

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

April 19, 2023

Reference Number: 571763102022

Unique Case Number (UCN): 2023HPT002

Via Certified Mail

Jerry K. Myers, MD
Chief Hospital Executive and Medical Director
Kell West Regional Hospital
5420 Kell Boulevard
Wichita Falls, Texas 76310

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

Dear Jerry K. Myers, MD:

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 Kell West Regional Hospital meets the definition of a hospital specified in 45 C.F.R. §180.20 and that as of the date of this notice, Kell West Regional 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 July 8, 2022.

CMS initially completed a review of Kell West Regional Hospital's website <https://www.kellwest.com/> on July 8, 2022. Pursuant to 45 C.F.R. § 180.70(b), CMS issued a Warning Notice dated July 27, 2022. The Warning Notice notified the hospital of the following material violations:

Violations - Requirements For Hospital Standard Charges

M-1 Failure to include all corresponding data elements in your list of standard charges for all items and services, as required by 45 CFR §180.50(b). Specifically, not all payer specific negotiated rates were posted in the online machine-readable file as required by 45 CFR §180.50(b)(3) and (c).

M-2 Failure to make public a machine-readable file containing a list of all standard charges for all items and services as required by 45 CFR §180.50. Specifically, no discounted cash prices were posted in the online machine-readable file as required by 45 CFR §180.50(b)(6) and (c).

M-3 Failure to include all corresponding data elements in the list of standard charges for all items and services, as applicable, as required by 45 CFR §180.50(b). Specifically, no de-identified minimum negotiated charges were posted in the online machine-readable file as required by 45 CFR §180.50(b)(4) and (c).

M-4 Failure to include all corresponding data elements in the list of standard charges for all items and services, as applicable, as required by 45 CFR §180.50(b). Specifically, no de-identified maximum negotiated charges were posted in the online machine-readable file as required by 45 CFR §180.50(b)(5) and (c).

M-5 Failure to follow the naming convention specified by CMS, specifically: `__standardcharges.[json|xml|csv]` as required by 45 CFR §180.50(d)(5).

M-6 Failure to clearly indicate the date that the standard charge data described in 45 CFR §180.50(b) was most recently updated, either within the file itself or otherwise clearly associated with the file as required by 45 CFR §180.50(e).

Violations - Displaying Shoppable Services in a Consumer-Friendly Manner

S-1 Failure to make public the standard charges identified in § 180.60(b)(3)-(6) 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, as required by § 180.60(a). Specifically, your hospital has not made standard charge information available for a combined total of at least 300 shoppable services.

S-2 Failure to include, as applicable, all corresponding data elements in the list of standard charges (identified in § 180.60(b)(3)-(6) for your hospital's list of shoppable services, as required by 45 CFR §180.60(b). Specifically, you did not include the de-identified minimum negotiated charge that applies to each shoppable service (and to each corresponding ancillary service, as applicable) as required 45 CFR §180.60(b)(5).

S-3 Failure to include, as applicable, all corresponding data elements in the list of standard charges (identified in § 180.60(b)(3)-(6) for your hospital's list of shoppable services, as required by 45 CFR §180.60(b). Specifically, you did not include the de-identified maximum negotiated charge that applies to each shoppable service (and to each corresponding ancillary service, as applicable) as required by 45 CFR §180.60(b)(6).

S-4 Failure to clearly indicate the date that the standard charge information described in § 180.60(b) was most recently updated, as required by 45 CFR §180.60(e).

CMS completed a review of Kell West Regional Hospital's website, <https://www.kellwest.com/>, on November 3, 2022. Based upon this review, it was determined that Kell West Regional Hospital remained in material violation of the requirements to make public its list of standard charges. On November 7, 2022, CMS issued a Request for Corrective Action Plan (CAP) notifying the hospital of the following material violations:

Violations- Comprehensive Machine-Readable File

M-1 Failure to include all corresponding data elements in the list of standard charges for all items and services, as required by 45 CFR §180.50(b). Specifically, not all payer specific negotiated rates were posted in the online machine-readable file as required by 45 CFR §180.50(b)(3) and (c).

