STRATEGIC HEALTH CARE

September 22, 2020

To: Strategic Health Care Clients

From: David Introcaso, Ph.D., VP, Regulatory Affairs (david.introcaso@shcare.net)

Re: Hospital Price Transparency Penalty: Potential Loss of All Medicare Reimbursement

We have received questions concerning CMS' regulatory policy concerning penalties hospitals will face for failure to publicly report hospital prices beginning January 1, 2021. CMS final price transparency rule, released November 15, 2019, is here and a CMS slide deck overview is here. More specifically, we have received questions concerning related discussion in the final IPPS 2021 rule published in the Federal Register September 18th (here).

In the final November 2019 price transparency rule, CMS formally established a maximum daily Civil Monetary Penalty (CMP) penalty amount of $300 per hospital. (See page 65586.) Failure to report price data for an entire year would potentially equal $109,500.

In the just-published final IPPS rule, CMS provides an extensive comment and response discussion concerning price transparency or the public reporting, and CMS collection of market-based payment rate information, under the rule's subheading "c. Market-Based Data Collection" at pages 58877-058892. For example, CMS revisits its calculation CMP calculation at page 58889.

Moreover, in the final IPPS rule, CMS makes two significant regulatory revisions. First, CMS changes the agency's requirement from - hospitals reporting the median MS-DRG negotiated charge with all its MA payers and with all or all other third-party organizations - to just all of its MA payers. (See page 58877 and 58881). Second, CMS states hospitals can potentially face the loss of all Medicare reimbursement for failing to report median negotiated MA prices. Specifically, CMS states at page 58890,

> Sections 1815(a) and 1833(e) of the Act state that no Medicare payments will be made to a provider unless it has furnished information requested by the Secretary to determine payment amounts due under the Medicare program. Sections 1815(a) and 1833(e) of the Act pertain to CMS's authority to collect information on the Medicare cost report. If a Medicare provider does not furnish payment information on the cost report, then potentially no Medicare payments will be provided [emphasis added].

Please email me if you have any questions or would like to discuss further. Thank you.