LAW OFFICES
WILLIAMS & CONNOLLY LLP
725 TWELFTH STREET, N.W.
WASHINGTON, D. C. 20005-5901
(202) 434-5000
FAX (202) 434-5029

LISA S. BLATT
(202) 434-5050
lblatt@wc.com

EDWARD BENNETT WILLIAMS (1920-1988)
PAUL R. CONNOLLY (1922-1978)

October 2, 2020

VIA ELECTRONIC FILING

Mr. Mark J. Langer
Clerk of the Court
United States Court of Appeals for the D.C. Circuit
E. Barrett Prettyman U.S. Courthouse and
William B. Bryant Annex
333 Constitution Avenue, NW
Washington, D.C. 20001

Re: *American Hospital Association et al. v. Azar*, No. 20-5193 (argument scheduled Oct. 15, 2020)

Dear Mr. Langer:

This responds to DOJ's October 1, 2020, 28(j) letter. Appellants attach: (1) guidance regarding the rule's "two requirements"; (2) HHS's frequently-asked-question responses; (3) "8 Steps to a Machine-Readable File"; and (4) "10 Steps to a Consumer-Friendly Display."

- The materials confirm that disclosure of a machine-readable file and shoppable-services list are "two requirements" hospitals must independently satisfy, and illustrate the requirements' "differences." Attach. 8, 12. Appellants argue that this multi-list mandate exceeds HHS's authority to require "a list" of standard charges. AHA Br. 37-40.

- The materials specify that "contracts with non-payer companies, i.e. local employers for drug screening, need to be included in the list of payer-specific negotiated rates." Attach. 17. Appellants argue that HHS's interpretation is implausibly capacious and could produce thousands of "standard charges" for any single item. AHA Br. 26-34.

- The materials show a mock hospital "display" of three types of rates—percentage-of-charge, per-diem, and DRG-based rates—with 6 out of 9 "N/A" entries signifying no individual, payer-specific rate. Attach. 9-10. Appellants argue that an interpretation of "standard charges" that produces charges impossible to calculate and that do not exist is unreasonable. AHA Br. 30, 52-56.

- The materials explain that negotiated "base rates" for service packages may vary based on patients' treatment, but instruct hospitals to merely disclose the "base" rate. Attach. 9-10. The materials do not address negotiated rates for items with more variability. Appellants argue that hospitals cannot disclose variable rates as the rule requires, and thus that the rule would mislead patients. AHA Br. 50-61.

- The materials enumerate de-identified minimum and maximum negotiated rates as two of "five types of standard charges," Attach. 6, contrary to DOJ's assertion that the rule requires only three types of standard charges, *see* U.S. Br. 30-31; Reply 4-5.

- The materials state that the rule makes data "available for use by the public in price transparency tools." Attach. 5. Appellants argue that consumers could not directly use HHS's machine-readable file, and that price-transparency tools are a less-speech-restrictive, more-effective alternative. AHA Br. 50-51, 59-60.

- The materials confirm a January 1, 2021, effective date. *Cf.* U.S. Response Ltr. (Oct. 1, 2020).

Respectfully submitted,

/s/ *Lisa S. Blatt*
Lisa S. Blatt
Counsel for Appellants

cc: Counsel of Record via ECF

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing letter complies with the type-volume limitations of Fed. R. App. P. 28(j) and the D.C. Circuit local rules because the body contains 350 or fewer words. This letter also complies with the typeface and type style requirements of Fed. R. App. P. 32(a)(5)(A) because this letter was prepared in Word using the proportionally spaced typeface, 14-point Times New Roman.

CERTIFICATE OF SERVICE

I hereby certify that, on October 2, 2020, I electronically filed the foregoing with the Clerk of the United States Court of Appeals for the District of Columbia Circuit using the CM/ECF system. I further certify that all party participants are registered CM/ECF users and will be served by the appellate CM/ECF system.

Dated: October 2, 2020

/s/ *Lisa S. Blatt*
Lisa S. Blatt
Counsel for Appellants

Hospitals

Hospital Price Transparency

Empowering patients with the necessary information to make informed health care decisions.

Key Provisions

Most institutions in the United States that are licensed as hospitals or otherwise approved as meeting applicable licensing requirements must post their standard charges prominently on a publicly available website.

For additional details on the definition of hospital refer to 45 CFR §180.20 and on the federally owned or operated hospitals already deemed to be in compliance refer to 45 CFR §180.30.

Standard charges must be posted two ways:

Machine Readable File

Single machine-readable digital file containing the following standard charges for all items and services provided by the hospital: gross charges, discounted cash prices, payer-specific negotiated charges, and de-identified minimum and maximum negotiated charges.

For additional details on this requirement refer to 45 CFR §180.50.

&

Consumer-friendly Display of Shoppable Services

Display of at least 300 "shoppable services" (or as many as the hospital provides if less than 300) that a health care consumer can schedule in advance. Must contain plain language descriptions of the services and group them with ancillary services, and provide the discounted cash prices, payer-specific negotiated charges, and de-identified minimum and maximum negotiated charges.

For additional details on this requirement, including the use of price estimator tools, refer to 45 CFR §180.60.

Attach. 1

Beginning January 1, 2021, we'll monitor and enforce these price transparency requirements. For hospitals that do not comply, we may issue a warning notice, request a corrective action plan, and impose a civil monetary penalty and publicize the penalty on a CMS website.

For additional details on monitoring and enforcement refer to 45 CFR Subpart C and for information on appealing a civil monetary penalty refer to 45 CFR Subpart D.

Questions?

Email the Price Transparency Team.

Need more information?

Find FAQs, guides, checklists, and more in our Resources.

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Help with File Formats and Plug-Ins

Hospital Price Transparency Frequently Asked Questions (FAQs)

This document is designed as a resource for Hospital Price Transparency frequently asked questions (FAQs).

All FAQs presented in this document are current as of September 30, 2020.

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Hospital Price Transparency Frequently Asked Questions (FAQs)

General Provisions

Where can I find the final rule establishing the hospital price transparency regulations?

CMS finalized new hospital price transparency requirements under section 2718(e) of the Public Health Service Act, as well as a regulatory scheme under section 2718(b)(3) that enables CMS to enforce those requirements, in the Calendar Year 2020 Outpatient Prospective Payment System (OPPS) Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates: Price Transparency Requirements for Hospitals to Make Standard Charges Public (CMS-1717-F2) final rule (Hospital Price Transparency final rule). The Hospital Price Transparency final rule was published in the Federal Register on November 27, 2019 (84 FR 65524) and is available at https://www.federalregister.gov/documents/2019/11/27/2019-24931/medicare-and-medicaid-programs-cy-2020-hospital-outpatient-pps-policy-changes-and-payment-rates-and

What are hospitals required to do under the hospital price transparency regulations? When do hospitals have to comply with these requirements?

By January 1, 2021, each hospital operating in the United States is required to provide clear, accessible pricing information about the items and services they provide in two ways:

1. Comprehensive machine-readable file with all items and services.
2. Display of shoppable services in a consumer-friendly format.

What requirements do hospitals have to comply with before January 1, 2021?

Existing CMS guidance requires that all hospitals in the United States make public their list of their current standard charges (whether in the form of a "chargemaster" or another form of the hospital's choice) online in a machine-readable format and to update this information annually. There are no hospitals operating within the United States with exemptions from this requirement under the current policy. Please refer to the FAQs for FY 2019 IPPS/LTCH PPS final rule (83 FR 41144) https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/Downloads/FAQs-Req-Hospital-Public-List-Standard-Charges.pdf and the following additional FAQs https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/ProspMedicareFeeSvcPmtGen/Downloads/Additional-Frequently-Asked-Questions-Regarding-Requirements-for-Hospitals-To-Make-Public-a-List-of-Their-Standard-Charges-via-the-Internet.pdf for existing guidance. This guidance remains in effect until December 31, 2020.

Hospital Price Transparency Frequently Asked Questions (FAQs)

How do the hospital price transparency regulations fit into CMS' Price Transparency strategic initiative?

The CMS Price Transparency Initiative is one of 16 CMS strategic initiatives designed to deliver better value and results for patients through competition and innovation. We believe that by ensuring accessibility to all hospital standard charge data for all items and services, these data will be available for use by the public in price transparency tools, to be integrated into EHRs for purposes of clinical decision-making and referrals, or to be used by researchers and policy officials to help bring more value to healthcare. Additionally, the ability to price shop across settings and calculate and compare of out-of-pocket costs requires data from both providers and payers. Because the Hospital Price Transparency Final Rule focuses on charge data that is controlled by providers, specifically hospitals, we view these policies as a first step in ensuring that pricing data necessary to determine out-of-pocket costs is available to consumers. We continue to encourage hospitals to go further in helping individuals understand their financial obligations in advance of receiving a health care service by, for example, creating consumer-friendly price transparency tools and lookups that provide consumer-specific out-of-pocket price estimates. You can read more about the Price Transparency strategic initiative: https://www.cms.gov/About-CMS/Story-Page/Price-transparency-fact-sheet.pdf and the proposed Transparency in Coverage proposed rule: https://www.cms.gov/newsroom/fact-sheets/transparency-coverage-proposed-rule-cms-9915-p.

