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## CMS Mandates Hospitals to Post Standard Charges Online and Indicates that Additional Price Transparency Reforms are on the Horizon

On August 2, 2018, the Centers for Medicare & Medicaid Services (“CMS”) issued a final rule (CMS-1694-F) updating Medicare payment policies and rates under the Inpatient Prospective Payment System (“IPPS”) and Long-Term Care Hospital (“LTCH”) Prospective Payment System (“PPS”) (the “Final Rule”).<sup>1</sup> The policies in the Final Rule address CMS’s goals of achieving greater price transparency, interoperability, and the reduction of existing administrative burdens on hospitals, so as to further advance the creation of a patient-centered healthcare system. Among the changes addressed in the 2,593-page Final Rule, there is an update to the CMS guidelines regarding the obligation of Medicare-participating hospitals to make their standard charges public.

Under existing law, hospitals are required to establish, update, and make public a list of the hospital’s standard charges for the items and services provided by the hospital.<sup>2</sup> In the FY 2015 IPPS/LTCH final rule,<sup>3</sup> CMS reminded hospitals of their obligation to comply with this requirement and provided guidelines for its implementation. Specifically, CMS stated that hospitals must “either make public a list of their standard charges (whether that be the chargemaster itself or in another form of their choice), or their policies for allowing the public to view a list of those charges in response to an inquiry.”<sup>4</sup> CMS gave hospitals the discretion to determine the manner and method by which to make the list public in accordance with its guidelines.<sup>5</sup> CMS encouraged “hospitals to undertake efforts to engage in consumer friendly communication of their charges to help patients understand what their potential financial liability might be for services they obtain at the hospital, and to enable patients to compare charges for similar services across hospitals.”<sup>6</sup> Moreover, CMS expressed that it expected

<sup>1</sup> Department of Health and Human Services, Centers for Medicare & Medicaid Services, Final Rule on “Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Policy Changes and Fiscal Year 2019 Rates; Quality Reporting Requirements for Specific Providers; Medicare and Medicaid Electronic Health Record (EHR) Incentive Programs (Promoting Interoperability Programs) Requirements for Eligible Hospitals, Critical Access Hospitals, and Eligible Professionals; Medicare Cost Reporting Requirements; and Physician Certification and Recertification of Claims” (CMS-1694-F) (to be published in the Federal Register on August 17, 2018). The unpublished version of the Final Rule is available at the following link: <https://www.federalregister.gov/documents/2018/08/17/2018-16766/medicare-program-hospital-inpatient-prospective-payment-systems-for-acute-care-hospitals-and-the>.

<sup>2</sup> 42 U.S.C.A. § 300gg-18(e).

<sup>3</sup> 79 Fed. Reg. 49854, 50146 (Aug. 22, 2014).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

hospitals to “update the information at least annually, or more often as appropriate, to reflect current charges.”<sup>7</sup> Additionally, a number of states have enacted laws that require the release of certain charge data.<sup>8</sup>

In the Final Rule, CMS updated these guidelines by requiring hospitals “to make available a list of their current standard charges via the Internet in a machine readable format and to update this information at least annually, or more often as appropriate.”<sup>9</sup> The information may “be in the form of the chargemaster itself or another form of the hospital’s choice, as long as the information is in machine readable format.”<sup>10</sup> This requirement takes effect January 1, 2019.<sup>11</sup>

In making this change, CMS rejected comments that “the information contained in the chargemaster would not be useful to patients and would only increase confusion, as it would not inform them of their out-of-pocket costs for a particular service” and that “payers are a better source of information about the cost of care and should be the primary source of information for out-of-pocket costs for patients.”<sup>12</sup> In the Final Rule, CMS encouraged hospitals “to provide context surrounding the chargemaster information” and clarified that CMS is not requiring at this time that “any information be published in a payer-specific manner.”<sup>13</sup> CMS explained that “making charge information more easily accessible to patients and the public does not preclude hospitals from taking additional steps or continuing to provide the information they currently provide.”<sup>14</sup> Moreover, CMS clarified that its guidelines do not preclude “hospitals and payers from working together to provide information on out-of-pocket costs for patients and to improve price transparency for patients.”<sup>15</sup>

However, CMS has indicated that the changes will not end there and that there will be additional price transparency reforms in the near future. Specifically, in the FY 2019 IPPS/LTCH PPS proposed rule, CMS stated that it is also “considering potential actions that would be appropriate, either under the authority of section 2718(e) of the Public Health Service Act or under other authority, to further [its] objective of having hospitals undertake efforts to engage in consumer-friendly communication of their charges to help patients understand what their potential financial liability might be for services they obtain at the hospital, and to enable patients to compare charges for similar services across hospitals.”<sup>16</sup> CMS sought

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7 *Id.*

8 *See* CMS-1694-F at 2137.

9 *Id.* at 2136-37.

10 *Id.* at 2137.

11 *Id.* at 2136.

12 *Id.* at 2138-39.

13 *Id.* at 2139.

14 *Id.*

15 *Id.* at 2140.

16 83 Fed. Reg. 20164, 20549 (May 7, 2018).

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public comment on a number of questions related to price transparency initiatives, including questions regarding the types of information that would be most beneficial to patients, whether health care providers should be required to inform patients about out-of-pocket costs before furnishing a particular service, whether health care providers should be required to provide patients with information about what Medicare pays for a particular service, and the mechanism by which CMS should enforce price transparency requirements.<sup>17</sup> In the Final Rule, CMS explained that the comments it received regarding the broader price transparency initiative would be addressed in future rulemaking.<sup>18</sup> Therefore, providers should be on the lookout for additional guidance on this topic and should also be cognizant of any state law requirements regarding price transparency.

### **Questions or Assistance**

If you have any questions about this alert, please contact Joan Feldman (jfeldman@goodwin.com or 860.251.5104) or Stephanie Gomes-Ganhão (sgomesganhao@goodwin.com or 860.251.5239).

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<sup>17</sup> *Id.*

<sup>18</sup> CMS-1694-F at 2137.

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