

Hospital Price Transparency: Progress And Commitment To Achieving Its Potential

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Editor's Note

This article is the latest in the *Health Affairs Forefront* series, [Provider Prices in the Commercial Sector](#), featuring analysis and discussion of physician, hospital, and other health care provider prices in the private-sector markets and their contribution to overall spending therein. Additional articles will be published throughout 2023. Readers are encouraged to review the [Call for Submissions](#) for this series. We are grateful to [Arnold Ventures](#) for their support of this work.

Pricing information has long been opaque in the health care marketplace. Lack of transparent information on prices makes it challenging for consumers to shop for services and limits competition. Over the past several years, the Centers for Medicare & Medicaid Services (CMS) has implemented or is in the process of implementing complementary groundbreaking policies to promote transparency across the health care system; this post focuses on the Hospital Price Transparency regulations. We discuss the findings of recent CMS analyses of how hospitals are putting the hospital price transparency requirements into practice, demonstrating a substantial increase in hospitals meeting website assessment criteria from 27 percent to 70 percent between 2021 and 2022, in the context of an increase in noncompliance penalties and significant education, monitoring, and enforcement activities.

Even so, all hospitals must fully comply with the law. CMS is exploring additional policies to accomplish this as well as examining ways to make health care pricing information more usable for consumers.

The [hospital price transparency regulation](#) became effective January 1, 2021 and requires each hospital operating in the United States to make public its standard charges for the items and services it provides. While certain hospitals, such as military treatment facilities, are deemed by CMS to have already met requirements, the remainder are required to make their standard charges public in two ways: 1) a consumer-friendly display comprising at least 300 shoppable services, which can be satisfied through the release of a shoppable services file or by offering a price estimator tool, and 2) a comprehensive, machine-readable file.

Should a hospital be identified as potentially noncompliant (for example, through complaints made by individuals or entities to CMS, analyses related to compliance, or an audit), the CMS compliance team begins a comprehensive compliance review. That process frequently involves direct hospital engagement and discourse, which can be time consuming. Should deficiencies be found, a warning letter is sent, and should those deficiencies not be remedied, CMS requests a corrective action plan.

Throughout this process, CMS responds to requests for technical assistance on issues, for example, about data completeness or presentation questions, that sometimes cannot be easily determined from simply looking at a hospital's posted data. Ultimately, should a hospital fail to respond to CMS's request for corrective action or come into compliance, CMS issues a notice of imposition of a civil monetary penalty.

First Year Of Hospital Price Transparency

Prior to the January 1, 2021 effective date, CMS began deploying significant education and technical assistance to help hospitals prepare to comply with the new requirements. CMS offered a number of webinars, listening sessions, and online implementation aids, including frequently asked questions and checklists designed to summarize the requirements.

Between January and February 2021, CMS conducted [an assessment](#) of the websites of 235 randomly sampled hospital websites to evaluate hospitals' implementation efforts and identify hospitals for initial enforcement actions. Hospitals were randomly chosen from the [Homeland Infrastructure Foundation-Level Data](#) because this data set encompasses both Medicare-enrolled and non-Medicare enrolled hospitals, in line with those hospitals that must comply with the regulation. The assessment found that 66 percent of

hospitals met consumer-friendly display criteria, 30 percent posted a machine-readable file that met the website assessment criteria, and 27 percent did both. When hospitals were identified as having deficiencies in this initial website assessment, CMS referred them internally for the comprehensive compliance review discussed above.

CMS also undertook [rulemaking](#) in 2021 to increase the penalty for noncompliance with the requirements. As a result, the maximum potential penalty increased from just over \$100,000 annually per hospital to over \$2 million annually per hospital in 2022. CMS also offered a method for eliciting public complaints, asking people to identify and report hospitals that do not appear to have made price information public. CMS's website includes an online form where anyone can [submit a complaint](#) to CMS should a hospital appear to be noncompliant. Increased public attention to this matter has helped to focus our enforcement efforts.