Definitions

How is hospital defined under the Hospital Price Transparency Final Rule? Does the rule apply to Critical Access Hospitals, other small or rural hospitals, state owned/operated institutions, and non-acute hospitals such as inpatient psychiatric hospitals and inpatient rehabilitation facilities (IRFs)?

Hospital means an institution, in any State in which State or applicable local law provides for the licensing of hospitals, which is licensed as a hospital pursuant to such law or is approved, by the agency of such State or locality responsible for licensing hospitals, as meeting the standards established for such licensing. For purposes of this definition, a State includes each of the several States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands. All hospital location(s) operating under the same hospital license (or approval), such as a hospital's outpatient department located at an off-campus location (from the main hospital location) operating under the hospital's license, are subject to the requirements in this rule. This definition includes all Medicare-enrolled institutions that are licensed as hospitals (or approved as meeting licensing requirements) as well as any non-Medicare enrolled institutions that are licensed as a hospital (or approved as meeting licensing

requirements). Given this definition, this rule applies to every institution that meets the definition of 'hospital' established by the Hospital Price Transparency Final Rule including institutions such as critical access hospitals, specialty hospitals, and state owned or operated facilities. Please refer to 45 CFR § 180.20.

Federally owned or operated hospitals (for example, hospitals operated by an Indian Health Program, the U.S. Department of Veterans Affairs, or the U.S. Department of Defense) that do not treat the general public, except for emergency services, and whose rates are not subject to negotiation, are deemed to be in compliance with the requirements for making public standard charges because their charges for hospital provided services are publicized to their patients in advance (for example, through the *Federal Register).* Please refer to 45 CFR §180.30.

What standard charges must hospitals make public?

A standard charge means the regular rate established by the hospital for an item or service provided to a specific group of paying patients. For purposes of complying with the Hospital Price Transparency Final Rule, this includes five types of standard charges:

1. The gross charge (the charge for an individual item or service that is reflected on a hospital's chargemaster, absent any discounts).
2. The discounted cash price (the charge that applies to an individual who pays cash, or cash equivalent, for a hospital item or service).
3. The payer-specific negotiated charge (the charge that a hospital has negotiated with a third party payer for an item or service).
4. The de-identified minimum negotiated charge (the lowest charge that a hospital has negotiated with all third-party payers for an item or service).
5. The de-identified maximum negotiated charge (the highest charge that a hospital has negotiated with all third-party payers for an item or service).

Please refer to 45 CFR §180.20.

What hospital "items and services" are included by the Hospital Price Transparency Final Rule? What is a "service package"?

For purposes of complying with the hospital price transparency requirements, items and services are all items and services, including individual items and services and service packages, that could be provided by a hospital to a patient in connection with an inpatient admission or an outpatient department visit for which a hospital has established a standard charge. Examples include supplies and procedures, room and board, and use of the facility and other

items (generally described as facility fees), services of employed physicians and non-physician practitioners (generally reflected as professional charges), and any other item or service for which a hospital has established a standard charge. Please refer to 45 CFR §180.20.

A service package is an aggregation of individual items and services into a single service for which the hospital has a single standard charge. "Service packages" may have charges established on, for example, the basis of a common procedure or patient characteristic, or may have an established per diem rate that includes all individual items and services furnished during an inpatient stay. Please refer to 45 CFR §180.20.

The definition of "items and services" includes services of employed physicians and non-physician practitioners. How does CMS define "employment"?

Given the variation and complexity in employment models and possible contracting relationships that may exist between hospitals and physicians, we believe it is important to preserve flexibility for hospitals to identify employed physicians or non-physician practitioners under their organizational structure, and, for this reason, we declined to codify a definition of "employment" in the Hospital Price Transparency Final Rule. Refer to 84 FR 65535. One resource that hospitals could consider reviewing for purposes of determining whether or not a physician or non-physician practitioner is employed by the hospital is: https://www.irs.gov/newsroom/understanding-employee-vs-contractor-designation.

Do these requirements apply to non-employed physicians and other practitioners who provide and bill for the same services at the hospital?

No. Services provided by physicians and non-physician practitioners who are not employed by the hospital are practitioners that are practicing independently, establish their own charges for services, and receive the payment for their services. Such services, therefore, are not services "provided by the hospital."

Do these requirements apply to the services of employed practitioners whose charges are not found in the hospital chargemaster?

Yes. The Hospital Price Transparency Final Rule does not limit the requirements to only hospital standard charges that are found within the hospital chargemaster, including standard charges for items and services provided by practitioners employed by the hospital. The requirements apply to such charges that may be located elsewhere within the hospital accounting and billing system, or, in the case of payer-specific negotiated charges, in contracts and rate sheets that are specific to a particular third party payer. Please refer to 84 FR 65535.

Hospital Price Transparency Frequently Asked Questions (FAQs)

Public Disclosure Requirements

Can hospitals choose between displaying standard charges in a machine-readable format and displaying standard charges for shoppable services in a consumer-friendly format?

No. Hospitals must make public both of the following: (1) A machine-readable file containing a list of all standard charges for all items and services as provided in § 180.50 and (2) a consumer-friendly list of standard charges for a limited set of shoppable services as provided in § 180.60. Please note that CMS will deem a hospital as having met the second of these two requirements if the hospital maintains an internet-based price estimator tool which meets the requirements provided in § 180.60(a)(2).

Our hospital does not provide a discounted cash price for items and services. How should we reflect this in the display of standard charge information?

Some hospitals may not have determined a discounted cash price for self-pay consumers for the items and services it provides. In this case, the hospital must post the gross charge as reflected in the hospital chargemaster. Please refer to 84 FR 65553 for discussion on this topic.

Some of the hospital items or services we offer do not have an associated HCPCS or CPT code. Are we required to list such services? If so, what should be indicated next to the item or service?

Yes. The Hospital Price Transparency Final Rule requires hospitals to disclose the standard charges for each item or service it provides, therefore, all hospital items and services for which the hospital has established a standard charge must be listed regardless of whether or not all the required corresponding data elements are available. Corresponding common billing and accounting codes must be included, as applicable. When an item or service does not have a corresponding payment or diagnosis codes associated with an item or service, it is acceptable to leave the information blank. Alternatively, a hospital could choose its own indicator or other method to communicate to the public that there is no corresponding code. Please refer to Table 1 (84 FR 65558) for an example of a display of gross charges which includes this scenario.

Is there a limitation on the number of third party payers for which we have to make negotiated charges public? For example, does this requirement apply to contracts with our top payers only?

No. Hospitals are required to list their standard charges, as applicable, including all payer-specific standard charges, for all items and services. The Hospital Price Transparency Final Rule

did not place limits on the number of third party payers for which a hospital would be required to make their standard charges public. Please refer to 84 FR 65567 for further discussion on this topic.

What is a "base rate" for a service package?

The base rate is the payer-specific charge the hospital has negotiated for a service package. Base rates for service packages are typically not found in the hospital chargemaster, but can be found in other parts of the hospital's billing and accounting systems, or in what are known as 'rate sheets' found in hospital in-network contracts with their third party payers. The base rate is **not** the final payment or reimbursement rate for the service package received by the hospital for individual patients.

My hospital negotiates rates with third party payers in three ways: 1) as a percent discount off gross charges, 2) as a per diem, and 3) based on DRG. How should my hospital display these payer-specific negotiated charges?

For each third party payer with whom your hospital has negotiated charges, you should consult your contract and rate sheets to identify and collect the data elements that are required (as applicable) for display.

This simplified example demonstrates how a hospital might display its payer-specific negotiated charges for each of three categories: 1) as a discount off its gross charges, 2) as a per diem, and 3) as a DRG. The following assumptions apply:

- For sake of simplicity, the hospital provides only inpatient services and has contracts with three different payers that have only one plan each.
- With Payer 1, the hospital has negotiated a 50% discount off its gross charges for each individual item or service (in this example, a CT scan associated with a CPT or HCPCS billing code) found in its chargemaster.
- With Payer 2, the hospital has negotiated a daily service package rate for an inpatient stay (in this example, a per diem rate).
- With Payer 3, the hospital has negotiated a service package rate (in this example, a joint replacement surgery that is associated with a DRG billing code).

Hospital Price Transparency Frequently Asked Questions (FAQs)

Item/service description	Billing Code	Gross Charges	Payer 1 negotiated charge	Payer 2 negotiated charge	Payer 3 negotiated charge
CT scan	[if applicable, for example, CPT or HCPCS]	$250	$125	N/A	N/A
Hospital inpatient care – per diem (daily) rate	[if applicable]	N/A	N/A	$500	N/A
Joint replacement	[if applicable, for example, DRG]	N/A	N/A	N/A	$15,000

How should my hospital display charges for service packages that vary based on severity of illness?

