Supporting Statement – Part A

CY 2020 Proposed Requirements for Hospitals to Make Public a List of Their Standard Charges (CMS-10707)

A. Background

The Centers for Medicare & Medicaid Services (CMS) is proposing new rules, at 45 CFR part 180, authorized by Section 2718(e) of the Public Health Service (PHS) Act. The Section 2718(e) of the PHS Act requires each hospital operating within the United States for each year to establish (and update) and make public (in accordance with guidelines developed by the Secretary) a list of the hospital's standard charges for items and services provided by the hospital, including for diagnosis-related groups established under section 1886(d)(4) of the Social Security Act (the Act). The proposed data collection would include the compilation and posting to the public via the internet in a machine-readable format the standard charge data by hospitals, including both the gross charges listed on the charge description master, and each payer-specific negotiated rate for all items and services. The proposed data collection would also include hospital selection of and making public via the internet all negotiated charges for at least 300 shoppable services in a consumer-friendly format as defined in this proposed rule.

In the FY 2015 IPPS/LTCH PPS proposed and final rules (79 FR 28169 and 79 FR 50146, respectively), we reminded hospitals of their obligation to comply with the provisions of section 2718(e) of the PHS Act and provided guidelines for its implementation. At that time, we required hospitals to either make public a list of their standard charges or their policies for allowing the public to view a list of those charges in response to an inquiry. In addition, we stated that we expected hospitals to update the information at least annually, or more often as appropriate, to reflect current charges. We also encouraged hospitals to undertake efforts to engage in consumer-friendly communication of their charges to enable consumers to compare charges for similar services across hospitals and to help consumers understand what their potential financial liability might be for items and services they obtain at the hospital.

In the FY 2019 IPPS/LTCH PPS proposed and final rules (83 FR 20548 and 83 FR 41144, respectively), we again reminded hospitals of their obligation to comply with the provisions of section 2718(e) of the PHS Act and updated our guidelines for its implementation. The announced update to our guidelines became effective January 1, 2019, and took one step to further improve the public accessibility of standard charge information. Specifically, we updated our guidelines to require hospitals to make available a list of their current standard charges via the internet in a machine-readable format and to update this information at least annually, or more often as appropriate. We subsequently published two sets of Frequently Asked Questions (FAQs)[1] that provided additional guidance to hospitals, including a FAQ clarifying that while hospitals could choose the format they would use to make public a list of their standard charges, the publicly posted information should represent their standard charges as reflected in their

[1]Available at: https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/Downloads/FAQs-Req-Hospital-Public-List-Standard-Charges.pdf and 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.

chargemaster. We also clarified that the requirement applies to all hospitals operating within the United States and to all items and services provided by the hospital.

B. Justification

1. Need and Legal Basis

Section 1001 of the Patient Protection and Affordable Care Act (Pub. L. 111-148), as amended by section 10101 of the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111-152), amended Title XXVII of the PHS Act, in part, by adding a new section 2718(e). Section 2718 of the PHS Act, entitled "Bringing Down the Cost of Health Care Coverage," requires each hospital operating within the United States for each year to establish (and update) and make public (in accordance with guidelines developed by the Secretary) a list of the hospital's standard charges for items and services provided by the hospital, including for diagnosis-related groups established under section 1886(d)(4) of the Act.

Additionally, on June 24, 2019, the President signed an Executive Order entitled "Improving Price and Quality Transparency in American Healthcare to Put Patients First" that directs the Secretary of HHS, within 60 days to "propose a regulation, consistent with applicable law, to require hospitals to publicly post standard charge information, including charges and information based on negotiated rates and for common or shoppable items and services, in an easy-to-understand, consumer-friendly, and machine-readable format using consensus-based data standards that will meaningfully inform patients' decision making and allow patients to compare prices across hospitals. The regulation should require the posting of standard charge information for services, supplies, or fees billed by the hospital or provided by employees of the hospital. The regulation should also require hospitals to regularly update the posted information and establish a monitoring mechanism for the Secretary to ensure compliance with the posting requirement, as needed."