Second Year Of Hospital Price Transparency

As of January 2023, CMS had issued nearly 500 warning notices and over 230 requests for corrective action plans since the initial implementing regulation went into effect in 2021. Nearly 300 hospitals have addressed problems and have become compliant with the regulations, leading to closure of their cases. While it was necessary to issue penalties to two hospitals in 2022 for noncompliance ([posted on the CMS website](#)), every other hospital that was reviewed has corrected its deficiencies.

To understand the effect of recent efforts to support compliance, as well as to identify areas for further improvement of enforcement activities, CMS undertook an even larger assessment of hospital websites in late 2022, the methodology of which mirrored the first 2021 assessment.

CMS conducted website assessments between September and November 2022 of 600 hospitals randomly sampled from the Homeland Infrastructure Foundation-Level Data. Exhibit 1 lists the data content and accessibility rule requirements that were reviewed in 2022, specifically, those that we believe that could be unambiguously assessed without hospital validation. Hospitals found to be deficient were referred to CMS's compliance team for a comprehensive compliance review.

Exhibit 1. Website assessment criteria

Comprehensive Machine-Readable File Rule Requirements Assessed	Consumer-Friendly Display Rule Requirements Assessed	
<p>1. General requirements (45 CFR §180.50(a)):</p> <ul style="list-style-type: none"> File is present <p>2. Required data elements (45 CFR §180.50(b)):</p> <ul style="list-style-type: none"> Description of items and services Gross charges Payer-specific negotiated charges by payer and plan De-identified minimum negotiated charges De-identified maximum negotiated charges Discounted cash prices* Any code used by the hospital for accounting or billing purposes <p>3. Format requirements (45 CFR §180.50(c)):</p> <ul style="list-style-type: none"> File is a single digital file in a machine-readable format <p>4. Location and accessibility requirements (45 CFR §180.50(d)):</p> <ul style="list-style-type: none"> File is on a publicly available website File is free of charge No user account or password is needed to access the file No personally identifying information (PII) is needed to access the file File is directly downloadable <p>*In accordance with the regulation, hospitals are required to post a discounted cash price, as applicable. The final rule acknowledges that not all hospitals may have established a discounted cash price.</p>	<p>1. General requirements (45 CFR §180.60(a)):</p> <ul style="list-style-type: none"> Consumer-friendly display is present <p><i>If display is a shoppable services list:</i></p> <p>1. Required data elements (45 CFR §180.60(b)):</p> <ul style="list-style-type: none"> Plain-language descriptions Payer-specific negotiated charges clearly associated with the name of the third party payer and plan Discounted cash prices** De-identified minimum negotiated charges De-identified maximum negotiated charges Any primary code used by the hospital for accounting or billing purposes <p>2. Location and accessibility requirements (45 CFR §180.60(d)):</p> <ul style="list-style-type: none"> List is on publicly available website List is free of charge No user account or password is needed to access the list No personally identifying information (PII) is needed to access the list Searchable by service description, billing code, and payer <p>**A hospital must post its gross charges if the hospital has not established discounted cash prices.</p>	<p><i>If display is a price estimator tool:</i></p> <p>1. Requirements of price estimator tool (45 CFR §180.60(a)(2)):</p> <ul style="list-style-type: none"> Allows consumers to obtain an estimate*** of the amount they will be obligated to pay the hospital for the shoppable service Tool accessible without charge and without having to register or establish a user account or password <p>***In accordance with CMS guidance (86 FR 63954), an estimate is a single price and not a range.</p>

