



# Rethinking Transparency – Inpatient Prospective Payment System Final Rule Rescinds Proposed Survey Disclosure Rule

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August 4, 2017 - [Sandra M. DiVarco](#)

## **Summary**

The 2018 IPPS/LTCH PPS proposed rule contained a provision that would have required AOs to make survey reports and acceptable plans of correction publicly available within approximately three months of issuance. The Final Rule, released on August 2, 2017, withdrew the proposed rule in its entirety due to potential conflict with the Social Security Act.

## **In Depth**

The 2018 Inpatient Prospective Payment System (IPPS)/Long-Term Care Hospital (LTCH) Prospective Payment System (PPS) proposed rule, published in April 2017, contained a controversial provision that would have required accrediting organizations (AOs) that confer deemed status (such as The Joint Commission and DNV) to make all survey reports and acceptable plans of correction publicly available on their websites within 90 days of issuance (Proposed Transparency Rule). While the proposed rule cited the goal of improved transparency and enhancing patient health and safety, hospitals and other health care facilities that rely on AOs for deemed status voiced significant concerns about the unintended consequences of such disclosures, including providing an AO-slanted view of events, placing health care facilities on the defensive regarding corrective actions, the inability to correct

misstatements in survey reports, and the risk that the public would not understand the survey process and become unreasonably biased against certain facilities. The Proposed Transparency Rule also garnered comment as Centers for Medicare and Medicaid Services (CMS) does not require itself to make all of its survey reports publicly available in such a short time frame, and does not presently make full plans of correction for all health care facilities readily available to the public.

To the surprise of some in the industry, the 2018 IPPS/LTCH PPS final rule (Final Rule) released on August 2, 2017, withdrew the Proposed Transparency Rule in its entirety, for a reason entirely unrelated to the main arguments that had been raised: potential conflict with Section 1865(b) of the Social Security Act (Act). Section 1865(b) of the Act provides that:

The Secretary may not disclose any accreditation survey (other than a survey with respect to a home health agency) made and released to the Secretary by the American Osteopathic Association or any other national accreditation body, of an entity accredited by such body, except that the Secretary may disclose such a survey and information related to such a survey to the extent such survey and information relate to an enforcement action taken by the Secretary. See 42 USC 1395bb.

CMS indicated in the Final Rule that it was concerned that implementing the Proposed Transparency Rule would “appear as if CMS was attempting to circumvent” the Act by requiring the AOs to release their own survey reports—a concern that was sufficient for the Proposed Transparency Rule to be withdrawn.

Whatever the basis of the decision, AOs, hospitals and health care facilities must prepare for the next effort to make AO and CMS survey and plan of correction information readily available on-line—transparency may have been delayed by the withdrawal of the Proposed Transparency Rule—but it is on the way, like it or not.

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