Base rates for service packages are sometimes adjusted by a multiplier to address severity of illness (SOI) or adjustments for other factors. For example, a joint replacement may have a payer-specific negotiated base rate at $2,000 with multipliers for various SOIs: intermediate complexity at $3,000 ($2,000 x 1.5); high complexity at $4,000 ($2,000 x 2); or very high complexity at $5,000 ($2,000 x 2.5). The Hospital Price Transparency Final Rule does not limit hospitals from displaying additional clarifying information for patients, for example, providing a base rate for each severity level within a DRG or other clarifying information to patients related to how a service package base rate may change depending on severity of illness (SOI). Please refer to 84 FR 65547 and 65551 for further discussion on this topic.

Should Medicaid plan rates be considered part of the de-identified minimum charge and payer-specific charge if a state is a fully managed Medicaid state?

Hospitals are required to make public the payer-specific negotiated charges that they have negotiated with third party payers, including charges negotiated by third party payer managed care plans such as Medicare Advantage plans, Medicaid MCOs, and other Medicaid managed care plans. Therefore, a state's Medicaid managed care contracts may fall within this description, if such managed care contracts include rates negotiated with the hospital. Please refer to 84 FR 65551 where we finalized our definition of ''third party payer'' as an entity that, by statute, contract, or agreement, is legally responsible for payment of a claim for a healthcare item or service.

Hospital Price Transparency Frequently Asked Questions (FAQs)

We believe displaying payer-specific negotiated rates publicly would violate the confidentiality clause of the hospital's contract with our third-party payers. Has CMS addressed this issue?

We recommend that hospital use the time before 1/1/2021 to review their contracts with third party payers and revise as they believe may be necessary to ensure hospital compliance with the Hospital Price Transparency Final Rule. Even if a contract between a hospital and a payer contained a provision prohibiting the public disclosure of its terms, it is our understanding that such contracts typically include exceptions where a particular disclosure is required by Federal law. Please refer to 84 FR 65544.

Can you give examples of how to determine the de-identified minimum and maximum negotiated charges for an item or service?

Once your hospital has listed each item and service it provides, along with the corresponding payer-specific negotiated charges the hospital has established for each one, you must identify the minimum and maximum amount. The following illustrations provide simple examples of how a hospital can determine the de-identified minimum and maximum negotiated charges for each item or service across all their payers.

Example 1: A hospital negotiates the following payer-specific charges with three payers for an individual item or service, for example, an imaging test identified by billing code '12345'.

Item/service description	Billing Code	Payer 1 negotiated charge	Payer 2 negotiated charge	Payer 3 negotiated charge	De-identified minimum negotiated charge	De-identified maximum negotiated charge
Imaging test	12345	$125	$300	$550	$125	$550

Example 2: A hospital negotiates the following payer-specific charges with three payers for two different service packages. The hospital has negotiated a payer-specific charge with Payer 1 for a procedure based on an APR-DRG. With Payers 2 and 3, the hospital has negotiated a payer-specific charge based on the number of days the patient spends in the hospital, that is, a *per diem* charge.

Item/service description	Billing Code	Payer 1 negotiated charge	Payer 2 negotiated charge	Payer 3 negotiated charge	De-identified minimum negotiated charge	De-identified minimum negotiated charge
Procedure	999	$1250	N/A	N/A	$1250	$1250
Per diem	xxx	N/A	$500	$450	$450	$500

Hospital Price Transparency Frequently Asked Questions (FAQs)

What are the similarities and differences of the requirements for the two ways that each hospital must make public a list of the hospital's standard charges for items and services it provides?[1]

	Comprehensive Machine-readable File	Consumer-friendly display of Shoppable Services[2]
General requirement	Single comprehensive machine-readable file containing a list of standard charges, as applicable, for all items and services.	Some standard charge information, as applicable, for at least 300 shoppable services including 70 CMS-specified services presented in a consumer-friendly manner[3]. The primary shoppable service must be grouped with any ancillary services the hospital customarily provides as part of or in conjunction with the primary service.
Standard Charges	• Gross charge • Discounted cash price • Payer-specific negotiated charges • De-identified minimum negotiated charge • De-identified maximum negotiated charge	• Discounted cash price (or gross charge, where the hospital has not established a discounted cash price) • Payer-specific negotiated charges • De-identified minimum negotiated charge • De-identified maximum negotiated charge

[1] A complete overview of requirements can be found at Subpart B-Public Disclosure Requirements.

[2] A hospital is deemed by CMS to meet the requirements of this section if the hospital maintains an Internet-based price estimator tool which meets the following requirements:

- Provides estimates for as many of the 70 CMS-specified shoppable services that are provided by the hospital, and as many additional hospital-selected shoppable services as is necessary for a combined total of at least 300 shoppable services.
- Allows healthcare consumers to, at the time they use the tool, obtain an estimate of the amount they will be obligated to pay the hospital for the shoppable service.
- Is prominently displayed on the hospital's website and accessible to the public without charge and without having to register or establish a user account or password.

[3] If a hospital does not provide 300 shoppable services, the hospital must make public its standard charges for as many shoppable services as it provides.

Hospital Price Transparency Frequently Asked Questions (FAQs)

	Comprehensive Machine-readable File	Consumer-friendly display of Shoppable Services[2]
Description of item or service and billing codes	A description of each item or service along with, as applicable, any code used by the hospital for purposes of accounting or billing for the item or service.	A plain-language description of each shoppable service along with, as applicable, any primary code used by the hospital for purposes of accounting or billing for the shoppable service.
Service not offered by hospital	No requirement	Use an indicator when one or more of the CMS-specified shoppable services are not offered by the hospital (for example, N/A).
Format	A single digital file that is machine-readable	No requirement
Naming Convention	Must adhere to the CMS naming convention: <ein>_<hospital-name>_standard charges.[json|xml|csv]	No requirement
Location of information	Displayed prominently on a publicly-available website and in a prominent manner that clearly identifies the hospital location with which the information is associated.	Displayed prominently on a publicly-available website and in a prominent manner that clearly identifies the hospital location with which the information is associated.
Access to information	Must be free of charge and may not require a log-in or password, other barriers, and/or the submission of any personal identifying information (PII).	Must be free of charge and may not require a log-in or password, other barriers, and/or the submission of any personal identifying information (PII).
Search Capability	Digitally searchable	Searchable by service description, billing code, and payer
Updates	Annually – with date of last update clearly indicated	Annually – with date of last update clearly indicated

Machine-Readable File

What is a 'machine-readable' file format?

A machine-readable file format is a digital representation of data or information in a file that can be imported or read into a computer system for further processing. Examples of this format include, but are not limited to, .XML, .JSON, and .CSV formats. Please refer to 45 CFR § 180.20.

Hospital Price Transparency Frequently Asked Questions (FAQs)

Must a hospital use a specific naming convention for the comprehensive machine-readable file? If so, what is the CMS-specified naming convention?

Yes. Hospitals must use the following naming convention specified by CMS for its comprehensive machine-readable file: <ein>_<hospital-name>_standardcharges.[json|xml|csv]. Please refer to 45 CFR §180.50.

Consumer-friendly Display of Shoppable Services

What is a shoppable service? Are medications considered shoppable services?

A shoppable service means a service that can be scheduled by a healthcare consumer in advance. Procedures such as joint replacements and services such as physical therapy are examples of shoppable services. Hospital administration of a medication could be considered a shoppable service if it can be scheduled in advance. Examples of administration of a medication that could be considered a shoppable service are the administration of flu shots or medication infusions for chronic conditions. The definition of 'shoppable service' can be found at 45 CFR §180.20.

What if a hospital does not provide one or more of the 70 CMS-specified shoppable services or provides less than 300 shoppable services in total? How can requirements of this regulation be met?

If a hospital does not provide one or more of the 70 CMS-specified shoppable services, the hospital must select additional shoppable services such that the total number of shoppable services is at least 300. If a hospital does not provide 300 shoppable services, the hospital must list as many shoppable services as they provide. The hospital must clearly indicate any CMS-specified shoppable service that it does not provide. The hospital may use "N/A" for the corresponding charge or use another appropriate indicator to communicate to the public that the shoppable service is not provided by the hospital. Please refer to 84 FR 65569 and 65574 for further discussion.

What is an 'ancillary item and service'?

Ancillary services are any item or service a hospital customarily provides as part of or in conjunction with a shoppable primary service and may include laboratory, radiology, drugs, delivery room (including maternity labor room), operating room (including post-anesthesia and postoperative recovery rooms), therapy services (physical, speech, occupational), hospital fees, room and board charges, and charges for employed professional services. Ancillary services may also include other special items and services for which charges are customarily made in addition to a routine service charge. For example, an outpatient procedure may include many

services that are provided by the hospital, for example, local and/or global anesthesia, services of employed professionals, supplies, facility and/or ancillary facility fees, imaging services, lab services and pre- and post-op follow up. To the extent that a hospital customarily provides (and bills for) such ancillary services as a part of or in conjunction with the primary service, the hospital should group the ancillary service charges along with the other standard charges that are displayed for the shoppable service. The definition of ancillary service can be found at 45 CFR §180.20 and further discussion of ancillary services can be found at 84 FR 65564.

