

Dr. Jacob Varon
Chairman and CEO
First Surgical Hospital
4801 Bissonnet Street
Bellaire, TX 77401

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DEPARTMENT OF HEALTH & HUMAN
SERVICES

Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mailstop: C5-15-12
Baltimore, Maryland 21244-1850

Center for Medicare



January 16, 2025

Unique Case Number (UCN): 2025HPT001

Dr. Jacob Varon
Chairman and CEO
First Surgical Hospital
4801 Bissonnet Street
Bellaire, TX 77401

Reference Number: 21062021

Location:
First Surgical Hospital
4801 Bissonnet Street
Bellaire, TX 77401

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

Dear Dr. Jacob Varon,

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 First Surgical Hospital meets the definition of a hospital specified in 45 C.F.R. § 180.20 and that as of the date of this notice, First Surgical Hospital is noncompliant with the price transparency requirements under Section 2718(e) of the Public Health Service Act, 42 U.S.C. § 300gg-18(e), and 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 at least January 18, 2023.

CMS initially completed a review of First Surgical Hospital's website <https://firstsurgical.com/> on January 18, 2023. Pursuant to 45 C.F.R. § 180.70(b), CMS issued a Warning Notice dated January 19, 2023. The Warning Notice notified the hospital of the following material violations:

Violations - Requirements for Hospital Standard Charges

1. Failure to make public a machine-readable file containing a list of all standard charges for all items and services online as required at 45 C.F.R. § 180.40(a) and 45 C.F.R. § 180.50(a). Specifically, no online machine-readable file was found.

Violations - Displaying Shoppable Services in a Consumer-Friendly Manner

1. Failure to make available a consumer-friendly list of standard charges for a limited set of shoppable services as provided in 45 C.F.R. § 180.60, as required at 45 C.F.R. § 180.40(b). Specifically, no consumer-friendly list of standard charges was found.

CMS completed a review of <https://firstsurgical.com/> on May 9, 2023. Based upon this review, it was determined First Surgical Hospital remained in material violation of the requirements under 45 C.F.R. §§ 180.40-180.60 to make public its list of standard charges. On May 10, 2023 CMS issued a Notice of Violation and Request for Corrective Action Plan (CAP) notifying the hospital of the following material violations:

Violations - Requirements for Hospital Standard Charges

1. Failure to make public a machine-readable file containing a list of all standard charges for all items and services online as required at 45 C.F.R. § 180.40(a) and 45 C.F.R. § 180.50(a). Specifically, no online machine-readable file was found.

Violations - Displaying Shoppable Services in a Consumer-Friendly Manner

1. Failure to make public the standard charges identified in 45 C.F.R. § 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 at 45 C.F.R. § 180.60(a). Specifically, your hospital has not made standard charge information available for a combined total of at least 300 shoppable services. If your hospital does not provide 300 shoppable services, please respond and provide supporting documentation.
2. Failure to include, as applicable, all corresponding data elements in the list of standard charges (identified in 45 C.F.R. § 180.60(b)(3)-(6)) for your hospital's list of shoppable services, as provided in 45 C.F.R. § 180.60(b). Specifically, each list of payer-specific negotiated charges is not clearly associated with the name of the third-party payer and plan, as required at 45 C.F.R. § 180.60(b)(3).
3. Failure to include, as applicable, all corresponding data elements in the list of standard charges (identified in 45 C.F.R. § 180.60(b)(3)-(6)) for your hospital's list of shoppable services, as provided in 45 C.F.R. § 180.60(b). Specifically, you did not include the payer-specific negotiated charge that applies to each shoppable service (and to each ancillary service, as applicable), as required at 45 C.F.R. § 180.60(b)(3).
4. Failure to include, as applicable, all corresponding data elements in the list of standard charges (identified in 45 C.F.R. § 180.60(b)(3)-(6)) for your hospital's list of shoppable services, as provided in 45 C.F.R. § 180.60(b). Specifically, you did not include the discounted cash price that applies to each shoppable service (and corresponding ancillary charges, as applicable) or, if your hospital does not offer a discounted cash price for one or more shoppable services (or corresponding ancillary services), the undiscounted gross

charge for the shoppable service (and corresponding ancillary services, as applicable), as required at 45 C.F.R. § 180.60(b)(4).

5. Failure to make the shoppable services information described in 45 CFR § 180.60(b) easily accessible, without barriers, as provided in 45 C.F.R. § 180.60(d)(3). Specifically, the shoppable services information is not searchable by payer as required at 45 C.F.R. § 180.60(d)(3)(iv).