Therefore, CMS is proposing to add a new Part 180--Hospital Price Transparency to Title 45 of the Code of Federal Regulations (CFR) which would contain regulations on price transparency for purposes of section 2718(e) of the PHS Act. These proposed requirements build upon previous guidance that required hospitals to make public their standard charges upon request starting in 2015 (79 FR 50146) and subsequently online in a machine-readable format starting in 2019 (83 FR 41144). The proposed rule includes information collections associated with the following: requirements specified in proposed §180.50 for a "hospital" (as defined in §180.20) to make public a machine-readable file that contains a hospital's gross charges and payer-specific negotiated charges for all "items and services" (as defined in §180.20) provided by the hospital; and requirements specified in proposed §180.60 for a hospital to make public payer-specific negotiated charges for select hospital-provided items and services that are "shoppable" and that are displayed and packaged in a consumer-friendly manner.

Collection of this information is necessary for CMS to ensure pricing information is readily accessible and usable to consumers. Health care consumers continue to lack the meaningful

pricing information they need to choose the healthcare services they want and need despite prior requirements for hospitals to make public their chargemaster rates online. Therefore, in response to stakeholders and in accordance with the President's Executive Order to propose a regulation within 60 days on "Improving Price and Quality Transparency in American Healthcare to Put Patients First" (June 24, 2019), these proposals requiring public release of hospital standard charge information are a necessary and important step in ensuring transparency in health care prices for consumers.

2. Information Users

Hospitals: Hospitals are the only respondents for the purpose of this information collection. This proposed rule would apply to each hospital operated within the United States. CMS proposes that hospitals be required to post or update standard charge information at least once per year including 1) a comprehensive machine-readable file that makes public all standard charge information for all hospital items and services, and (2) a consumer-friendly display of common "shoppable" services derived from the machine-readable file. CMS believes that these two different methods of making hospital standard charges public are necessary to ensure such data is available to consumers where and when it is needed (for example, via integration into price transparency tools, Electronic Health Records (EHRs), and consumer apps), and also directly available and useful to consumers that search for hospital-specific charge information without use of a developed price transparency tool. We believe that requiring hospitals to make public the negotiated charges for shoppable services will increase consumer satisfaction and encourage price comparison, ultimately resulting in decreased out-of-pocket cost to the consumer.

Health Care Consumers: CMS intends for consumers to have easier access to health care pricing information, including gross charges for all hospital items and services and negotiated rates for shoppable services. Consumers will have better ability to estimate their hospital bills prior to treatment.

Third party developers and researchers: Third party developers will have access to all negotiated rates by payer for the first time for the purpose of innovative and price comparison web-based tools to encourage consumers to make healthcare decisions including cost among other factors. Researchers will have better information on regional and local health care costs which may lead to a better understanding of price dispersion and economic factors that result in artificially inflated costs.

Further, consumers (individuals) or entities may review the publicly available information and report to CMS findings that suggest a hospital's noncompliance with the proposed requirements.

3. Use of Information Technology

Generally, under the proposed requirements, hospitals must make public information about their standard charges on the internet. While all data (list of standard charges) must be made available in a machine-readable format, a subset of the data (shoppable services) must be made available in a consumer-friendly format. CMS is proposing to define a machine-readable format as 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 machine readable formats include, but are not

limited to, .XML, JSON and .CSV formats. Requiring hospitals to post a list of their standard charges in a machine-readable format would ensure that standard charge data can be accessible to the public, including third party developers who may use such data to create consumer-friendly price transparency tools.

4. Duplication of Efforts

We anticipate no duplication of efforts for hospitals. The required information collection is distinguishable from other federal efforts and flexibility afforded in the proposed rule would allow hospitals to use already existing platforms for making a list of standard charges public to avoid duplication of State and private sector efforts aimed to improve price transparency.

