

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard, Mail Stop C5-15-12  
Baltimore, Maryland 21244-1850



Center for Medicare

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April 19, 2023

Reference Number: 13038672021

Unique Case Number (UCN): 2023HPT001

Via Certified Mail

Tim Jones  
Chief Hospital Executive  
Frisbie Memorial Hospital  
11 Whitehall Road  
Rochester, NH 03867-3226

**RE: Hospital Price Transparency Notice of Imposition of a Civil Monetary Penalty (CMP)**

Dear Tim Jones:

The Centers for Medicare & Medicaid Services (CMS) is imposing a civil monetary penalty (CMP) as described in 45 C.F.R. §180.90. CMS has determined that Frisbie Memorial Hospital meets the definition of a hospital specified in 45 C.F.R. §180.20 and that, as of the date of this notice, Frisbie Memorial Hospital is noncompliant with the price transparency requirements under 45 C.F.R. Part 180 (<https://www.govinfo.gov/content/pkg/FR-2019-11-27/pdf/2019-24931.pdf>). CMS has determined that your hospital has been noncompliant since October 24, 2022.

CMS initially completed a review of Frisbie Memorial Hospital website <https://frisbiehospital.com/> on July 23, 2021. Pursuant to 45 C.F.R. §180.70(b), CMS issued your hospital a Warning Notice, dated August 25, 2021. Frisbie Memorial Hospital's CEO responded to the CMS Warning Notice via FedEx on November 19, 2021, providing additional information regarding its price estimator tool and its machine-readable file.

On October 24, 2022, CMS again reviewed Frisbie Memorial Hospital's machine-readable file and determined that your hospital remained noncompliant with the price transparency requirements. CMS considered the information provided in the November 19, 2021 letter and determined the information did not sufficiently address the violations found in this review. CMS also identified additional noncompliance findings.

Subsequently, on November 2, 2022, CMS issued a Notice of Violation and Request for a Corrective Action Plan (CAP) to Frisbie Memorial Hospital, through your CEO, notifying the hospital of your continued noncompliance for the following material violations:

### **Violations - Comprehensive Machine-Readable File**

1. Failure to include all corresponding data elements in the list of standard charges, as applicable, as provided in 45 C.F.R. § 180.50(b). Specifically, descriptions for each item and service were not posted in the online machine-readable file as required at 45 C.F.R. § 180.50(b)(1).
2. Failure to include all corresponding data elements in the list of standard charges, as applicable, as provided in 45 C.F.R. § 180.50(b). Specifically, not all gross charges were posted in the online machine-readable file as required at 45 C.F.R. § 180.50(b)(2).
3. Failure to make public a machine-readable file containing a list of all standard charges for all items and services as provided in 45 C.F.R. § 180.50. Specifically, not all discounted cash prices were posted in the online machine-readable file as required at 45 C.F.R. § 180.50(b)(6).
4. Failure to include all corresponding data elements in the list of standard charges, as applicable, as provided in 45 C.F.R. § 180.50(b). Specifically, not all payer specific negotiated rates were posted in the online machine-readable file as required at 45 C.F.R. § 180.50(b)(3).
5. Failure to include all corresponding data elements in the list of standard charges, as applicable, as provided in 45 C.F.R. § 180.50(b). Specifically, not all de-identified minimum negotiated charges were posted in the online machine-readable file as required at 45 C.F.R. § 180.50(b)(4).
6. Failure to include all corresponding data elements in the list of standard charges, as applicable, as provided in 45 C.F.R. § 180.50(b). Specifically, not all de-identified maximum negotiated charges were posted in the online machine-readable file as required at 45 C.F.R. § 180.50(b)(5).
7. Failure to include all corresponding data elements in the list of standard charges, as applicable, as provided in 45 C.F.R. § 180.50(b). Specifically, the file did not contain all codes used by the hospital for purposes of accounting or billing for the item or service, including, but not limited to the Current Procedural Terminology (CPT) code, the Healthcare Common Procedure Coding System (HCPCS) code, the Diagnosis Related Group (DRG), the National Drug Code (NDC), or other common payer identifiers as required at 45 C.F.R. § 180.50(b)(7).

The Notice of Violation and Request for CAP provided details on how to contact CMS with questions regarding your hospital's non-compliance, and stated that Frisbie Memorial Hospital must submit a CAP within 45 calendar days, which was extended to the next business day (December 19, 2022). Frisbie Memorial Hospital did not submit a CAP by the submission deadline and has not contacted CMS in response to the Notice of Violation and Request for CAP, either through the CEO or any other designated representative.

