

Hospital Price Transparency Rule – Getting Prepared for January 2021

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*This presentation does not constitute legal advice.
Attendees should consult with their own legal counsel for
advice and guidance.*

Agenda

- Price Transparency Rule Overview
- Comprehensive Machine-Readable File
- Consumer-Friendly Disclosure (Shoppable Services)
 - Consumer-Friendly Disclosure of 300 Shoppable Services
 - Alternative: Internet-based price estimator tool
- Enforcement
- Outlook & Legal Challenges

42 U.S.C. § 300gg-18(e): Standard Hospital Charges

“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 1395ww(d)(4) of this title.”

- **Prior Guidelines**
 - **FY 2015 IPPS:** Requires that “hospitals either make a public list of their standard charges, or their policies for allowing the public to view a list of those charges in response to an inquiry.”
 - **FY 2019 IPPS:** Hospitals must make public (and annually update) a list of their current standard charges (chargemaster) for all items and services, online in a machine-readable format

Two Required Disclosures

Comprehensive Machine-Readable File

- Make public a machine-readable file which includes all “standard charges”, including gross charges and payer-specific negotiated rates, for all hospital “items and services”

Consumer-Friendly Disclosure of Common “Shoppable Services”

- Provide an Internet-based price estimator tool for common shoppable services

—OR—

- Make public a consumer-friendly disclosure of “standard charges” for at least 300 “shoppable services”

January 1, 2021 Effective Date

- Published effective date: January 1, 2021
- Efforts to stop or delay implementation:
 - Litigation—Expedited Briefing
 - July 2, 2020 Letter
 - Addresses burden of compliance during COVID-19
 - Requests implementation be delayed until the issue is settled by the courts
 - No response to date

Price Transparency: Administrative Activity

- **2018:** RFIs on price transparency and “standard charges” guidance
- **January 2019:** Chargemaster available in machine readable form online
- **February 2019:** Price Information RFI in “Information Blocking” proposed rule
- **June 2019:** Executive Order on Improving Price and Quality Transparency
- **July 2019:** Price transparency proposed rule in OPSS
- **September 2019:** OCR exploring using HIPAA for price transparency