CMS completed a review of <https://firstsurgical.com/> on April 30, 2024. On May 1, 2024 CMS issued an additional Notice of Violation and Request for Corrective Action Plan (CAP) notifying the hospital of the following material violations:

Violations - Requirements for Hospital Standard Charges

1. Failure to include all of the corresponding data elements in its list of standard charges, as applicable, as provided in 45 C.F.R. § 180.50(b)(1). Specifically, no discounted cash prices were posted in the online machine-readable file as required at 45 C.F.R. § 180.50(b)(1)(vi).
2. Failure to include all of the corresponding data elements in its list of standard charges, as applicable, as provided in 45 C.F.R. § 180.50(b)(1). Specifically, no de-identified minimum negotiated charges were posted in the online machine-readable file as required at 45 C.F.R. § 180.50(b)(1)(iv).
3. Failure to include all of the corresponding data elements in its list of standard charges, as applicable, as provided in 45 C.F.R. § 180.50(b)(1). Specifically, no de-identified maximum negotiated charges were posted in the online machine-readable file as required at 45 C.F.R. § 180.50(b)(1)(v).

Violations - Displaying Shoppable Services in a Consumer-Friendly Manner

1. Failure to include, as applicable, all corresponding data elements in the list of standard charges (identified in 45 C.F.R. § 180.60(b)(3)-(6)) for your hospital's list of shoppable services, as provided in 45 C.F.R. § 180.60(b). Specifically, you did not include the discounted cash price that applies to each shoppable service (and corresponding ancillary charges, as applicable) or, if your hospital does not offer a discounted cash price for one or more shoppable services (or corresponding ancillary services), the undiscounted gross charge for the shoppable service (and corresponding ancillary services, as applicable), as required at 45 C.F.R. § 180.60(b)(4).

CMS completed a review of <https://firstsurgical.com/> on July 9, 2024 and issued another additional Notice of Violation and Request for Corrective Action Plan (CAP) notifying the hospital of the following material violations:

Violations - Requirements for Hospital Standard Charges

1. Failure to include the affirmation statement in the machine-readable file, as required at 45 C.F.R. § 180.50(a)(3)(ii).

2. Failure to ensure that the public website the hospital selected to host its machine-readable file establishes and maintains, in the form and manner specified by CMS a .txt file in the root folder as required by 45 C.F.R. § 180.50(d)(6)(i).
3. Failure to conform the machine-readable file to the CMS template layout, data specifications, and data dictionary for purposes of making public the standard charge information, as required at 45 C.F.R. § 180.50(c)(2).
4. Failure to comply with 45 C.F.R. § 180.50(b)(2)(i)(A) requiring that the hospital name, license number, and location name(s) and address(es) under the single hospital license to which the list of standard charges applies be encoded in the machine-readable file.

Violations - Displaying Shoppable Services in a Consumer-Friendly Manner

1. Failure to include, as applicable, all corresponding data elements in the list of standard charges for your hospital's list of shoppable services, as provided in 45 C.F.R. § 180.60(b). Specifically, you did not include the discounted cash price that applies to each shoppable service (and corresponding ancillary charges, as applicable) or, if your hospital does not offer a discounted cash price for one or more shoppable services (or corresponding ancillary services), the undiscounted gross charge for the shoppable service (and corresponding ancillary services, as applicable), as required at 45 C.F.R. § 180.60(b)(4).

CMS completed a review of First Surgical Hospital's website <https://firstsurgical.com/> on December 16, 2024. The following material violations were identified:

Violations - Requirements for Hospital Standard Charges

1. Failure to conform the machine-readable file to the CMS template layout, data specifications, and data dictionary for purposes of making public the standard charge information, as required at 45 C.F.R. § 180.50(c)(2).

First Surgical 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 \$62,016.00, pursuant to 45 C.F.R. § 180.90. The CMP is calculated as follows:

\$323.00 per day for hospitals with a bed count¹ of 30 or fewer = \$323.00 x (192 days) = \$62,016.00. This CMP is calculated from July 9, 2024 to and including January 16, 2025, the date of this notice.

¹ Pursuant to 45 C.F.R. § 180.90(c)(2)(ii)(D)(1), CMS used the most recently available, finalized Medicare hospital cost report to determine the number of beds.

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 45 C.F.R. §§ 180.40 - 180.60 as appropriate. It is suggested that your hospital notify CMS via email at HPTCompliance@cms.hhs.gov when it makes any necessary corrections to be compliant with the relevant sections of 45 C.F.R. §§ 180.40 - 180.60, as indicated above.**

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, and a final and binding decision upholds the CMP in whole or in part as described in 45 C.F.R. Part 180, Subpart D, then your hospital must pay the CMP amount that was upheld within 60 calendar days from the date of the final and binding decision, 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.

To Pay via Federal ACH Wire Transfer

Subtype/Type Code:	10 00
Amount:	\$62,016.00
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 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

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.

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., Part 150, Subpart D. 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 is unable to file electronically. Otherwise, the 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. 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. Submitted documents are accepted in Portable Document Format (PDF), image, audio, or video files. All electronic documents must be formatted so that they will print on standard 8.5 x 11 inch paper. The ALJ will consider documents uploaded to the DAB E-File on any day on or before 11:59 p.m. Eastern Time, 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. Eastern Time. If your hospital is unable to file electronically, 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:

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 as described in 45 C.F.R. Part 180, Subpart D, CMS will issue a

³ Pursuant to 45 C.F.R. §180.110(a)(1), 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.

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 Pilotte
Director
Performance-Based Payment Policy Group
Center for Medicare

CC: Veronica Gonzales, Business Office Manager