

## Insights

### CMS Runs Out of Patience: Hospital Price Transparency Rules to Face Stricter Enforcement

May 9, 2023

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The Centers for Medicare and Medicaid Services ("CMS") is making another concerted effort to enforce hospital cost transparency rules that have been in effect since January 1, 2021 (the "Rules") as explained in our **prior alert**. Since that time, CMS struggled to enforce compliance with the Rule and has introduced other rules to make the cost of noncompliance too much to bear as explained in another **prior alert**. In a **Fact Sheet** published on April 26, 2023, CMS is signaling a more aggressive approach to enforcement through warning letters and corrective action plan requests. Based on the tone of the letter, it appears that CMS's patience has worn thin, and that hospitals may want to evaluate their hospital cost transparency compliance procedures so that they are not surprised by adverse CMS determinations.

By way of background, CMS required hospitals to make available to the public certain standard charge information for the items and services they provide. CMS monitors hospitals for compliance by: (1) evaluating complaints made by individuals or entities to CMS; (2) reviewing individuals or entities analyses of noncompliance; and (3) auditing hospitals' websites. CMS later increased the penalties for noncompliance from \$300 per day for any hospital to a penalty based on "bed count," as established by the hospital's most recently filed cost report to increase cooperation with the Rule.

While CMS's recent announcement is not a rule change, it does outline how CMS intends to increase enforcement as follows: (1) requiring noncompliant hospitals to submit a corrective action plan ("CAP") within 45 days from when CMS issues the CAP request to be completed within 90 days of issuance; and (2) automatically imposing a civil monetary penalty on hospitals that fail to submit a CAP within the 45-day submission deadline or to implement the CAP within the 90-day timeframe.

Notably, CMS will no longer issue warning notices to hospitals that have not made any attempt to satisfy the transparency requirements under the Rule. Instead, CMS will immediately request that the hospital submit a CAP. As of April 2023, CMS has imposed civil monetary penalties on four hospitals for noncompliance, totaling \$1,317,420, and issued more than 730 warning notices and 269 requests for CAPs. In its Fact Sheet, CMS highlighted use of automation to complete reviews more quickly, which has resulted in an increase in the number of reviews CMS is able to conduct per month.

For questions regarding your compliance efforts, please contact **Christopher J. Kulik**, **Brandon W. Shirley**, or your regular Krieg DeVault health care attorney.

For additional information, please see our prior updates **here** and **here**.

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