



## Hospital Price Transparency - CMS Rule Webinar Q&A's

### Questions Not Addressed During Webcast

#### Questions Related to CMS Rules

**How can we help CMS with compliance? Also, some hospitals are reporting facility fees and professional fees together, some are reporting one or the other or part of one or both. How can we ensure there is uniformity and access to all the relevant information?**

*Please submit complaints through CMS website*

**While deeming Government hospitals compliant is typical, the fact that the information may be available in the Federal Register in no way complies with the ease of readability or use. Should we not have access to what is being charged in those facilities?**

*Please see discussion in the rule: 84 FR 65532*

**If the hospital does not have a pricing contract with say an anesthesia group, do those prices have to be included? Those types of groups are usually out of network for the employer groups plan.**

*Only hospital items/services as defined by the rule are included.*

**What is your thinking about the WSJ report that alleges a pattern of 'hiding' this information? Could this loophole be addressed through future rule making? <https://www.wsj.com/articles/hospitals-hide-pricing-data-from-search-results-11616405402>**

*Rule requires posting 'without barriers'*

**What is the mandatory date for hospitals to be in compliance with this legislation?**

*1/1/2021*

**What is the reporting level - by CMS number, by state or region for a health system, or (hopefully) by brick-and-mortar location?**

*Rule requires each hospital to make public its standard charges.*

**Does CMS have any specific plans to evaluate whether the rule results in any of the potential outcomes summarized in the March Modern Healthcare article Peter cited?**

*Rule indicates we will monitor for unintended consequences*

**For the "payer specific negotiated charge" relative to all 3rd party payers, in other words would they have to put down each charge for each payer (carriers/health plans, etc)?**

*Rule requires posting standard charges by payer and plan.*

**Will this extend to other providers such as outpatient surgery centers or MRI centers?**

*Rule applies to institutions defined as 'hospital'*

## **Questions related to Fiduciary**

**Would plan sponsor collaboration with an alliance serve as a sufficient proxy for the fiduciary obligation?**

*If the alliance has taken proper steps to establish a process for checks and balances, such a collaboration “could” serve as a good faith compliance effort. CAVEAT: The duty of fiduciary obligation cannot be mitigated through reliance upon a third party; therefore, a plan sponsor can delegate the responsibility for compliance, but can never delegate the liability for compliance.*

**You are asking the employer to verify that the hospitals are compliant with the rule or remove them from the network but sometimes you cannot remove a hospital from the plan as only the TPA can do so? What do you recommend?**

*Great question! The plan sponsor has the obligation to act in a prudent manner, which does not mean that they are required to do things that they are contractually prohibited from doing.... such as removing a provider. By performing the suggested testing and reporting non-compliance to the TPA, their fiduciary obligation is likely fulfilled. However, it is a good idea to review the current administrative services agreement (ASA) between the plan sponsor and the TPA to determine what liability the TPA assumes for the network, and suggest amendments thereto, which specifically address the CMS hospital transparency rule, and a clear process for compliance.*

**Do Tony’s comments apply to non-ERISA plans?**

*Generally, yes, as most non-ERISA plans choose to follow ERISA guidelines by intention (or by practical adherence to similar guidelines). Check with your counsel if you are a non-ERISA plan.*

**Turquoise Health, a California start up is scouring hospital websites and providing information freely available regarding compliance by hospital name per state but focuses on the machine-readable format. Do you know of an organization that is focused on compliance of the shoppable services? Do you have a rubric we could follow if we wished to assess our state hospitals?**

*A plan sponsor should definitely use such information as a “tool” but as mentioned in answer #1 above, the plan sponsor remains responsible and liable for their own fiduciary liability and cannot delegate the responsibility.*