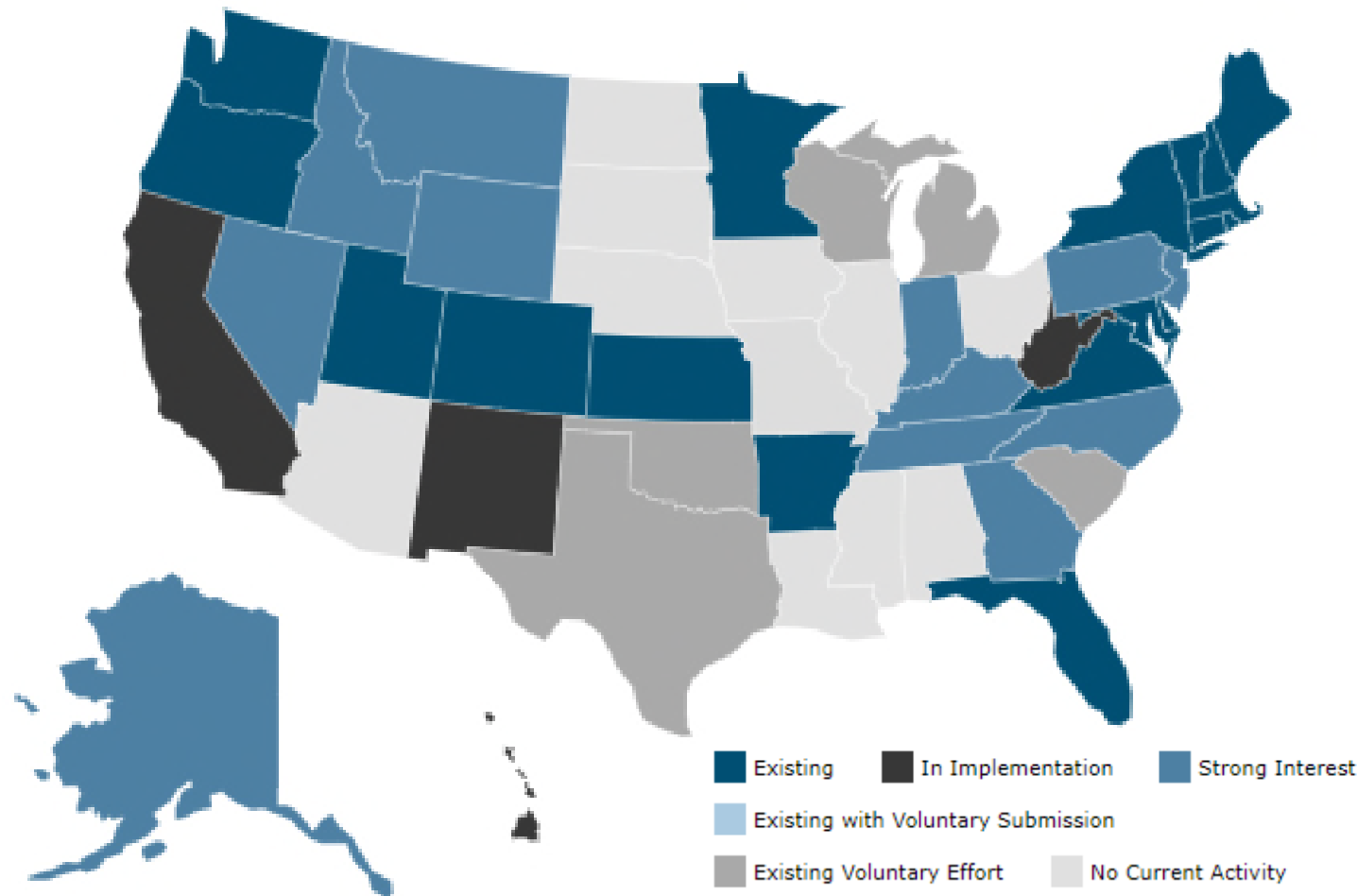


Price Transparency: Administrative Activity (cont.)

- **October 2019:** Stark proposed rule contains a price transparency element
- **November 2019:** Price Transparency Final Rule Issued
- **November 2019:** Transparency In Coverage proposed rule requires payers to publish cost-sharing information and in-network provider negotiated rates
- **January 1, 2021:** Effective Date of Price Transparency Final Rule



Price Transparency: All-Payor Claims Database



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Covered Hospitals

- Price Transparency Rule applies to **both** Medicare-enrolled hospitals and institutions operating as a hospital under state or local law that do not participate in Medicare
- Includes critical access hospitals, inpatient psychiatric facilities, sole community hospitals, and inpatient rehabilitation facilities
- Does **not** include ambulatory surgical centers or other non-hospital sites of care such as community health clinics
- Does not include federally-owned hospitals, such as VA hospitals or hospitals operated by an Indian Health Program, as they are deemed by CMS to be in compliance with the Rule

Comprehensive Machine-Readable File

January 1, 2021 Rule requires hospitals to make public a machine-readable file which includes all “standard charges”, including gross charges and payer-specific negotiated rates, for all hospital “items and services”

- Key definitions and elements:
 - What is considered a “standard charge”?
 - Which payers?
 - Which “items and services”?
 - Which data elements are required in the file?

“Standard” Charges

Defined in 45 C.F.R. §180.20 as “the regular rate established by the hospital for an item or service provided to a specific group of paying patients”

Gross Charge

- The charge for an individual item or service that is reflected on a hospital’s chargemaster, absent any discounts

Payer-Specific Negotiated Charge

- The charge that a hospital has negotiated with a third party payer for an item or service

De-Identified Min/Max

- The highest and lowest charges 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 (or cash equivalent) for a hospital item or service

Third Party Payer

- Third party payer defined in 45 C.F.R.§180.20 as “an entity that, by statute, contract, or agreement, is legally responsible for payment of a claim for a healthcare item or service”
- Rental/Access Agreements?
- Statutory Rates?

Items and Services

45 C.F.R. §180.20:

“all items and services, including individual items and services and service packages, that could be provided by a hospital to a patient in connection with an inpatient admission or an outpatient department visit for which the hospital has established a standard charge”.