5. Small Businesses

The proposed requirement applies to all hospital, including small rural hospitals. However, based on our analysis and comments from stakeholders regarding implementation under prior guidance, we believe the proposed requirements impose minimal additional burden on hospitals because standard charges are collected and maintained as part of normal operations of most hospitals in the United States. Further, we do not believe the economic effects will vary significantly between rural and critical access markets and larger or consolidated health care markets.

6. Less Frequent Collection

Less frequent collection would not be an option because section 2718(e) of the PHS Act requires each hospital operating within the United States shall for each year establish (and update) and make public (in accordance with guidelines developed by the Secretary) a list of the hospital's standard charges for items and services provided by the hospital, including for diagnosis-related groups established under section 1886(d)(4) of the Act.

CMS previously required, in the FY 2019 IPPS/LTCH PPS final rule (83 FR 41686 through 41688), effective January 1, 2019, hospitals to update standard charge information at least annually, or more often as appropriate to reflect current charges. CMS believes that certain situations, such as economic climate or supply and demand of items and services may influence standard charges. While the statute requires hospitals to update standard charge information annually, we encourage hospitals to update their standard charge information as often as needed so that the public has the most up-to-date pricing information.

7. Special Circumstances

This collection of information does not require any special circumstances.

8. Federal Register/Outside Consultation

The 60-day Federal Register notice for the CY 2020 Medicare Hospital Outpatient Prospective Payment System and Ambulatory Surgical Center Payment System Proposed Rule published on August 9, 2019 (84 FR 39398).

9. Payments/Gifts to Respondents

No payments or gifts will be given to respondents for participation.

10. Confidentiality

All information collected under this information collection will be maintained in strict accordance with statutes and regulations governing confidentiality requirements. In addition, the tools used for transmission of data are considered confidential forms of communication and are Health Insurance Portability and Accountability Act (HIPAA) and Privacy Act of 1974 (5 U.S.C. 552a) compliant.

11. Sensitive Questions

There are no sensitive questions associated with this collection.

12. Burden Estimates (Hours & Wages)

We note that hospitals in the United States maintain chargemasters and general ledgers which contain a list of their gross charges and negotiated charges for their items and services as part of their standard billing and business practices.[2] As such, we believe that the burden for making standard charges publicly available is nominal.

Additional, we estimate that this proposed rule applies to 6,002 hospitals operating within the United States under the proposed definition of "hospital". To estimate this number, we subtract 208 federally-owned hospitals from the total number of U.S. hospitals, 6,210 hospitals [3] (45 CFR 180.30) (6,210 total hospitals – 208 federally-owned hospitals).

In order to comply with regulatory updates proposed in this proposed rule, affected hospitals would first need to review the rule. We estimate that this task would take a lawyer on average 1 hour and a general operations manager on average 1 hour.

We estimate it would take a business operations specialist, on average, 8 hours to complete necessary processes and procedures to gather and compile required information and post it to the internet in the form and manner specified by this proposed rule. We also are proposing several

[2] Batty, M., & Ippolito, B. (2017). Mystery of the chargemaster: examining the role of hospital list prices in what patients actually pay. *Health Affairs*, *36*(4), 689-696. Available at: https://www.healthaffairs.org/doi/10.1377/hlthaff.2016.0986

[3] American Hospital Association. Fast Facts on U.S. Hospitals, 2019. Available at: https://www.aha.org/statistics/fast-facts-us-hospitals

requirements for posting required information at proposed 45 CFR part 180. These requirements impose form and manner standards for the applicable hospitals. We estimate that a network and computer system administrator would spend on average 2 hours to meet requirements specified by this proposed rule.

We estimate hourly cost for each labor category used in this analysis by referencing the Bureau of Labor Statistics report on Occupational Employment and Wages, May 2018.[4] We also have calculated the cost of overhead at 100 percent of the mean hourly wage, in line with the Hospital Inpatient and Hospital Outpatient Quality Reporting programs (81 FR 57260 and 82 FR 59477, respectively).