On several occasions in February and March of 2023, CMS attempted to contact Frisbie Memorial Hospital to provide technical assistance about the hospital price transparency requirements and the request for a CAP. On February 16, 2023, CMS contacted Frisbie Memorial Hospital by phone and left a detailed voicemail with the executive assistant of the administrative office. CMS followed up again on March 9, 2023, and was connected to the line of the CEO, Tim Jones. CMS left a detailed voicemail regarding Frisbie Memorial Hospital's state of non-compliance and requested a call back as soon as possible. CMS made a final attempt to contact Frisbie Memorial Hospital on March 14, 2023. During this attempt, CMS left another detailed voicemail with the executive assistant of the administrative office referencing the two previous contact attempts and requesting an immediate call back.

Frisbie Memorial Hospital has not submitted a CAP and has not responded to CMS's contact attempts, and continues to fail to meet the CAP requirements as described in 45 C.F.R. §180.80(c) and (d). Moreover, CMS reviewed Frisbie Memorial Hospital's machine-readable file on the date of this CMP and your hospital has not corrected the material violations cited in the Notice of Violation and Request for CAP. Therefore, Frisbie Memorial Hospital continues to be out of compliance with 45 C.F.R. §§ 180.40 – 180.50, and CMS is imposing the CMP set forth below.

### **I. Amount of the CMP**

The 58-bed<sup>1</sup> facility is located within the Capital Division of HCA Healthcare.<sup>2</sup>

Based on the foregoing findings of noncompliance with requirements for standard hospital charges and Frisbie Memorial Hospital's failure to respond to CMS' request to submit a CAP, CMS is imposing a total CMP of \$102,660.00, pursuant to 45 C.F.R. § 180.90. The CMP is calculated as follows:

- a) \$10.00 per bed per day for hospitals with a bed count greater than 30 but not more than 550 = \$10.00 x (58 beds) x (177 days) = \$102,660.00. This CMP is calculated from October 24, 2022 up to and including April 19, 2023, the date of this notice.

For hospitals that remain noncompliant, CMS may issue subsequent notices imposing additional CMPs for continuing violation(s), as described at 45 C.F.R. § 180.90(b)(2)(iv), (f). **CMS may impose additional CMPs until CMS determines your hospital is in full compliance with sections 180.40 – 180.60. It is suggested that your hospital notify CMS via email at [HPTCompliance@cms.hhs.gov](mailto:HPTCompliance@cms.hhs.gov) when it makes any necessary corrections to be in compliance with 45 C.F.R. §§ 180.40 – 180.60.**

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<sup>1</sup> This data was derived from the S3 Part 1 Worksheet, Column 2, Line 14 of the 2020 HCRIS Cost Report with RPT\_REC\_NUM (734698) for CCN (300014) located at this link <https://www.cms.gov/research-statistics-data-and-systemsdownloadable-public-use-filescost-reportscost-reports-fiscal/2020>

<sup>2</sup> <https://hcahealthcare.com/locations/division-map.dot>

## II. Payment of CMP

Pursuant to 45 C.F.R. §180.90(d), your hospital must pay the CMP in full within 60 calendar days<sup>3</sup> from the date of this notice of imposition of CMP.

If your hospital decides to request a hearing, then your hospital must pay the CMP amount in full within 60 calendar days from the date of a final and binding decision to uphold the CMP, in whole or in part, as specified in 45 C.F.R. § 180.90(d)(2). More information regarding Appeal Rights can be found in Section IV.

The CMP may be paid by federal ACH wire transfer.

### *To Pay via Federal ACH Wire Transfer*

Subtype/Type Code:	10 00
Amount:	[Fill In]
Sending Bank Routing Number:	[REDACTED]
ABA Number of Receiving Institution:	[REDACTED]
Receiver Name:	Treasury NYC
Receiving Institution Name:	Federal Reserve Bank of New York
Receiving Institution Address:	33 Liberty Street, New York, NY 10045
Beneficiary Account Number:	[REDACTED]
Beneficiary Name:	Centers for Medicare & Medicaid Services (CMS)
Beneficiary Physical Address:	7500 Security Blvd., Baltimore, MD 21244
CMS Tax ID Number:	[REDACTED]
Credit Gateway Customer Care Number	1-877-815-1206
Re: Unique Case Number (UCN) 2023HPT001 and Hospital Price Transparency CMP	[REDACTED]

## III. Appeal Rights

Pursuant to 45 C.F.R. Part 180, Subpart D, your hospital may appeal CMS' CMP determination by requesting a hearing before an Administrative Law Judge (ALJ) of the U.S. Department of Health and Human Services' Departmental Appeals Board (DAB). To request a hearing, your hospital must submit its hearing request within 30 calendar days of the issuance of the notice of imposition of CMP in accordance with the procedures outlined in 45 C.F.R. § 150.401, *et seq.* The request for a hearing must comply with the requirements described in 45 C.F.R. § 150.407.