Examples:

- Supplies and procedures
- Room and board
- **Service packages** (“an aggregation of individual items and services into a single service with a single charge”)
- Services of **employed physicians** and non-physician practitioners (generally reflected as professional charges)

Note: HHS declined to define “employment”

Comprehensive File: Required Data Elements

Hospitals must include the following data elements in their list of comprehensive list of standard charges:

- Description of each item or service provided by the hospital
- Gross charge for each item or service
- Payer-specific negotiated charge for each item or service, clearly associated with the *name of the payer and plan*
- De-identified minimum and maximum negotiated charge for each item or service
- Discounted cash price for each item or service
- Any code used by the hospital to bill or account for the item or service, including CPT codes, HCPCS, DRG's, NDC's, or other common payer identifiers

Comprehensive Machine-Readable File

Sample From HHS – Gross Charges in a Comprehensive Machine-Readable File

Hospital XYZ Medical Center
Prices Posted and Effective [month/day/year]
Notes: [insert any clarifying notes]

Description	CPT/HCPCS Code	NDC	OP/Default Gross Charge	IP/ER Gross Charge	ERx Charge Quantity
HB IV INFUS HYDRATION 31-60 MIN	96360		\$1,000.13	\$1,394.45	
HB IV INFUSION HYDRATION ADDL HR	96361		\$251.13	\$383.97	
HB IV INFUSION THERAPY 1ST HR	96365		\$1,061.85	\$1,681.80	
HB ROOM CHARGE 1:5 SEMI PRIV				\$2,534.00	
HB ROOM CHG 1:5 OB PRIV DELX				\$2,534.00	
HB ROOM CHG 1:5 OB DELX 1 ROOM				\$2,534.00	
HB ROOM CHG 1:5 OB DELX 2 ROOMS				\$2,534.00	
SURG LEVEL 1 1ST HR 04	Z7506			\$3,497.16	
SURG LEVEL 1 ADDL 30M 04	Z7508			\$1,325.20	
SURG LEVEL 2 1ST HR 04	Z7506			\$6,994.32	
PROMETHAZINE 50 MG PR SUPP	J8498	00713013212	\$251.13	\$383.97	12 Each
PHENYLEPHRINE HCL 10 % OP DROP		17478020605	\$926.40	\$1,264.33	5 mL
MULTIVITAMIN PO TABS		10135011501	\$0.00	\$0.00	100 Each
DIABETIC MGMT PROG, F/UP VISIT TO MD	S9141		\$185.00		
GENETIC COUNSEL 15 MINS	S0265		\$94.00		
DIALYSIS TRAINING/COMPLETE	90989		\$988.00		
ANESTH, PROCEDURE ON MOUTH	170		\$87.00		

¹ Note that this example shows only one type of standard charge (specifically the gross charges) that a hospital would be required to make public in the comprehensive machine-readable file. Hospitals must also make public the payer-specific negotiated charges, the de-identified minimum negotiated charges, the de-identified maximum negotiated charges, and the discounted cash prices for all items and services.

Comprehensive File: Formatting, Access & Updates

- Single digital file in a machine-readable format
- Displayed on a publicly accessible website
- Displayed in a prominent manner and must be clearly identified with the hospital location publishing the standard charge information
- Easily accessible, meaning it must be:
 - Free of charge
 - Without having to establish a user account or password
 - Without having to submit personally identifying information
 - The digital file with standard charge information must be digitally searchable
- Updated annually and must clearly indicate the date of the last update

Comprehensive Machine-Readable File: Additional Considerations

- Multiple Hospital Locations
- Capitation, Bundling, APMs, etc.
- Audience & Disclaimers



Patients



Journalists



Other
Hospitals



Insurers



Think Tanks
&
Academics



Plaintiffs'
Attorneys

Consumer-Friendly Disclosure of Shoppable Services



Provide an **Internet-based price estimator tool** for common shoppable services

OR

Make public a **consumer-friendly disclosure of “standard charges”** for at least 300 “shoppable services”

Consumer-Friendly Disclosure of Shoppable Services

“Shoppable service” means a service that can be scheduled by a healthcare consumer in advance.

