

# HEALTH REFORM IMPACT

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## All U.S. Hospitals Must Publicize “Standard Charges”

April 12, 2010

Hidden among the amendments to a section of the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act (the “Health Reform Legislation”), is the following little-noticed provision:

**STANDARD HOSPITAL CHARGES.**—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 Social Security Act.<sup>1</sup>

The effective date of this provision is not clear because the provision is embedded in the amendments devoted to group health plans and health insurance reforms and therefore the applicable effective date appears to have been written with health plans in mind. As a result, the effective date makes little sense with respect to hospitals. The provision states that, unless the subsection specifically states otherwise, the provisions of Section 1001 are effective “for plan years beginning on or after the date that is 6 months after the date of enactment of this Act” (i.e., plan years beginning after September 22, 2010, which would be January 1, 2011 for calendar year plans).<sup>2</sup> Hospitals generally do not operate on “plan years” and consequently it is uncertain when this provision takes effect with respect to hospitals. The most conservative approach would be for hospitals to assume that this section is effective immediately and to create a standard charge list and make it available to the public as soon as possible. Note that there is currently no official guidance regarding what this “list” should include and how it must be made public. Hopefully, the Secretary of the Department of Health and Human Services (“HHS”) will establish guidelines on these topics at some point in the near future.

In recent years, many states have enacted legislation requiring some level of disclosure of hospital pricing information, while others merely have voluntary programs or no public disclosure requirements at all. States that require disclosure vary widely with respect to

<sup>1</sup> Patient Protection and Affordable Care Act, HR 3590 Section 10101 (f) “Sec. 2718 (e)” (enacted March 23, 2010).

<sup>2</sup> Section 10101 of the Act, where the provision is located, amends Section 1001 of the Act. The effective date of Section 1001 of the Act is governed by Section 1004 of the Act, unless the subsection specifically states otherwise. *Id.* at Section 1004.

what must be disclosed (e.g., average annual charges versus charge estimates or actual charges), how much must be disclosed (e.g., information on the most common inpatient and/or outpatient procedures), when it must be disclosed (e.g., upon request, upon admission, monthly, or annually), and to whom it must be disclosed (e.g., reporting to the state's insurance department and/or disclosure to consumers).<sup>3</sup>

For multi-hospital, multi-state organizations struggling to keep up with the myriad of state hospital charge disclosure laws and regulations, the new provision in the Health Reform Legislation could be seen as a positive development if it enables a one-size fits all approach. However, there is no indication that this law will preempt State laws and regulations. As a result, making a standard charge list available to the public does not necessarily mean that the hospital will not need to separately comply with applicable state charge disclosure laws and regulations. Moreover, for hospitals residing in states where no such public disclosure/transparency laws currently exist, developing a "standard charge" list may require the hospital to undertake the daunting task of consolidating its various policies with respect to charity care, financial assistance, commercial insurance agreements, and Medicare payment structure.

The applicable penalties and sanctions for not publicizing standard charges as required by this provision are not clear. Accordingly, we will have to wait to for clarity and guidance from the Secretary of HHS to know what the potential exposure is for noncompliance.

If you have questions regarding the information in this alert, or would like assistance in developing a public disclosure document regarding your charges, please contact any of the attorneys in our healthcare practice group listed below.

Also, please [click here](#) to visit our special web page for Health Reform IMPACT.

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<sup>3</sup> See generally National Conference of State Legislatures, State Legislation Relating to Transparency and Disclosure of Health and Hospital Charges (updated April 2009) at <http://www.ncsl.org/default.aspx?tabid=14512>.

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