The DAB no longer accepts requests for a hearing submitted by U.S. Mail or commercial carrier unless your hospital does not have access to a computer or internet service. Your hospital must use the DAB's Electronic Filing System ("DAB E-File") located at <https://dab.efile.hhs.gov> within the time frame described above to electronically submit an appeal to CMS. Further

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<sup>3</sup> Pursuant to 45C.F.R. §180.90(d)(3), if the 60th calendar day is a weekend or a Federal holiday, then the timeframe is extended until the end of the next business day.

instructions are located at [https://dab.efile.hhs.gov/appeals/to\\_crd\\_instructions](https://dab.efile.hhs.gov/appeals/to_crd_instructions). The DAB's Civil Remedies Division (CRD) requires all hearing requests to be signed and accompanied by this notice letter from CMS that addresses the action taken and the respective appeal rights. All submitted documents must be in Portable Document Format. The ALJ will consider documents uploaded to the DAB E-File on any day on or before 11:59 p.m. EST to have been received on that day. Your hospital must accept electronic service of any appeal-related documents filed by CMS or that the CRD issues on behalf of the ALJ via DAB E-File.

Please contact the CRD at (202) 565-9462 for questions regarding the DAB E-File. If your hospital experiences technical issues with the DAB E-File, please contact the E-File System Support at [OSDABImmediateOffice@hhs.gov](mailto:OSDABImmediateOffice@hhs.gov) or at (202) 565-0146 before 4 p.m. EST. If your hospital does not have access to a computer or internet service, your hospital may request a waiver from e-filing by contacting the CRD at (202) 565-9462 and providing an explanation as to why your hospital cannot file electronically.

Should your hospital file an appeal, CMS requests that copies of the appeal documents be emailed to [HPTCompliance@cms.hhs.gov](mailto:HPTCompliance@cms.hhs.gov) and also mailed to the address listed below. Documents or first-class mail replies may be sent to:

Centers for Medicare & Medicaid Services  
Hospital Price Transparency  
ATTN: John Pilotte  
7500 Security Blvd, Mail Stop C5-15-12  
Baltimore, MD 21244-1850

Pursuant to 45 C.F.R. § 180.110, failure to request a hearing in the manner and timeframe described above permits CMS to impose the CMP indicated in this notice and CMS may impose any subsequent penalties pursuant to continuing violations without right of appeal. The hospital has no right to appeal a penalty to which it has not requested a hearing in accordance with 45 C.F.R. § 150.405, unless the hospital can show good cause, as determined at 45 C.F.R. § 150.405(b), for failing to timely exercise its right to a hearing. If the CMP is upheld, in part, by a final and binding decision, CMS will issue a modified notice of imposition of CMP to conform to the adjudicated finding as described in 45 C.F.R. §180.90(b)(3).

## **V. Publication of CMP**

In accordance with 45 C.F.R. § 180.90(e), CMS will post this notice on a CMS website. If your hospital elects to request a hearing, CMS will indicate in its posting that the CMP is under review. If the CMP is upheld, in whole, by a final and binding decision, CMS will maintain this notice on a CMS website. If the CMP is upheld, in part, by a final and binding decision, CMS will issue a modified CMP notice to conform to the adjudicated finding and post the modified notice publicly on a CMS website. If the CMP is overturned, in full, by a final and binding decision, CMS will remove this notice from the CMS website.

If you have questions, please contact us at [HPTCompliance@cms.hhs.gov](mailto:HPTCompliance@cms.hhs.gov). We appreciate your prompt attention to this matter.

Sincerely,

**John C. Pilotte**  
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Digitally signed by John C.  
Pilotte -S  
Date: 2023.04.19 13:04:31  
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John Pilotte  
Director  
Performance-based Payment Policy Group  
Center for Medicare