- At least 300 shoppable services, including 70 CMS-specified shoppable services and 230 hospital-selected shoppable services
 - Must indicate whether any of 70 CMS-specified services are not offered by the hospital, and select additional services to reach at least 300
 - Hospital must list as many shoppable services as it provides, if total number is less than 300
- Commonly provided to the hospital’s patient population

Consumer-Friendly Disclosure of Shoppable Services

The following data elements are required:

- Plain-language description of each shoppable service
- Indicator when one or more of the CMS-specified shoppable services are not offered
- Payer-specific negotiated charge for each shoppable service
- De-identified minimum and maximum negotiated charge and discounted cash price for each shoppable service
- Location at which the shoppable service is provided
- Grouping of the primary shoppable code with ancillary services the hospital customarily provides in conjunction with the primary shoppable service
- Any code used by the hospital to bill or account for the item or service, including CPT codes, HCPCS, DRG's, NDC's, or other common payer identifiers

Consumer-Friendly Disclosure of Shoppable Services

- Hospitals have discretion to choose a format for making public the consumer-friendly information
- The *display* requirements for the disclosure of shoppable services are the same as the comprehensive machine-readable file
 - Displayed prominently on a publicly available Internet location that clearly identifies the hospital location with which the information is associated
 - Must be easily accessible, without barriers, including ensuring the data is accessible free of charge, does not require a user to register, establish an account or password or submit PII, and is searchable by service description, billing code, and payer
 - Updated at least annually and indicate the date of the last update

Consumer-Friendly Disclosure of Shoppable Services

Sample From CMS – Display of Shoppable Services

Hospital XYZ Medical Center

Prices Posted and Effective [month/day/year]

Notes: [insert any clarifying notes or disclaimers]

Shoppable Service	Primary Service and Ancillary Services	CPT/ HCPCS Code	[Standard Charge for Plan X]
Colonoscopy	Primary Diagnostic Procedure	45378	\$750
	Anesthesia (Medication Only)	[Code(s)]	\$122
	Physician Services	Not provided by hospital (may be billed separately)	
	Pathology/Interpretation of Results	Not provided by hospital (may be billed separately)	
	Facility Fee	[Code(s)]	\$500
Office Visit	New Patient Outpatient Visit, 30 Min	99203	\$54
Vaginal Delivery	Primary Procedure	59400	[\$]
	Hospital Services	[Code(s)]	[\$]
	Physician Services	Not provided by hospital (may be billed separately)	
	General Anesthesia	Not provided by hospital (may be billed separately)	
	Pain Control	Not provided by hospital (may be billed separately)	
	Two Day Hospital Stay	[Code(s)]	[\$]
	Monitoring After Delivery	[Code(s)]	[\$]

Consumer-Friendly Disclosure of Shoppable Services

Can meet consumer-friendly disclosure requirement by maintaining an **internet-based price estimator tool** which:

- Provides estimates for as many of the 70 CMS-specified shoppable services that are provided by the hospital, and additional hospital-selected shoppable services for a combined total of at least 300 shoppable services
- Allows healthcare consumers to, at the time they use the tool, obtain an estimate of the amount they will be obligated to pay the hospital for the shoppable service
- Is prominently displayed on the hospital's website and accessible to the public without charge and without having to register or establish a user account or password

Note: A price estimator tool satisfies the required disclosure of shoppable services, NOT the required machine-readable file of standard charges

Monitoring and Enforcement

- Monitoring through audits and investigation of complaints
- Written warning, corrective action plans, Civil Monetary Penalties (CMPs)
- CMP Limits:
 - Only imposed *after* a hospital has received and failed to respond to (or comply with) a corrective action plan
 - Maximum of \$300/day
- Appeal rights



Challenge to Price Transparency Rule: *AHA v. Azar*

Procedural History

- June 23: U.S. District Court Judge Nichols rules against AHA in its challenge to the Price Transparency Rule
- Expedited briefing in D.C. Circuit
 - July 17: AHA Opening Brief
 - August 14: Azar Brief
 - August 28: AHA Reply
- Oct. 15, 2020: Oral Argument

AHA v. Azar Appeal: Theories

- Impermissible interpretation of section 2718(e)
 - “Standard charges” vs negotiated rates
 - “A list” vs data files
 - Congressional intent
- First Amendment
- Arbitrary and Capricious

Thank You & Questions



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