How should a hospital display charges for a shoppable service in a consumer-friendly manner when the hospital offers it as a service package or when the hospital already includes all ancillary services as part of the service package charge?

To the extent that the hospital includes in its public display a shoppable service that it commonly provides as a service package, the hospital must display the charge the hospital has established for the service package as a whole. In other words, if the hospital has established a standard charge for the service package, the hospital must display that standard charge as opposed to displaying a manufactured charge for each of the individual items and services that make up the service package. For example, when displaying the charge for a shoppable service identified by a DRG, the hospital would display the payer-specific negotiated charge (the "base rate") negotiated with a third party payer for the DRG. To be consumer friendly, the hospital may elect to communicate what individual items and services are included in the standard charge for the service package, but this is not required under the Hospital Price Transparency Final Rule. However, the rule does require hospitals to list any additional ancillary services the hospital customarily provides with the shoppable service. In other words, if there are any items and services that are not already included in the service package but that would be customarily provided by the hospital in conjunction with the service package, the hospital must provide a description of the ancillary service along with its standard charge(s) and other required data elements, as applicable.

Can a price estimator tool be used to meet the requirement to display shoppable services in a consumer-friendly format? If yes, what requirements must the price estimator tool meet?

Yes. In the Hospital Price Transparency Final Rule, we stated that we had been persuaded by commenters' suggestions that hospitals offering online price estimator tools that provide real-time individualized out-of-pocket cost estimates should receive consideration. Although we recognize that some hospital price estimator tools may not display consumer-friendly standard charge information in the precise ways we are requiring under the rule, they do

appear to accomplish the goal and intent of ensuring such information is available in a consumer-friendly manner by allowing individuals to directly determine their specific out-of-pocket costs in advance of committing to a hospital service. We emphasize, however, that hospitals must still publish their standard charges for the items and services they provide in a comprehensive machine-readable file (refer to 45 CFR §180.50). In other words, offering a price estimator tool can satisfy the requirement to post shoppable service information in a consumer-friendly format but does not satisfy the requirement to display hospital standard charges in a comprehensive machine-readable file.

Further, if a hospital chooses to exercise this option, the hospital Internet-based price estimator tool must meet the following criteria to be deemed in compliance:

- Provide estimates for as many of the 70 CMS-specified shoppable services that are provided by the hospital, and as many additional hospital-selected shoppable services as is necessary for a combined total of at least 300 shoppable services.
- Allow healthcare consumers to, at the time they use the tool, obtain an estimate of the amount they will be obligated to pay the hospital for the shoppable service.
- Is prominently displayed on the hospital's website and accessible to the public without charge and without having to register or establish a user account or password.

Please refer to 84 FR 65577 for further discussion on this topic and to 45 CFR §180.60(a)(2) for the requirements.

Does CMS have an example of disclaimer language that a hospital could use on its price estimator tool?

No. Each hospital is unique and serves a unique patient population. We encourage, but do not require, hospitals to provide disclaimers as applicable and appropriate in their price estimator tools, including disclaimers acknowledging the limitation of the presented standard charge information and advising the user to consult, as applicable, with his or her health insurer to confirm individual payment responsibilities and remaining deductible balances. Similarly, we encourage, but do not require, that hospital standard charge information include the following:

- Notification of the availability of financial aid, multiple procedure discounts, payment plans, and assistance in enrolling for Medicaid or a state program.
- An indicator for the quality of care in the healthcare setting.
- Making the standard charge information available in languages other than English, such as Spanish and other languages that would meet the needs of the communities and populations the hospital serves.

We discussed the flexibility to provide disclaimers in hospital price estimator tools at 84 FR 65578-65579.

Hospital Price Transparency Frequently Asked Questions (FAQs)

Can CMS provide a list of internet-based price estimator tool vendors?

No, we do not have an available list of vendors who provide price estimator tool application software. Offering such tools is one way a hospital can choose to comply with requirements for displaying charges for shoppable services in a consumer-friendly manner, but this method of compliance is optional under the Hospital Price Transparency Final Rule.

Can hospitals provide additional consumer-friendly resources?

Yes. Hospitals are encouraged to embrace a patient-centered approach to care in all forms, including providing consumer-friendly resources related to cost of care that will empower patients with pricing information to help them make healthcare decisions that work best for them.

Do contracts with non-payer companies, i.e. local employers for drug screening, need to be included in the list of payer-specific negotiated rates?

The term "payer-specific negotiated charge" is defined as the charge that the hospital has negotiated with a third party payer for an item or service. The term ''third party payer'' is defined at as an entity that is, by statute, contract, or agreement, legally responsible for payment of a claim for a healthcare item or service. Therefore, if a local company meets the definition of "third party payer" and your hospital has negotiated a payer-specific negotiated charge for an item or service with that company, then you must list the payer-specific negotiated charge for the item or service, along with the other required data elements, as applicable. These definitions can be found at 45 CFR § 180.20.

Monitoring and Penalties for Noncompliance

What happens if a hospital does not comply?

CMS has the authority to monitor hospital compliance with section 2718(e) of the Public Health Service Act, by evaluating complaints made by individuals or entities to CMS, reviewing individuals' or entities' analysis of noncompliance, and auditing hospitals' websites. Should CMS conclude a hospital is noncompliant with one or more of the requirements to make public standard charges, CMS may request a corrective action plan (CAP) from the hospital if its noncompliance constitutes a material violation of one or more requirements, and may assess on a hospital a civil monetary penalty not in excess of $300 per day, and publicize the penalty on a CMS website, should the hospital fail to respond to CMS' request to submit, or comply with the requirements, of a CAP. Please refer to Subpart C- Monitoring and Penalties for Noncompliance.

Hospital Price Transparency Frequently Asked Questions (FAQs)

Appeals of Civil Monetary Penalties

Can a hospital appeal a civil monetary penalty related to hospital price transparency?

Yes. A hospital upon which CMS has imposed a penalty may request a hearing before an Administrative Law Judge (ALJ) in accordance with 45 CFR part 180, subpart D. In deciding whether the amount of a civil monetary penalty is reasonable, the ALJ may only consider evidence of record related to the following: hospital's posting(s) of standard charges, if available; material the hospital timely previously submitted to CMS (including with respect to corrective actions and corrective action plans), and material CMS used to monitor and assess the hospital's compliance.

How long does a hospital have to request a hearing?

A hospital must request a hearing within 30 calendar days after the date of issuance of the notice of imposition of a civil monetary penalty. The "date of issuance" is no more than five (5) days after the filing date postmarked by the U.S. Postal Service, or deposited with a carrier for commercial delivery, unless there is a showing that the document was received earlier. Please refer to 45 CFR §§150.401, 150.405(a).

Can a hospital request an extension of time for filing a request for a hearing?

A request for an extension of time must be made promptly by written motion. The ALJ may extend the time for filing a request for hearing only if the ALJ finds that the hospital was prevented by events or circumstances beyond its control from filing its request within 30 calendar days after the date of issuance of the notice of imposition of a civil monetary penalty. Please refer to 45 CFR § 150.405(b).

What happens if a hospital does not request a hearing according within the required timeframe?

If a hospital does not request a hearing within 30 calendar days of the issuance of the notice of imposition of a CMP, CMS may impose the CMP indicated in such notice and may impose additional penalties pursuant to continuing violations according to new 45 CFR 180.90(f) without right of appeal. According to 45 CFR §180.110(b), the hospital has no right to appeal a penalty with respect to which it has not requested a hearing in accordance with 45 CFR §150.405, unless the hospital can show good cause, as determined at §150.405(b), for failing to timely exercise its right to a hearing.

Hospital Price Transparency Frequently Asked Questions (FAQs)

8 Steps to a Machine-Readable File of All Items & Services

By January 1, 2021, hospitals are required to be in compliance with the hospital price transparency requirements set forth in the CY 2020 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates: Price Transparency Requirements for Hospitals to Make Standard Charges Public (CMS-1717-F2),[1] herein referred to as the "Hospital Price Transparency Final Rule". This Rule implements Section 2718(e) of the Public Health Service Act and requires most hospitals to make public their standard charges (as defined at 45 CFR § 180.20) online in two ways:

1. A comprehensive machine-readable file that includes the following standard charges for all hospital items and services: gross charges, discounted cash prices, payer-specific negotiated charges, and de-identified minimum and maximum negotiated charges; and
2. A consumer-friendly display that includes the following standard charges for at least 300 'shoppable' services (or as many as the hospital provides if less than 300) that are grouped with charges for ancillary services that are customarily provided by the hospital: discounted cash prices, payer-specific negotiated charges, and de-identified minimum and maximum negotiated charges.