We conclude that the annual burden per hospital should be calculated with all activities performed by four professions combined. We estimate an annual burden assessment to be 12 hours (2 hours + 8 hours + 2 hours) per hospital with a cost of $1,017.24 ($257.80 + $592.00 + $167.44) per hospital. We also estimate a total national burden of 72,024 hours (12 hours X 6,002 hospitals) and total cost of $6,105,474 ($1,017.24 X 6,002 hospitals).

SUMMARY OF INFORMATION OF COLLECTION BURDENS

Occupation Title	Cost per hour	# of Hours per Hospital	# of Hospitals	Total Burden Hours	Total Cost
Lawyers	$138.68	1	6002	6002	$832,357.36
General and Operations Managers	$119.12	1	6002	6002	$714,958.24
Business Operations Specialists	$74.00	8	6002	48,016	$3,553,184.00
Network and Computer Systems Administrators	$83.72	2	6002	12,004	$1,004,974.88
Total		**12**		**72,024**	**$6,105,474.48**

Refer to the CY 2020 Medicare Hospital Outpatient Prospective Payment System and Ambulatory Surgical Center Payment System Proposed Rule, section XXIV.D, "ICR for Proposal on Hospital Price Transparency".

13. Capital Costs

There are no capital costs.

[4] Bureau of Labor Statistics report on Occupational Employment and Wages, May 2018 Available at: https://www.bls.gov/oes/2018/may/oes_nat.htm

14. Cost to Federal Government

The federal cost is based on the efforts expended by CMS staff with the following assumptions in place: (1) hospitals are required to post at a minimum once annually on a public website of the hospital's choosing, and a review or audit of the website would occur in response to complaints; (2) that a standard compliance action template is developed and uniformly enforced; and (3) 1% of the hospitals are reported for non-compliance.

Estimates are based in part on the State of California's Office of Statewide Health Planning and Development's chargemaster experience and a look at similar CCIIO monitoring efforts, where insurers where required to post information on rate increases.

Estimates

To generate hourly estimates, the 2019 General Schedule (GS) Locality Pay Tables[5] published by the Office of Personnel Management (OPM) for the DC-Baltimore region is used for the table below and wage includes average benefits as percentage to average wage for federal employee is about 63.9% according to a recent CBO study[6]. For purposes of calculating FTEs, 2020 hours is equivalent to one FTE. The estimate is based on 1% of hospitals reported for non-compliance by consumers or entities, and requiring additional action (compliance action, monitoring and penalties). The time estimates are divided between GS-11, at 58%, GS-13 at 28% and GS-15 at 14% and include the following tasks.

- Investigative action if CMS receives a complaint.
- Clarify complaint if necessary; accessing, reviewing and validating data posted on hospital website. Time estimate may vary depending on the validation procedures required.
- Notify hospital of noncompliance and need for corrective action: develop and send written warning notice and/or notice of violation requiring a corrective action plan (CAP); review and approve hospital's CAP; assist hospitals as needed to develop CAPs; monitor and evaluate hospital's compliance with the corrective action.
- Assessment of civil monetary penalties (CMPs), and posting of notice of assessment of CMPs on a CMS website and maintaining the website of these postings; responding to hospital appeals of CMPs and other legal issues.
- Provide policy guidance and technical assistance to stakeholders including hospitals as needed.
- Holding an annual best practice call for hospitals to demonstrate procedures for maintaining compliance and highlight exemplars.

Estimate				
Staff	Hours	Per hour Rate	FTE Equivalent	Total
GS-11, step 4	2020	58.81	1.0	$118,796
GS-13, step 4	1010	83.71	0.5	$ 84,547
GS-15, step 4	505	113.36	0.25	$ 57,247
				$260,590

[5] https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2019/general-schedule/
[6] https://www.cbo.gov/sites/default/files/112th-congress-2011-2012/workingpaper/2012-04fedbenefitswp0.pdf

15. Changes to Burden

This is a new information collection.

16. Publication/Tabulation Dates

The results of this information collection will not be published.

17. Expiration Date

The expiration date will be displayed on the website.

18. Certification Statement

There are no exceptions to the certification statement.