

Chapter 297 (2022 Acts of Assembly) Workgroup

September 7, 2022

CALL TO ORDER & INTRODUCTIONS

REVIEW OF AGENDA



Ch. 297 (2022 Acts of Assembly) Workgroup - Agenda

Study Mandate and Goals	Ms. Allen
Current State and Federal Requirements for Hospital Price Transparency	Ms. Allen
Discussion on Preliminary Recommendations	Roundtable Discussion
Public Comment Period	
Wrap Up and Next Steps	



LEGISLATIVE MANDATE & GOALS

Chapter 297 (2022 Acts of Assembly)

Effective July 1, 2023, every hospital shall:

- 1) make available to the public
- 2) on its website
- 3) a machine-readable file
- 4) containing a list of all standard charges
- 5) for all items and services provided by the hospital

The terms "hospital," "items and services," "machine-readable," and "standard charge" have the same meaning as set forth in 45 C.F.R. § 180.20.

Chapter 297 (2022 Acts of Assembly)

Directs the Secretary of Health and Human Resources to develop recommendations on implementing the act

Report on recommendations due by November 1, 2022 to:

- Governor
- Chair of House Committee on Health, Welfare and Institutions
- Chair of Senate Committee on Education and Health

CURRENT STATE & FEDERAL REQUIREMENTS FOR HOSPITAL PRICE TRANSPARENCY

Price Transparency: State

Effective July 1, 2023, every hospital shall:

- 1) make available to the public
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- 3) a machine-readable file
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Enforcement: State

The State Health Commissioner can impose one or more of the following:

- Plan of correction
- Suspend hospital license
- Revoke hospital license

Determinations of noncompliance and penalties imposed can both be contested under the Virginia Administrative Process Act (§ 2.2-4000 *et seq.* of the Code of Virginia)

Price Transparency: Federal

Effective January 1, 2021, every hospital must make publicly available electronically via the internet:

- A machine-readable file containing a list of all standard charges for all items and services
- A consumer-friendly list of standard charges for a limited set of shoppable services

Hospitals must make available the standard charges for each location it operates, if:

- The locations operate under a single license/approval
- The standard charges are not identical at all locations under the single license/approval

Minimum Data Elements for Item/Service: Federal

- Description
- Gross charge in inpatient and outpatient settings.
- Payer-specific negotiated charge in inpatient and outpatient settings
 - Each payer-specific negotiated charge must be clearly associated with third party payer's name and plan
- De-identified minimum negotiated charge in inpatient and outpatient settings
- De-identified maximum negotiated charge in inpatient and outpatient settings
- Discounted cash price in inpatient and outpatient settings
- Any code used by the hospital for purposes of accounting or billing, including:
 - Current Procedural Terminology (CPT) code
 - Healthcare Common Procedure Coding System (HCPCS) code
 - Diagnosis Related Group (DRG)
 - National Drug Code (NDC)
 - Other common payer identifier

Format, Location & Updates: Federal

Publish in a single digital file in a machine-readable format on publicly available website

Prominently display standard charge info and clearly identify hospital location

Ensure standard charge info is easily accessible without barriers, including:

- Free of charge
- Without having to establish a user account or password
- Without having to submit personal identifying information
- To automated searches and direct file downloads through a link posted on website

Standard charge info/file must be digitally searchable

Filename format is <ein>_<hospitalname>_standardcharges.[json|xml|csv]

Update annually and clearly indicate date of update

Compliance Monitoring: Federal

CMS evaluates whether a hospital has complied with the requirements

- CMS has not authorized state survey agencies (e.g., VDH) to make compliance determinations of the *federal* requirements
- Federal hospital price transparency is not a condition of participation in Medicare or Medicaid

CMS can utilize the following to monitor and assess compliance:

- CMS' evaluation of complaints made by individuals or entities to CMS
- CMS review of individuals' or entities' analysis of noncompliance
- CMS audit of hospitals' websites

Enforcement: Federal

CMS can impose one or more of the following:

- Written notice of violation(s)
- Corrective action plan
- Civil monetary penalty, to be publicized on CMS website, for:
 - Failing to respond to CMS request for corrective action plan
 - Failing to comply with corrective action plan

Enforcement: Federal

Schedule of civil monetary penalties based on maximum daily dollar amount

- CY2021: \$300
- CY2022 and thereafter:
 - Hospitals with 30 or fewer beds: \$300
 - Hospitals with 31 to 550 beds: # of beds X \$10
 - Hospitals with 551 or greater beds: \$5,500

Maximum daily dollar amounts will be adjusted annually using the multiplier determined by federal Office of Management and Budget

Enforcement: Federal

Hospitals may appeal imposition of civil monetary penalties as specified in CFR

45 CFR Part 180 does not specifically authorize hospitals appealing determination of noncompliance

Hearing must be requested within 30 calendar days of the issuance of the notice of imposition of a civil monetary penalty

- Only exception is if a hospital can demonstrate good cause for failing to timely ask for a hearing

Current Activities: Federal

CMS auditing sample of hospitals starting January 2021, investigating complaints, and reviewing analyses of non-compliance

- CMS has not indicated the size of the sample
- CMS has not indicated how the sample was determined (e.g., based on geography, population, etc.)
- VDH is not aware of any Virginia hospital being included in the sample

June 2022 – CMS imposes civil monetary penalties on:

- Northside Hospital Atlanta (GA) - \$883,180
 - \$300/day x 121 days in 2021 = \$36,300
 - \$10/bed per day x 536 beds x 158 days in 2022 = \$846,880
- Northside Hospital Cherokee (GA) - \$214,320
 - \$300/day x 114 days in 2021 = \$34,200
 - \$10/bed per day x 114 beds x 158 days in 2022 = \$846,880

DISCUSSION ON PRELIMINARY RECOMMENDATIONS

Observations from Sampled Machine-Readable Files

- Difficulty locating files on hospital websites, with some not being able to be located
- Missing update dates or appear to be out of date
- Filenames do not appear to match CMS specifications
- Inconsistent inclusion of medications
- Some file formats, though permitted by CMS, are harder to use than others
- Prices not displayed in dollars
- Difficult to compare prices across hospitals because each hospital has discretion on description and coding for item/service
- Unclear if outpatient surgical hospitals are aware both federal and upcoming state hospital price transparency rules apply

Questions to Consider

Should recommendations incorporate federal minimums for machine-readable files? If no, why?

What recommendations would provide additional clarity or consistency to improve consumer/patient utility of hospital pricing data?

Should clarifying information from CMS's FAQ document be part of the regulatory recommendations? If yes, which ones?

How should the recommendations address price estimates vs. binding prices?

How should compliance be monitored at the state-level?

Should the machine-readable file be submitted to VHI along with hospitals' annual filings?

What enforcement options should there be at the state-level?

What recommendations, if any, could address outpatient surgical hospitals' knowledge of the new requirements?

What recommendations can be accomplished via regulation and what recommendations require a non-regulatory method?

PUBLIC COMMENT

Public Comment Period

There is a 4-minute time limit for each organization to speak

We will be calling from the list of persons who signed up to speak

After the 4-minute public comment limit is reached we will let you complete the sentence and will move on to the next speaker

We will call the name of the person on list and also the name of the person is next on the list

WRAP-UP & NEXT STEPS

ADJOURNMENT