This document addresses only the requirements for the comprehensive machine-readable file as specified at 45 CFR § 180.50. Federally owned or operated hospitals are deemed by CMS to be in compliance with the requirements for making public standard charges.[2] For additional information on the consumer-friendly display of shoppable services, refer to 10 Steps to a Consumer-Friendly Display of Shoppable Services.[3]

Step 1: Identify each hospital location that must make available its list of standard charges[4]

The Hospital Price Transparency Final Rule established that each hospital location operating under a single hospital license (or approval) that has a different set of standard charges than the other location(s) operating under the same hospital license (or approval) must separately make public the standard charges applicable to that location. You do not need to post separate files for each clinic operating under a consolidated state hospital license, if the file includes charges for all items and services offered at the single campus location (84 FR 65564). All files must clearly identify the hospital location with which the information is associated.[5] If multiple locations have the same set of standard charges, you should make sure that is clearly indicated in the file.

[1] 84 FR 65524
[2] Federally owned or operated hospitals include but are not limited to: Federally owned hospital facilities, including facilities operated by the U.S. Department of Veterans Affairs and Military Treatment Facilities operated by the U.S. Department of Defense and hospitals operated by an Indian Health Program as defined in section 4(12) of the Indian Health Care Improvement Act.
[3] url for this document once available.
[4] Refer to 45 CFR §180.50(a)(2).
[5] Refer to 45 CFR §180.50(d)(2).

Step 2: Identify all items and services for which your hospital has established a standard charge [6]

In the comprehensive machine-readable file, you must include all items and services for which your hospital has established a standard charge.

Items and services[7] are defined in the Hospital Price Transparency Final Rule as all items and services, including individual items and services and service packages, that could be provided by a hospital to a patient in connection with an inpatient admission or an outpatient department visit for which the hospital has established a standard charge. Examples of hospital items and services include supplies and procedures, room and board, use of the facility and other items (generally described as facility fees, services of employed physicians and non-physician practitioners (generally reflected as professional charges)), and any other items or services for which a hospital has established a standard charge.

Your hospital may have established standard charges for items and services that are time-based or unit-based or have a service package that has been negotiated with a third party payer to include treatment for complications or follow up care. These are included in the definition of hospital items and services. Refer to the examples below for further information.

- **Time-based services**: For example, you may have established a standard charge for the first hour spent in the operating room (OR) and a different standard charge for each hour after that. In this example, the item or service (e.g. the OR time) could be described as "OR time- first hour" and "OR time – each additional hour" on two rows, each associated with its relevant standard charge (84 FR 65557).
- **Unit-based charges**: Medications are an example of an item or service for which your hospital may have established unit-based standard charges. For example, you may have established a standard charge for each 5mL of phenylephrine HCL 10% eye drops. In this example, the item or service (e.g. the eye drops) could be described in one row as "Phenylephrine HCL 10% - 5mL" along with the relevant standard charge.
- **Service Packages:** Some hospitals have established standard charges for service packages. The definition of items and services gives your hospital the flexibility to display the standard charges for service packages in a way that is unique to each of your payer-specific contracts (84 FR 65535). For example, your hospital may have negotiated with a third party payer on a per diem basis or for a service package identified by a DRG code. When listing service packages and their associated standard charges, your hospital is not required to list each and every individual item or service that *could* be included as part of the service package. Instead, the hospital should list the payer-specific negotiated charge (e.g. the "base rate") and associated service package as a single line-item on its machine-readable file (84 FR 65559). A service package described as "hip or major joint replacement" would be listed with its payer-specific negotiated charge on one row of the comprehensive machine-readable file. Please note that even though you are not required to list each and every individual item or service that *could* be included as part of the service package, such items and services must be separately listed when your hospital has established a standard charge for them individually.

[6] Refer to 45 CFR §180.50(a).
[7] Refer to 45 CFR §180.20.

The Hospital Price Transparency Final Rule defines five types of standard charges[8] you must make public in the machine-readable file for each of the items and services, as applicable. The five types of standard charges are:

- **Gross charge**: The charge for an individual item or service that is reflected on a hospital's chargemaster, absent any discounts.
- **Payer-specific negotiated charge**: The charge that a hospital has negotiated with a third party payer for an item or service. Each payer-specific charge must be clearly associated with the name of the third party payer.
    - Hospitals can consult their rate sheets or rate tables within which the payer-specific negotiated charges are often found. Such rate sheets typically contain a list of common billing codes for items and services provided by the hospital along with the associated payer-specific negotiated charge or rate (84 FR 65559).
- **De-identified minimum negotiated charge**: The lowest charge that a hospital has negotiated with all third-party payers for an item or service.
- **De-identified maximum negotiated charge:** The highest charge that a hospital has negotiated with all third-party payers for an item or service.
- **Discounted cash price**: The charge that applies to an individual who pays cash (or cash equivalent) for a hospital item or service.

Your hospital is not required to make public Medicare and Medicaid fee-for-service (FFS) reimbursement rates because such data is publicly available. However, nothing in the Hospital Price Transparency Final Rule limits your hospital's ability to include this information if you choose (84 FR 65558).

Step 3: Gather the required data elements for each item and service[9]

After you have a list of all items and services provided by the hospital for which the hospital has established a standard charge, you must gather and include the following common data elements, as applicable, for each item or service so that consumers can make comparisons across hospitals:

- **Standard Charges**: Gross charge, discounted cash price, payer-specific negotiated charges, de-identified minimum negotiated charge, de-identified maximum negotiated charge
- **Description of the item or service**: There is no requirement for the description in your machine-readable file to be in plain language; you may consider using the short description associated with corresponding billing codes, or the short description used in your hospital's chargemaster, or another type of description.
- **Common billing or accounting code(s)**: Include any code used by your hospital for purposes of accounting or billing for the item or service, including, but not limited to, the CPT code, the HCPCS code, the DRG, or other commonly used payer identifier.

[8] Refer to 45 CFR §180.20.
[9] Refer to 45 CFR §180.50(b)

8 Steps to a Machine-Readable File of All Items & Services

Step 4: Select your file format[10]

Once you have all the required information, you can determine the file format that works best for your hospital. This file format must be machine-readable.

Machine-readable file is defined by the Hospital Price Transparency Final Rule as: A digital representation of data or information in a file that can be imported or read into a computer system for further processing.[11] Examples of machine-readable formats include, but are not limited to, .XML, .JSON and .CSV formats.

Additionally, nothing in the Hospital Price Transparency Final Rule limits your hospital from providing additional information or details. For example, your hospital may wish to define elements in a data dictionary or provide more specificity in data file formats to make the file easier to use.

Step 5: Name your machine-readable file according to the CMS naming convention[12]

Hospitals must use a CMS-specified naming convention, which we believe will help stakeholders more easily locate your hospital's comprehensive machine-readable file. Your hospital must use the following naming convention for your comprehensive machine-readable file: <ein>_<hospital-name>_standardcharges.[json|xml|csv]

- <ein>: Your Hospital's Employer Identification Number
- <hospital-name>: Name of Your Hospital
- <standardcharges>: "standardcharges"
- [json|xml|csv]: Your chosen file format.

Step 6: Post your machine-readable file prominently on a publically available website[13]

You must post your hospital's machine-readable file of all items and services on a publicly available website, and the information displayed must clearly identify the hospital location with which the standard charges are associated.

Furthermore, the information must:

- Be free of charge
- Require no registration or user account or password
- Not request personally identifying information (PII).

[10] Refer to 45 CFR §180.50(c).
[11] Refer to 45 CFR §180.20.
[12] Refer to § 180.50(d)(5).
[13] Refer to § 180.50(d).

8 Steps to a Machine-Readable File of All Items & Services

Step 7: Update your comprehensive machine-readable file annually[14]

Your hospital must update its standard charge information for its comprehensive machine-readable file at least once annually and clearly indicate the date that your hospital most recently updated the information.

Step 8: Double check that you've met the requirements.

CMS developed a Hospital Price Transparency Checklist[15] to help you double check all the requirements. This should not be interpreted as a substitute for reading and meeting the requirements of the Hospital Price Transparency Final Rule. This brief checklist along with this document are meant to assist your review of the comprehensive machine-readable file you prepare to make public the standard charges and associated data elements.

[14] Refer to Refer to § 180.50(e)(5).

[15] Url for External Checklist (this is currently being drafted). Depending on length, we could also embed it within the document itself.

10 Steps to Making Public Standard Charges for Shoppable Services

On January 1, 2021, hospitals are required to be in compliance with the hospital price transparency requirements set forth in the CY 2020 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates: Price Transparency Requirements for Hospitals to Make Standard Charges Public (CMS-1717-F2),[1] herein referred to as the "Hospital Price Transparency Final Rule". This final rule implements Section 2718(e) of the Public Health Service Act and requires hospitals to make public their standard charges online in two ways:

1. A comprehensive machine-readable file that includes all standard charges for all hospital items and services; and
2. A consumer-friendly display of standard charges for at least 300 'shoppable' services that are grouped with charges for ancillary services that are customarily provided by the hospital.