M-2 Failure to include all corresponding data elements in the list of standard charges for all items and services, as applicable, as required by 45 CFR §180.50(b). Specifically, not all de-identified minimum negotiated charges were posted in the online machine-readable file as required by 45 CFR §180.50(b)(4) and (c).

M-3 Failure to publish the information described in 45 CFR §180.50(b) in a single digital file that is in a machine-readable format as required by 45 CFR §180.50(c). Specifically, the information posted online by your hospital is not in a single digital file.

Violations - Displaying Shoppable Services in a Consumer-Friendly Manner

S-1 Failure to make available a consumer-friendly list of standard charges for a limited set of shoppable services described in § 180.60, as required by § 180.40(b). Specifically, no consumer-friendly list of standard charges was found.

Kell West Regional Hospital submitted a CAP on December 22, 2022 with a proposed completion date of February 15, 2023. CMS requested a CAP revision on January 6, 2023. Kell West Regional Hospital submitted a revised CAP on January 19, 2023 which was approved by CMS on January 25, 2023.

CMS completed a review of Kell West Regional Hospital's website, <https://www.kellwest.com/>, on March 31, 2023, after the approved CAP completion date. The following material violations were identified:

Violations- Requirements for Hospital Standard Charges

M-1 Failure to clearly indicate the date that the standard charge data described in 45 CFR §180.50(b) was most recently updated, either within the file itself or otherwise clearly associated with the file as required by 45 CFR §180.50(e).

M-2 Failure to publish the information described in 45 CFR §180.50(b) in a single digital file that is in a machine-readable format as required by 45 CFR §180.50(c). Specifically, the information posted online by your hospital is not in a single digital file.

M-3 Failure to follow the naming convention specified by CMS, specifically: `__standardcharges.[json|xml|csv]` as required by 45 CFR §180.50(d)(5).

Violations - Displaying Shoppable Services in a Consumer-Friendly Manner

S-1 Failure to make available a consumer-friendly list of standard charges for a limited set of shoppable services described in 45 CFR §180.60, as required by 45 CFR §180.40(b). Specifically, no consumer-friendly list of standard charges was found.

Your hospital continues to be out of compliance with 45 C.F.R. §§ 180.40 – 180.60. Therefore, CMS is imposing the CMP set forth below.

I. Amount of the CMP

Based on the foregoing findings of noncompliance with requirements for standard hospital charges and displaying shoppable services in a consumer-friendly manner, CMS is imposing a total CMP of \$117,260 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 (41 beds¹) x (286 days) = \$117,260. This CMP is calculated from July 8, 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 when it makes any necessary corrections to be in compliance with 45 C.F.R. §§ 180.40 – 180.60.**

II. Payment of CMP

Pursuant to 45 C.F.R. §180.90(d), your hospital must pay the CMP in full within 60 calendar days² 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 III.

The CMP may be paid by federal ACH wire transfer.

¹ This data was derived from the S3 Part 1 Worksheet, Column 2, Line 14 of the 2020 HCRIS Cost Report with RPT_REC_NUM (727387) for CCN (450827) located at this link <https://www.cms.gov/research-statistics-data-and-systems/downloadable-public-use-files/cost-reports/cost-reports-fiscal/2020>

² Pursuant to 45 C.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

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) 2023HPT004 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 days³ 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 instructions are located at 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 or at (202) 565-0146 before 4 p.m. EST. If your

³ Pursuant to 45 C.F.R. §180.110(a), if the 30th calendar day is a weekend or a Federal holiday, then the timeframe is extended until the end of the next business day.

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 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).

IV. 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. We appreciate your prompt attention to this matter.

Sincerely,

**John C.
Pilotte -S**

Digitally signed by John C.
Pilotte -S
Date: 2023.04.19 13:06:53
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John Pilotte
Director
Performance-based Payment Policy Group
Center for Medicare

cc: Terry Stagg, Facility Manager