

Report on Medicare Compliance Volume 33, Number 16. April 29, 2024 More Price Transparency Requirements Take Effect July 1 and After; CMS Posts MRF Validator

By Nina Youngstrom

New price transparency requirements take effect July 1 on the shoulders of other requirements that should have been met Jan. 1. With another deadline looming, hospitals may want to take advantage of CMS's new online validator,^[1] which allows them to determine whether their machine-readable files (MRF) are in good shape. The stakes are high because CMS is taking enforcement seriously. It has already reviewed compliance with price transparency requirements at thousands of hospitals.

"No one is safe from being placed under the microscope," said Martie Ross, a consulting principal with PYA, at its April 24 webinar.

CMS has steadily heightened price transparency requirements and consequences for noncompliance. Since Jan. 1, 2021, hospitals have been required to reveal to the world five types of charges for all items and services: gross charges, payer-specific negotiated charges, the discounted cash price, and the minimum and maximum payments they accept from payers for every item and service without identifying the payers. Hospitals must make the charges available in a comprehensive MRF and post a "shoppable" list of 300 payer-specific negotiated charges for common services or develop an internet-based price estimator tool that lets patients calculate a price specific to their insurance.

Originally, "CMS was not prescriptive in how we established a file format," said Kathy Reep, a senior manager with PYA. But the 2024 outpatient prospective payment system (OPPS) rule streamlined the MRF and standardized the format to make it "much more user-friendly," Reep said. Unlike the shoppable list and price estimator, the MRF "was never intended to be a consumer tool," she said. "It's for researchers, payers and other providers."

Most of the new price transparency requirements will take effect July 1, but some were effective Jan. 1, Reep said. Because it's already late April, "I urge you to find out whether your facility is compliant today." The first thing for the hospital to do is show it made a good-faith effort to ensure the information in the MRF is accurate and complete, she said. It must be established and maintained in a text file and explained on CMS's Price Transparency-Data Dictionary GitHub Repository.^[2] The second is to ensure that the words "price transparency" are on the footer of your website's home page (and elsewhere) and that clicking on them takes people to the MRF, Reep said.

Hospitals also must complete the text file that identifies the location of the MRF. The text file includes the following information: hospital name, location, source page URL, MRF URL, the point of contact for price transparency and their email address. "Make sure if that person leaves, the person is updated," Reep said.

Another slew of requirements takes effect July 1. For one thing, all the required data elements in the MRF must be encoded. "Rather than having a loose format with all the various columns and headers loosely aligned as we do on an Excel spreadsheet, you will be using a specific defined format from CMS," she explained. CMS has approved

three formats for this purpose: comma-separated values (CSV) “wide” format, a CSV “tall” format, or JSON schema. Within these formats, hospitals will encode various information, including:

- The type of information used to establish the standard charge location/setting (e.g., inpatient, outpatient);
- Billing codes (HCPCS, CPT, National Drug Codes and DRGs),
- Payers and plans; and
- Whether the standard charge negotiated with the payer/plan is a dollar amount or based on a case rate, flat rate, fee schedule amount, per diem, percentage of charges or algorithm.

“It’s very detailed in terms of what you have to do,” Reep noted. If the payer has different prices for different products (e.g., PPOs and HMOs) “you have to separate the data elements,” she said. They can only be lumped together if, for example, the data is the same across PPO products.

Attestation Starts July 1

Starting July 1, hospitals also are required to press a button that says true or false to this statement: “To the best of its knowledge and belief, this hospital has included all applicable standard charge information in accordance with the requirements of 45 C.F.R. § 180.50 and the information encoded in this machine-readable file is true, accurate and complete as of the date indicated in this file.”

Anytime there’s an attestation, it opens the door to possible False Claims Act liability, Ross said. “You’re attesting these are your charges” and there could be the potential for false claims allegations if it’s determined the charges aren’t accurate.

To that point, hospitals are required to update their information annually. “Make sure you change the date and keep the file current because you’re always attesting to the completeness and accuracy of the file,” Reep said. If there’s any ambiguity when updating the information, Ross recommends documenting why you made a decision to do something one way and not the other.

New requirements spill into next year. Starting Jan. 1, 2025, hospitals must be more specific if they use algorithms to calculate charges, Reep said. If their contract with a payer includes a cost outlier or stop loss, then they have to go in using prior claims to calculate what they typically are paid for that type of patient. For example, if a patient is coming in for cardiac surgery and the contract says the hospital is paid extra if the charges exceed a certain threshold, “you have to show based on historical claims what they have paid you for that service.”

Hospitals next year also must begin identifying in the MRF the drug units and types of measurement for all pharmaceuticals. “This will add to the file complexity as drugs may be dispensed in various ways—injectable, pill, liquid, etc.—and charges and payment rates for each version and payer will have to be listed,” Reep said.

As they work on compliance, hospitals have a new option to find out what CMS thinks of their MRF. The new online validator tool will let hospitals know whether their MRF satisfies the format and data specifications that take effect July 1. The tool may respond with errors or warnings, depending on the nature of the problem.

Also, the CMS GitHub site is a forum for problem-solving, Reep said. People can post questions about price transparency requirements and challenges, and CMS officials and people from the industry may answer.

Hundreds of Hospitals Have Completed CAPs

On the enforcement front, CMS has recently made changes to the enforcement framework for transparency

violations and upped the penalties, Ross said. For example, hospitals are now required to acknowledge they received a warning notice and produce more information, including payer contracts, to help CMS evaluate their compliance. The maximum annual penalty is \$2.007 million if a hospital has more than 550 beds and wasn't compliant for a full year.

CMS has posted a list of all hospitals that have been reviewed for compliance with price transparency requirements through the end of 2023, Ross said.^[3] It states the name and location of the hospital and the action taken by CMS: warning notice, request for a corrective action plan (CAP), closure notice or met requirements. Ross said she and Reep downloaded all the hospitals reviewed and determined that 913 hospitals received warning notices, 478 were asked to implement CAPs, 963 got closure notices after complying with CAPs and 473 met requirements.

"It's curious whether they are actively pursuing enforcement currently given the significant changes we will see in July and whether the process of sending files through the review form to get them validated will have an impact on compliance going forward," Ross said. CMS also lists the hospitals that have been fined for violating price transparency requirements.^[4] So far, there have been 14, with fines ranging from \$57,000 to \$979,000. That reflects the type of hospital, from critical access hospitals to academic medical centers, she said. Of the 14, seven have challenged their civil monetary penalties.

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¹ Centers for Medicare & Medicaid Services, "Hospital Price Transparency Tools," accessed April 25, 2024, <https://bit.ly/3vYpLdf>.

² Centers for Medicare & Medicaid Services, "Hospital Price Transparency," accessed April 25, 2024, <https://bit.ly/3WlFPAe>.

³ Centers for Medicare & Medicaid Services, "Hospital Price Transparency Enforcement Activities and Outcomes," Q4 2023, accessed April 25, 2024, <https://bit.ly/44fdZHU>.

⁴ Centers for Medicare & Medicaid Services, "Enforcement Actions," last modified April 23, 2024, <https://go.cms.gov/44eB6lW>.

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