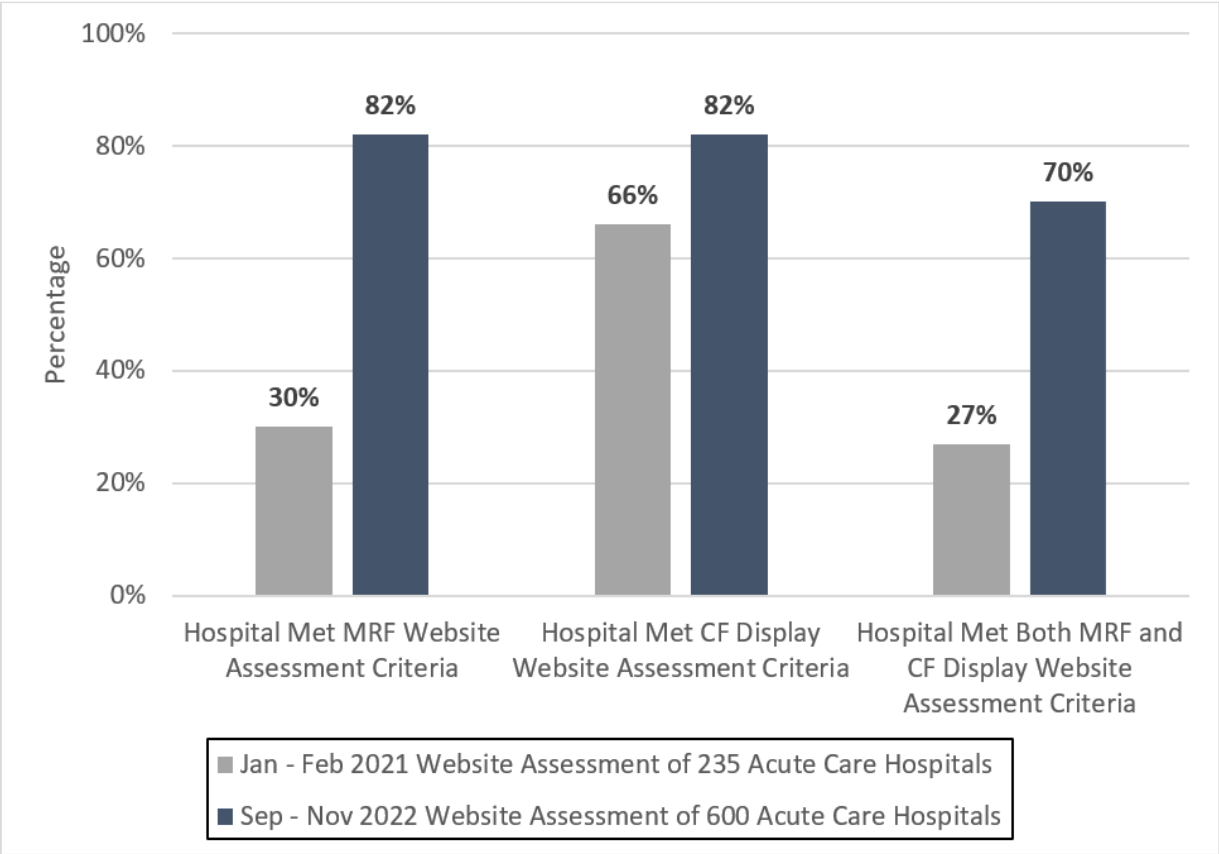
Source: This table presents the criteria used to conduct the 2022 website assessment. It does not include all the requirements of the Hospital Price Transparency regulation. This list is not intended to be used to assess a hospital's compliance.

Of the 600 acute care hospitals sampled for the 2022 analysis, 493 (82 percent; 95 percent confidence interval (CI), 79-85 percent) posted a

consumer-friendly display that met the consumer-friendly display website assessment criteria, 490 (82 percent; 95 percent CI, 79-84 percent) posted a machine-readable file that met the website assessment criteria, and 421 (70 percent; 95 percent CI, 67-73 percent) did both.

The results of the second website assessment suggest that there has been substantial progress in hospitals' implementation efforts since the Hospital Price Transparency regulation first went into effect on January 1, 2021, although approximately 30 percent of hospitals must still do more to achieve full compliance (exhibit 2). Because this study limited its review to regulatory requirements that can be determined by any party (including external parties), the results cannot be used to determine compliance with respect to every regulatory requirement, which often necessitates a more detailed analysis and direct interaction with the hospital, as occurs during a comprehensive compliance review.

Exhibit 2. Comparison of Jan.-Feb. 2021 and Sept.-Nov. 2022 website assessment results



Source: CMS analysis.

We believe the multifaceted effort that CMS has undertaken since initially implementing the regulation—including efforts to educate, monitor, and enforce the regulations with increased applicable potential penalty amounts, along with heightened public interest and scrutiny—have driven this improvement.