This document addresses only the requirements for displaying shoppable services in a consumer-friendly manner as specified at 45 CFR §180.60. For additional information on the comprehensive machine-readable file, refer to the 8 Steps to a Machine-readable File of All Items & Services.[2]

Does your hospital already have an online Price Estimator Tool?
Read this important information before starting.

As an alternative to making public your standard charges for shoppable services in accordance with 45 CFR § 180.60(a)(1) (as outlined in the steps below), you may instead offer an internet-based price estimator tool as described in 45 CFR § 180.60(a)(2). If your hospital chooses this alternative, the price estimator tool must:[3]

- Provide estimates for as many of the 70 CMS-specified shoppable services that are provided by the hospital, and as many additional hospital-selected shoppable services as is necessary for a combined total of at least 300 shoppable services.
- Allow healthcare consumers to, at the time they use the tool, obtain an estimate of the amount they will be obligated to pay the hospital for the shoppable service.
- Be prominently displayed on the hospital's website and accessible to the public without charge and without having to register or establish a user account or password.

Please note that **we encourage**, **but do not require**, that your hospital provide additional information to maximize the consumer-friendly nature of your price estimator tool (84 FR 65579), including, for example:

- Containing any appropriate disclaimers that you believe are necessary and would be helpful, such as one that acknowledges the limitation of the estimation and advises the user to consult with his or her health insurer to confirm individual payment responsibilities and remaining deductible balances.
- Notifying consumers if financial aid, payment plans, and assistance in enrolling for Medicaid or a state program are available.
- Presenting quality of care indicators, if available, to help consumers make value-based decisions.
- Displaying information in languages other than English to meet the needs of the communities and populations your hospital serves
- Clearly communicating the location at which the shoppable service is provided if your hospital has more than one location, and whether the estimate is for an inpatient or outpatient service.

[1] 84 FR 65524
[2] url for this document once available.
[3] Refer to 45 CFR §180.60(a)(2).

10 Steps to Making Public Standard Charges for Shoppable Services

Step 1: Understand the definitions applicable to Shoppable Services.[4]

In accordance with Hospital Price Transparency Final Rule, your hospital must post a consumer-friendly display of standard charges for at least 300 'shoppable' services, including corresponding ancillary services, if applicable, that are provided by the hospital. If a hospital does not provide 300 shoppable services, the hospital must make public the standard changes for as many shoppable services as it provides. In order to create this display, you should first understand how these terms are defined under the Hospital Price Transparency Final Rule.

- **Shoppable service**: A service that can be scheduled by a healthcare consumer in advance.
  - Such services are routinely provided in non-urgent situations that do not require immediate action or attention to the patient, thus allowing patients to price shop and schedule a service at a time that is convenient for them (84 FR 65564).
  - Examples of common shoppable services include imaging and laboratory services, medical and surgical procedures, and outpatient clinic visits (84 FR 65565).

- **Ancillary service**: Any item or service a hospital customarily provides as part of or in conjunction with a shoppable primary service.
  - Examples of ancillary services can include laboratory, radiology, drugs, delivery room (including maternity labor room), operating room (including post-anesthesia and postoperative recovery rooms), therapy services (physical, speech, occupational), hospital fees, room and board charges, and charges for employed professional services. Ancillary services may also include other special items and services for which charges are customarily made in addition to a routine service charge (84 FR 65564).

The Hospital Price Transparency Final Rule established definitions for the four types of standard charges your hospital is required to provide in your consumer-friendly display for each shoppable service, as applicable.

- **Discounted cash price**: the charge that applies to an individual who pays cash, or cash equivalent, for the shoppable service. If the hospital does not offer a discounted cash price for a shoppable service, the hospital must list its undiscounted gross charge for the shoppable service (and any corresponding ancillary services).
- **Payer-specific negotiated charge**: the charge that a hospital has negotiated with a third party payer for the shoppable service. Each payer-specific charge must be clearly associated with the name of the third party payer.
  - Hospitals can consult their rate sheets or rate tables within which the payer-specific negotiated charges are often found. Such rate sheets typically contain a list of common billing codes for items and services provided by the hospital along with the associated payer-specific negotiated charge or rate (84 FR 65559).
- **De-identified minimum negotiated charge**: the lowest charge that a hospital has negotiated with all third-party payers for the shoppable service.

[4] Refer to 45 CFR §180.20 for definitions.

- **De-identified maximum negotiated charge:** the highest charge that a hospital has negotiated with all third-party payers for the shoppable service.

Your hospital is not required to make public Medicare and Medicaid fee-for-service (FFS) reimbursement rates because such data is publicly available. However, nothing in the Hospital Price Transparency Final Rule limits your hospital's ability to include this information if you choose (84 FR 65552).

Step 2: Assess if you provide the 70 CMS-specified shoppable services[5]

Your hospital must make public four types of standard charges (discussed in Step 1), as applicable, for as many of the 70 CMS-specified shoppable services that are provided by your hospital, and as many additional hospital-selected shoppable services as is necessary for a combined total of at least 300 shoppable services. If a hospital does not provide 300 shoppable services, the hospital must make public the standard charges for as many shoppable services as it provides. The 70 CMS-specified shoppable services were finalized through the notice and comment rulemaking process and are based on an analysis of State price transparency requirements, a review of services that frequently appear in web-based price transparency tools, an analysis of high volume services and high cost procedures derived from External Data Gathering Environment (EDGE) server data[6], and a review by CMS medical officers (84 FR 65568).

You are permitted to make appropriate substitutions and cross-walks of the indicated codes as necessary in order to display the standard charges you have established, as applicable, for the 70 CMS-specified shoppable services (84 FR 65571). If your hospital does not provide one or more of the CMS-specified shoppable services, you must either indicate "N/A" for the corresponding charge or otherwise make it clear that the shoppable service is not provided by your hospital (84 FR 65574).

The 70 CMS-specified shoppable services are listed below and in Table 3 of the Hospital Price Transparency Final Rule (84 FR 65571).

FINAL LIST OF 70 CMS-SPECIFIED SHOPPABLE SERVICES

Specified Shoppable Service	2020 CPT/HCPCS Primary Code
Evaluation & Management Services	**2020 CPT/HCPCS Primary Code**
Psychotherapy, 30 min	90832
Psychotherapy, 45 min	90834
Psychotherapy, 60 min	90837
Family psychotherapy, not including patient, 50 min	90846
Family psychotherapy, including patient, 50 min	90847

[5] Refer to 84 FR 65571.

[6] Consistent with 45 CFR 153.700, in States where HHS is operating the risk adjustment program, issuers must submit enrollment, claims, and encounter data for risk adjustment-covered plans in the individual and small group markets through the External Data Gathering Environment (EDGE) servers. Issuers upload enrollee, pharmaceutical claim, medical claim, and supplemental diagnosis information from their systems to an issuer-owned and controlled EDGE server.

10 Steps to Making Public Standard Charges for Shoppable Services

Specified Shoppable Service	2020 CPT/HCPCS Primary Code
Group psychotherapy	90853
New patient office or other outpatient visit, typically 30 min	99203
New patient office of other outpatient visit, typically 45 min	99204
New patient office of other outpatient visit, typically 60 min	99205
Patient office consultation, typically 40 min	99243
Patient office consultation, typically 60 min	99244
Initial new patient preventive medicine evaluation (18-39 years)	99385
Initial new patient preventive medicine evaluation (40-64 years)	99386
Laboratory & Pathology Services	**2020 CPT/HCPCS Primary Code**
Basic metabolic panel	80048
Blood test, comprehensive group of blood chemicals	80053
Obstetric blood test panel	80055
Blood test, lipids (cholesterol and triglycerides)	80061
Kidney function panel test	80069
Liver function blood test panel	80076
Manual urinalysis test with examination using microscope	81000 or 81001
Automated urinalysis test	81002 or 81003
PSA (prostate specific antigen)	84153-84154
Blood test, thyroid stimulating hormone (TSH)	84443
Complete blood cell count, with differential white blood cells, automated	85025
Complete blood count, automated	85027
Blood test, clotting time	85610
Coagulation assessment blood test	85730
Radiology Services	**2020 CPT/HCPCS Primary Code**
CT scan, head or brain, without contrast	70450
MRI scan of brain before and after contrast	70553
X-Ray, lower back, minimum four views	72110
MRI scan of lower spinal canal	72148
CT scan, pelvis, with contrast	72193
MRI scan of leg joint	73721
CT scan of abdomen and pelvis with contrast	74177
Ultrasound of abdomen	76700
Abdominal ultrasound of pregnant uterus (greater or equal to 14 weeks 0 days) single or first fetus	76805
Ultrasound pelvis through vagina	76830
Mammography of one breast	77065

