and should not be used to avoid making every attempt to ensure the estimate is accurate.
    - CMS also encourages hospitals to use the disclaimer as an opportunity to "identify, explain, and document any limitations of the analysis, including but not limited to any assumptions and exclusions that were made when developing the estimate."

Hospital Price Transparency and the No Surprises Act

The U.S. Department of Health and Human Services (HHS) is seeking comment on how the consumer-friendly file or price estimator tool may be leveraged to provide good faith estimates under the No Surprises Act through Requirements Related to Surprise Billing; Part II. Comments on this interim final rule are due Dec. 6, and IHA encourages members to take this opportunity to demonstrate to HHS the challenges this may create for consumers and hospitals considering the information providers must communicate within good faith estimates for uninsured and self-pay patients. IHA's summary of Requirements Related to Surprise Billing; Part II is here.

Next Steps

Member hospitals and health systems are encouraged to review updated price transparency requirements and ensure their machine-readable file and consumer-friendly file or price estimator tool are compliant. An IHA fact sheet and hospital-specific impact reports reflecting the CY 2022 OPPS final rule are forthcoming.