

Many Hospitals Remain in Noncompliance with Price Transparency Rule: House Committee Urges More Oversight

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What You Need to Know

- The Hospital Price Transparency Rule requires hospitals to annually make public a comprehensive list of the hospital's standard charges for provided items and services, including a display of charges for the hospital's 300 most shoppable services in a consumer-friendly format.
- Although the rule has been in effect for almost two years, the Congressional House Committee on Energy and Commerce advises that CMS has issued hundreds of warning letters and requests for civil monetary penalties to hospitals deemed non-compliant and has asked the GAO to take action.
- Now is the time for hospitals to review their compliance and consult with legal counsel and other expert advisors to ensure that the legal requirements of transparency and accessibility have been fully met, in order to avoid significant financial ramifications.

On November 4, 2022, the Congressional House Committee on Energy and Commerce wrote to the Government Accountability Office (GAO) urging it to utilize additional resources to examine hospital compliance with the Hospital Price Transparency Rule. The Committee made the request because, despite the rule having been in effect for almost two years, there was concern that only a small percentage of hospitals were in compliance with the rule.

The Hospital Price Transparency Rule was published by CMS in November 2019 and went into effect on January 1, 2021. In sum, it requires hospitals each year to establish, update and make public a

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machine-readable file containing a list of all of the hospital's standard charges for items and services provided by the hospital, and to display charges for the hospital's 300 most shoppable services in a consumer-friendly format. Under the rule, hospitals are required to make public such information as the gross charges, the discount cash price, the payer-specific negotiated charges, and the de-identified minimum and maximum negotiated charges for all items and services. Moreover, the information must be displayed in a prominent manner on the hospital's website, and must be easily accessible without barriers (*i.e.* free of charge without the need for a user account or sharing personal identifiers). Similar requirements exist for the shoppable services information.

Hospitals are initially provided with a written warning notice or a corrective action plan when identified as being in non-compliance with the rule. However, continued non-compliance will result in civil monetary penalties (CMP). Per the 2022 Medicare Outpatient Prospective Payment rule, CMPs for hospital noncompliance have increased, with penalties of \$300 per day for hospitals with less than 30 beds, \$10 per day times the number of beds for hospitals with between 31 and 550 beds, and a penalty of \$5,500 per day for hospitals with greater than 550 beds. Accordingly, depending upon a hospital's size, penalties can range from \$109,500 per year for small hospitals to over \$2 million per year for large hospitals. Thus, ongoing non-compliance by a hospital can have significant financial ramifications.

According to the House Committee letter, as of January 2022 CMS had issued over 300 warning letters and 98 requests for CMPs for hospitals deemed to be in non-compliance. In June 2022, CMS issued CMP notices to two hospitals for non-compliance with the rule, imposing one penalty for just shy of \$900,000 and the other for over \$200,000.

Based upon several reports and studies cited in the House Committee letter, these hospitals are likely just the tip of the iceberg. The following studies were cited as further evidence that many hospitals remain in non-compliance either as a result of failing to adequately meet the rule's requirements or simply ignoring it altogether.

- The Wall Street Journal reported in December 2021 that some of the biggest hospitals had failed to comply with the final rule, including over half of the approximately 40% of hospitals that did post negotiated rates, but were in non-compliance with other provisions of the rule.
- The Johns Hopkins Bloomberg School of Public Health released a study finding that more than half (55%) of hospitals were non-compliant with the final rule.
- Patient Rights Advocate found that only 14% of hospitals were fully compliant with all of the provisions of the rule.

Consequently, in light of its concerns, the House Committee asked the GAO to undertake an examination of hospital compliance with the rule and report back on the following questions:

1. To what extent are hospitals complying with the requirements relating to the public listing of standard charges in a machine-readable file?

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2. To what extent are hospitals complying with the requirements relating to the online posting of a consumer-friendly list of the 300 shoppable services and their prices?
3. To what extent is the pricing information easily accessible for consumers?
4. How is CMS monitoring and enforcing hospital compliance with the final rule and to what extent has CMS taken action against non-compliant hospitals?

It remains to be seen whether the GAO will take up this request and begin examining hospital compliance. However, regardless of whether it does, CMS has already demonstrated its efforts to pursue compliance with the price transparency rule and all indications are that these efforts will only increase, especially with the increase in potential CMPs putting hospitals at risk of being penalized millions of dollars for non-compliance.

Hospitals would be well advised to review their efforts at compliance with the Hospital Price Transparency Rule to ensure that the legal requirements of transparency and accessibility have been fully met. Further, for any hospitals that have yet to address this federal requirement, now is the time to act to get in compliance. With the real potential for CMPs in the millions of dollars, a hospital cannot be too cautious and should consult with legal counsel and other expert advisors to ensure proper compliance.

Please contact the author of this Alert with questions concerning compliance obligations under the Hospital Price Transparency Rule, or to discuss your hospital's specific circumstances.

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