10 Steps to Making Public Standard Charges for Shoppable Services

Specified Shoppable Service	2020 CPT/HCPCS Primary Code
Mammography of both breasts	77066
Mammography, screening, bilateral	77067
Medicine and Surgery Services	**2020 CPT/HCPCS/DRG Primary Code**
Cardiac valve and other major cardiothoracic procedures with cardiac catheterization with major complications or comorbidities	216
Spinal fusion except cervical without major comorbid conditions or complications (MCC)	460
Major joint replacement or reattachment of lower extremity without major comorbid conditions or complications (MCC).	470
Cervical spinal fusion without comorbid conditions (CC) or major comorbid conditions or complications (MCC).	473
Uterine and adnexa procedures for non-malignancy without comorbid conditions (CC) or major comorbid conditions or complications (MCC)	743
Removal of 1 or more breast growth, open procedure	19120
Shaving of shoulder bone using an endoscope	29826
Removal of one knee cartilage using an endoscope	29881
Removal of tonsils and adenoid glands patient younger than age 12	42820
Diagnostic examination of esophagus, stomach, and/or upper small bowel using an endoscope	43235
Biopsy of the esophagus, stomach, and/or upper small bowel using an endoscope	43239
Diagnostic examination of large bowel using an endoscope	45378
Biopsy of large bowel using an endoscope	45380
Removal of polyps or growths of large bowel using an endoscope	45385
Ultrasound examination of lower large bowel using an endoscope	45391
Removal of gallbladder using an endoscope	47562
Repair of groin hernia patient age 5 years or older	49505
Biopsy of prostate gland	55700
Surgical removal of prostate and surrounding lymph nodes using an endoscope	55866
Routine obstetric care for vaginal delivery, including pre-and post-delivery care	59400
Routine obstetric care for cesarean delivery, including pre-and post-delivery care	59510
Routine obstetric care for vaginal delivery after prior cesarean delivery including pre-and post-delivery care	59610
Injection of substance into spinal canal of lower back or sacrum using imaging guidance	62322-62323

Specified Shoppable Service	2020 CPT/HCPCS Primary Code
Injections of anesthetic and/or steroid drug into lower or sacral spine nerve root using imaging guidance	64483
Removal of recurring cataract in lens capsule using laser	66821
Removal of cataract with insertion of lens	66984
Electrocardiogram, routine, with interpretation and report	93000
Insertion of catheter into left heart for diagnosis	93452
Sleep study	95810
Physical therapy, therapeutic exercise	97110

Step 3: Select additional shoppable services to reach a total of 300[7]

In addition to listing as many of the 70 CMS-specified shoppable services as your hospital provides, you must select and list additional shoppable services to reach a combined total of at least 300 shoppable services.

- In most cases, this means your hospital must select an additional 230 shoppable service for display.
- If your hospital does not offer one or more of the 70 CMS-specified shoppable services, you must select and list additional shoppable services (that is, more than 230) for a combined total of at least 300.
- If your hospital does not provide 300 shoppable services in total, you must list as many shoppable services as your hospital provides.

When selecting a shoppable service, you must consider the rate at which your hospital provides and bills for that shoppable service. In other words, the shoppable services your hospital selects for display should be commonly provided to your hospital's patient population (84 FR 65571).

A service is 'shoppable' if it's a service that can be scheduled in advance, not one that is *always* scheduled in advance. For example, certain imaging or laboratory tests might be performed in an emergent setting and not be shoppable at that time, but could be shoppable under a different circumstance. Accordingly, a hospital could include a service that is only sometimes shoppable in its list of shoppable services.

Step 4: Determine the ancillary services customarily provided with each shoppable service[8]

After identifying your hospital's 300 shoppable services, you must identify and group the ancillary services your hospital customarily provides as part of, or in conjunction with, each shoppable service. Because hospitals differ in how ancillary services are provided and charged, only you can determine which items and services your hospital customarily provides as ancillary services in conjunction with the primary shoppable service and how best to communicate and display your standard charges in a

[7] Refer to 45 CFR 180.60(a)(1).
[8] Refer to 84 FR 65564 and 65565.

consumer-friendly manner. As noted in the Hospital Price Transparency Final Rule, not all shoppable services have associated ancillary items and services.

Though not required, we strongly encourage and recommend, for the sake of consumer-friendly presentation, that you consider indicating any additional ancillary services that are not provided by your hospital but that you know the patient is likely to experience as part of the primary shoppable service, and to indicate that such services may be billed separately by other entities involved in the patient's care. We believe such disclosures may be helpful to enable consumers to identify when services of physicians or non-physician practitioners (who are not employed by the hospital) may be separately charged (84 FR 65535).

The examples below demonstrate different scenarios and how a hospital could present its shoppable service standard charge information (grouped along with standard charges for ancillary services, as applicable). However, the following format is not required. Your hospital has flexibility to choose an appropriate format for presenting your hospital's shoppable service standard charge information in a consumer-friendly manner[9].

Example 1: No Ancillary Services

Not all shoppable services are associated with additional ancillary services. This example of an office visit illustrates this scenario.

Shoppable Service	Billing Code	[Standard Charge for Plan X]
New patient outpatient visit, 30 min	99203	$54

Example 2: Ancillary Services Provided as Part of a Primary Shoppable Service

Some shoppable services have ancillary services which are included as part of the shoppable service package. In this example, the hospital and payer have negotiated a standard charge for colonoscopies as a service package that includes all ancillary services.

Shoppable Service	Ancillary Services	Billing Code	[Standard Charge for Plan X]
Colonoscopy		45378	$2,500
	Physician services	N/A	No additional charge
	Pathology/interpretation of results	N/A	No additional charge
	Anesthesia (medication only)	N/A	No additional charge
	Facility fee	N/A	No additional charge

Example 3: Ancillary Services Provided in Conjunction with a Primary Shoppable Service

Some shoppable services have ancillary services that are customarily provided by the hospital in conjunction with the primary shoppable service. In contrast to Example 2, the hospital and payer have

[9] These examples are intended to highlight different aspects of the requirements and do not include all required data elements that must be displayed.

not negotiated a standard charge for colonoscopies as a shoppable service, and each ancillary service has a separate standard charge.

Shoppable Service	Ancillary Services	Billing Code	[Standard Charge for Plan Y]
Colonoscopy		45378	$1,500
	Physician services	[code(s)]	$822
	Pathology/interpretation of results	[code(s)]	$75
	Anesthesia (medication only)	[code(s)]	$122
	Facility fee	[code(s)]	$500

Example 4: Ancillary Services Furnished by Other Providers

Your hospital is not required to indicate ancillary services that are typically furnished by other providers involved in the primary shoppable service. However, for sake of consumer-friendly presentation, we strongly encourage and recommend that your hospital indicate all ancillary services the customer may expect to receive in conjunction with the primary shoppable service, regardless of whether the hospital or another provider provides those ancillary services, and to indicate they may be billed separately by other entities involved in their care for such ancillary services (84 FR 65566).

Shoppable Service	Ancillary Services	CPT/ HCPCS Code	[Standard Charge for Plan X]
Colonoscopy		45378	$750
	Anesthesia (medication only)	[code(s)]	$122
	Physician services	Not provided by hospital (may be billed separately)	
	Pathology/interpretation of results		
	Facility fee	[code(s)]	$500

Step 5: Gather the required data elements for each shoppable service[10]

After you have the list of shoppable services your hospital will be including in your consumer-friendly display, you must ensure that you have all the required data elements for each of these services. You will need to include the standard charges, as applicable, and other specific common data elements so that consumers can understand the hospital's standard charges and make comparisons across hospitals.

- **Standard Charges**: Discounted cash price, payer-specific negotiated charges, de-identified minimum negotiated charge, de-identified maximum negotiated charge

[10] Refer to 45 CFR §180.20 for definitions of standard charges and 45 CFR §180.60 for requirements of the consumer-friendly display.

- **Plain-Language Description**: Develop and display a plain-language description of each shoppable service. Your hospital is not required to use, but could consider consulting, the Federal plain language guidelines at https://www.plainlanguage.gov/guidelines/.
- **Not Offered Indicator**: Indicate when one or more of the CMS-specified shoppable services are not offered by your hospital.
- **Location**: Indicate at which location you provide the shoppable service and include whether the standard charges apply in the inpatient setting, the outpatient department setting, or both.
- **Shoppable Service Code(s)**: Include any primary code used by your hospital for purposes of accounting or billing for the shoppable service, including, but not limited to, the CPT code, the HCPCS code, the DRG, or other commonly used service billing code. If the same or similar shoppable service is paid as a service package by two different payers that use two different common billing codes (for example, an MS-DRG by Medicare versus an APR-DRG by another third-party payer), your hospital is permitted to make appropriate substitutions and cross-walks as necessary in order to display your standard charges for the shoppable services across all your third party payers.

Step 6: Decide how best to display shoppable services in a consumer-friendly manner

As there are a variety of consumer-friendly ways to display standard charges for shoppable services and because we did not want to restrict hospitals from innovating or from having to duplicate efforts, the Hospital Price Transparency Final Rule was not prescriptive regarding the format hospitals must use. Therefore, your hospital has flexibility to determine what format you use to display your shoppable services information in a manner that is consumer-friendly. For example, your hospital may choose to post online one file that displays the standard charges for each third party payer. Or your hospital may decide to make the information available to consumers online without the use of flat files. One example of how your hospital could choose to display shoppable services online using a flat file format is available in Table 2 of the Hospital Price Transparency Final Rule (84 FR 65567). We have not replicated it here, however, because we strongly encourage your hospital to innovate and select a consumer-friendly online format that best meets the needs of your patient population. Regardless of what format your hospital chooses, you should take care to ensure that all the required information is included and that the data is readily accessible to the public.