CMS’s analysis builds on other investigation in this area, and our results are consistent with the findings of [some parties](#) and [state officials](#), but divergent from others. We limited our review to the regulatory requirements that can be unambiguously determined by anyone reviewing the data posted on the hospital website. We did not review aspects of the regulatory requirements that may require validation or clarification from the hospital, such as when a hospital specifies “not applicable” for a certain procedure. (For example, the fact that there is no specific negotiated charge associated with a particular service—e.g., deep brain stimulation, a commonly performed surgical treatment for Parkinson’s disease—may mean that the hospital has not in fact established a negotiated rate for that procedure because it just does not offer that type of neurosurgery, or it may signal the omission of required information and indicate noncompliance.) Such CMS comprehensive compliance reviews are currently underway for the hospitals identified during the website assessments.

We also note that hospitals may be in compliance with the requirements even when posting very large files or files that are difficult to access. These examples illustrate that while a hospital may be complying with CMS’ requirements, it still may be challenging for an individual to find hospital pricing information that is useful and there is opportunity to improve to usability of this information.

Next Steps

In the past two years, we have begun to see the value of pricing data realized. [Consumers have accessed prices](#) to shop for care and save money; [researchers](#) and [industry experts](#) have uncovered potential savings by analyzing variation in negotiated charges and discounted cash prices for the same items and services within and across hospitals; [employers have used the data](#) to negotiate more competitive rates; and innovators have identified and aggregated the hospital price data for [consumers to make more](#)

[meaningful comparisons](#). As interested parties continue to identify value in this pricing data— for example, [some have noted the potential](#) for the information to assist in competition litigation—we realize the full potential is likely beyond what we previously imagined.

Even as we recognize the progress that has been made to date, we are aware of how much work many hospitals must still do. Our 2022 analysis showed that after two years of these requirements being in place, at least 30 percent of hospitals are still not fully in compliance with the regulations. That represents a marked improvement over the 2021 analysis, but it is not sufficient and CMS will continue working to ensure— via technical assistance and enforcement activity – that all hospitals fully comply with the law.

CMS is exploring several areas in its continued efforts to ensure that hospitals fully comply with the hospital price transparency requirements. First, we have been engaging interested parties to obtain their feedback on the best path forward— just recently, CMS held a listening session to hear from consumer groups about the most important ways to display information for consumers.

Second, we are exploring how to further drive standardized reporting of price transparency information. The current regulations permit some flexibility related to form and format, so long as the hospital makes public its standard charges in a machine-readable file format and includes certain minimum data elements. Increased standardization could help deliver on the promise of hospital price transparency to better enable third parties to develop products to make prices available to consumers. It could also help hospitals comply with the regulations and aid CMS enforcement.

During [prior rulemaking](#), CMS solicited recommendations for improving standardization of the machine-readable file. In summer 2022, a technical expert panel comprised of industry experts including hospitals, researchers, and innovators was convened to provide additional recommendations for standardizing machine-readable file formats. As a result, in November, 2022, CMS made available a template with a [standardized set of data elements](#) for machine-readable files that hospitals could elect to adopt. We intend to engage consumers, hospitals, academic researchers, innovators, and other experts with respect to how we can build on this effort to move towards standardized disclosure of pricing information.

Third, we are continuing to explore methods to make it easier for the public to find and access hospital machine-readable files because we have received stakeholder feedback that the varied locations to which these files are posted can make them difficult to locate. In fact, on more than one occasion, CMS's hospital price transparency compliance team found files posted online when responding to a complaint alleging that a hospital had failed to post a file. Such methods would be considered in future rulemaking, including mandating the centralization of information or being more prescriptive about the placement of the link on a hospital's website.

Fourth, CMS is also exploring how to streamline enforcement efforts, including expediting the timeframes by which it requires hospitals to come into full compliance upon submitting a corrective action plan. CMS also plans to take aggressive additional steps to identify and prioritize action against hospitals that have failed entirely to post files.

In reflecting on how far we've come, we are encouraged by the forward movement and committed to achieving improved compliance with hospital transparency regulations. We believe that, together with members of the public, we can further unlock the collective potential of hospital price transparency and achieve greater competition in the health care system.

Authors' Note

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