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Client Alert: District Court of Appeals Upholds Hospital Charges Transparency Rule

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The Affordable Care Act of 2010 required that hospitals annually establish and make public a list of its "standard charges." Health and Human Services (HHS) historically allowed hospitals to comply by posting their charge masters. In 2019, the Secretary of HHS, at the direction of the President, began to modify the HHS interpretation through a new rule. The final rule, released in November of 2019, defined "standard charges" to more broadly include "the regular rate established by the hospital for an item or service provided to a specific group of paying patients." Under the rule, hospitals are required to publish two separate lists of hospital prices: (1) a comprehensive list stating various charges for all items and services provided, and (2) a consumer-friendly list showing the prices associated with a more narrow set of "shoppable" services. With respect to the comprehensive list, for each item or service offered, the hospital must include five categories of standard charges: (1) the gross charge, (2) the payer-specific negotiated charge, (3) the de-identified minimum negotiated charge, (4) the de-identified maximum negotiated charge, and (5) if applicable, the discounted cash price that the hospital charges patients who self-pay. The new rule would require the disclosure of rates paid by managed care payors unlike the previous interpretation. The new rule was to be effective January 1, 2021.

Following the release of the final rule, the American Hospital Association and others challenged the rule, alleging that its definition of "standard charges" violates the Affordable Care Act, the Administrative Procedures Act, and the First Amendment. HHS prevailed in a lower court ruling, and the case was appealed. On December 29, 2020, The United States Court of Appeals for the District of Columbia (case number 20-5193) issued an opinion affirming the lower court decision in favor of HHS and, thereby upholding the new rule.

Therefore, hospitals need to immediately assess their particular ability to disclose the required charge transparency. While this endeavor of determining "standard charges" and providing a means of disclosing such charges will be time consuming, good-faith efforts to comply are more likely to gain at least some favor with HHS as opposed to inaction. A separate but related rule also requires hospitals to disclose de-identified median rates negotiated by Medicare Advantage insurers, and failure to do so could result in serious adverse consequences related to Medicare payments. While this transparency effort was begun under the Trump Administration, it is unlikely that any significant change will occur under the Biden Administration.

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