Step 7: Ensure your display of shoppable services is searchable[11]

In order for the information to be easily accessible, your hospital's standard charge data must be presented in format that is searchable by service description, billing code, and payer.

Step 8: Post your shoppable services prominently on a publically available website[12]

Your hospital must post its consumer-friendly display of shoppable services prominently on a publicly available website, and the information displayed must clearly identify the hospital location with which the standard charges are associated.

[11] Refer to §180.60(d)(3)(iv).
[12] Refer to § 180.60(d).

Furthermore, the information must:

- Be free of charge
- Require no registration or user account or password
- Not request personally identifying information (PII).

Finally, we expect that your hospital will post its information in a format accessible to people with disabilities or to otherwise ensure that individuals with disabilities can readily access your hospital's standard charge information, in accordance with any applicable federal or state laws (FR 84 65581).

Step 9: Update your consumer-friendly shoppable services display annually[13]

Your hospital must update its standard charge information for its consumer-friendly display at least once annually and clearly indicate the date that your hospital most recently updated the information.

Step 10: Double check that you've met the requirements.

CMS developed a Hospital Price Transparency Checklist[14] to help you double check all the requirements. This should not be interpreted as a substitute for reading and meeting the requirements of the Hospital Price Transparency Final Rule. This brief checklist along with this document are meant to assist your review of the consumer-friendly display of shoppable services as you prepare to make public the standard charges and associated data elements.

[13] Refer to Refer to § 180.60(e).

[14] Url for External Checklist (this is currently being drafted). Depending on length, we could also embed it within the document itself.

Hospital Price Transparency Requirements
Quick Reference Checklists

Overview

In addition to the **8-Step Guide to Making Public Standard Charges for All Items & Services** and the **10-Step Guide to Making Public Standard Charges for Shoppable Services**, these quick reference checklists are meant to assist your hospital's review of the Hospital Price Transparency Final Rule[i].

Quick Reference Checklists

Disclaimer

The information provided in the Quick Reference Checklist is only intended to be a general summary of regulations we promulgated at 45 CFR Part 180. We encourage all users to review those regulations in their entirety, as well as the CY 2020 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates: Price Transparency Requirements for Hospitals to Make Standard Charges Public (CMS-1717-F2).

Hospital Price Transparency Requirements
Quick Reference Checklists

Table 1: Is my hospital required to comply?[ii]

Question	Answer
Is your institution located in any state of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Northern Mariana Islands?	If YES – Continue to next question. If NO – STOP. Your institution does not fall under the definition of hospital and is not required to comply with the Hospital Price Transparency Final Rule.
Is your institution licensed as a hospital or approved as meeting the standards established for such licensing?	If YES – Continue to next question. If NO – STOP. Your institution does not fall under the definition of hospital and is not required to comply with the Hospital Price Transparency Final Rule.
Is your institution federally owned or operated?[iii] *This includes, but is not limited to: facilities operated by the U.S. Department of Veterans Affairs, Military Treatment Facilities operated by the U.S. Department of Defense, and hospitals operated by an Indian Health Program.*	If YES – STOP. Your institution has been deemed by CMS to be in compliance with the requirements of the Hospital Price Transparency Final Rule. If NO – Your institution **falls under** the definition of hospital and **must comply** with the Hospital Price Transparency Final Rule.

Table 2: Making Public Standard Charges for All Items & Services[iv]

	Machine Readable File
✓	**General**
	Has your hospital posted a file of all hospital standard charges for all items and services?
	Is the file specific to the hospital location operating under a single hospital license (or approval)? *Note: A separate file must be posted for each hospital if there are multiple hospitals operating under a single hospital license with different sets of standard charges.*
	Does the file clearly indicate the hospital location?
	Format
	Is the file a single digital file?
	Is the file in a machine-readable format (e.g., .XML, .JSON, .CSV)?
	Does the file meet the CMS-specified file naming convention, specifically: <ein>_<hospital-name>_standardcharges.[json|xml|csv]?

Hospital Price Transparency Requirements
Quick Reference Checklists

	Machine Readable File
	Data Elements[v] (as applicable)
	Does the file include all individual items and services (including service packages) provided by hospital?
	Does the file include a description for the items and services provided by the hospital?
	Does the file include the gross charge for the items and services provided by the hospital?
	Does the file include the payer-specific negotiated charges with name of the third party payer and plan clearly associated for the items and services provided by the hospital?
	Does the file include the de-identified minimum negotiated charge for the items and services provided by the hospital?
	Does the file include the de-identified maximum negotiated charge for the items and services provided by the hospital?
	Does the file include the discounted cash price for the items and services provided by the hospital?
	Does the file separately list the inpatient setting and outpatient department setting, as applicable, for the items and services provided by the hospital?
	Does the file include any code used by the hospital for purposes of accounting or billing for the items and services provided by the hospital?
	Accessibility
	Is the file posted on a publically available website in a prominent manner?
	Is the file information digitally searchable?
	Is the file available free of charge?
	Is the file accessible without having to register or establish a user account or password?
	Can the file be accessed without submitting personally identifiable information (PII)?
	Annual Updates
	Has the standard charge information in the file been updated within the past 12 months?
	Is the date the information was last updated clearly indicated?

Hospital Price Transparency Requirements Quick Reference Checklists

Table 3: Making Public Standard Charges for Shoppable Services[vi]

✓	Shoppable Services
✓	**General**
	Has your hospital posted a display of standard charges for a set of shoppable services?
	Is the display specific to the hospital location operating under a single hospital license (or approval)? *Note: A separate display must be posted for each hospital if there are multiple hospitals operating under a single hospital license with different sets of standard charges.*
	Does the display clearly identify the hospital location?
	Data Elements (as applicable)
	Does the display include the 70 CMS-specified shoppable services?[vii]
	If your hospital does not offer one or more of the 70 CMS-specified shoppable services, does the display clearly indicate that?
	Does the display include additional hospital-selected shoppable services for a combined total of at least 300 shoppable services? *Note: If your hospital offers less than 300 shoppable services in total, include as many as are offered.*
	Did your hospital select the additional shoppable services based on the utilization or billing rate of the services in the past year?
	Does the display include a plain-language description of each shoppable service?
	Does the display include the payer-specific negotiated charge with the name of the third party payer and plan clearly associated for each shoppable service?
	Does the display include the de-identified minimum negotiated charge for each shoppable service?
	Does the display include the de-identified maximum negotiated charge for each shoppable service?
	Does the display include the discounted cash price for each shoppable service? *Note: If the hospital does not offer a discounted cash price, then the undiscounted gross charge should be listed.*
	Is each standard charge for each shoppable service grouped together with charges for associated ancillary services, as applicable?
	Does the display include any primary code used by the hospital for purposes of accounting or billing for the shoppable service?
	Does the display list the location where the shoppable service is provided?
	Accessibility
	Is the display posted on a publically available website in a prominent manner?
	Is the display available free of charge?
	Is the display accessible without having to register or establish a user account or password?
	Can the display be accessed without submitting personally identifiable information (PII)?
	Is the display searchable by service description, billing code, and payer?

	Shoppable Services
	Annual Updates
	Has the standard charge information in the display been updated within the past 12 months?
	Is the date the information was last updated clearly indicated?

Table 4: Internet-based Price Estimator Tool[viii]

	Estimator Tool
✓	*Alternatively, your hospital can meet the requirements for Making Public Standard Charges for Shoppable Services by maintaining an internet-based price estimator tool.*
	General
	Does the tool allow healthcare consumers to, at the time they use the tool, obtain an estimate of the amount they will be obligated to pay the hospital for the shoppable service?
	Does the tool provide estimates for as many of the 70 CMS-specified shoppable services that are provided by the hospital?
	Does the tool provide additional hospital-selected shoppable services as is necessary for a combined total of at least 300 shoppable services?
	Accessibility
	Is the tool prominently displayed on your hospital's website?
	Is the tool accessible to the public without charge?
	Is the tool accessible without having to register or establish a user account or password?

[i] 84 FR 65524
[ii] Refer to 45 CFR §180.20 for the definition of hospital.
[iii] Refer to 45 CFR §180.30.
[iv] Refer to 45 CFR §180.50 for the full list of requirements specified in the section.
[v] Please note there may not be an associated data element for every item or service provided by the hospital. For example, the hospital may not have established a cash price for inpatient gauze pads and gauze pads may not have an associated billing code.
[vi] Refer to 45 CFR §180.60 for the full list of requirements specified in the section.
[vii] This list can be found at 84 FR 65571-65572.
[viii] Refer to 45 CFR §180.60(a)(2) for price estimator tools.