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MedPAC Votes to Lower Urban Freestanding Emergency Department Payments

On April 5, 2018, at the public meeting for the *Medicare Payment and Advisory Commission* (MedPAC), the commissioners passed, via a unanimous vote, the following proposed recommendations related to reimbursement for *freestanding emergency departments* (FSEDs), a/k/a stand-alone emergency departments:

(1) "*Congress should* ***reduce Type A emergency department [ED] payment rates by 30 percent*** *for off-campus stand-alone emergency departments that are* ***within six miles*** *of an on-campus hospital emergency department*"[1] [emphasis added]; and,

(2) "*Congress should allow* ***isolated rural*** *stand-alone emergency departments* ***more than 35 miles*** *from another ED to bill standard outpatient prospective payment system facility fees and provide such emergency departments with annual payments to assist with fixed cost*."[2] [emphasis added]

Currently, Medicare reimburses FSEDs under the *outpatient prospective provider system* (OPPS) by two different methods:

(1) *Type A ED rates* reimburse hospital EDs open 24 hours per day; and,

(2) *Type B ED rates* reimburse hospitals with EDs open fewer than 24 hours per day (note that these payments are approximately *30% lower* than Type A rates).[3]

These recommendations should come as no surprise, given that MedPAC has published findings regarding trends and utilization of stand-alone EDs in both its June 2016 and June 2017 *Reports to the Congress*.[4] In its most recent research, MedPAC found that, of the almost 600 FSEDs currently operating in the U.S., most have been open since 2010, and approximately two-thirds of these can currently bill Medicare for services.[5] Additionally, FSEDs were found to be disproportionately located in areas with higher than average incomes and better (i.e., privately) insured consumers.[6] This is thought to be, in part, due to varying state regulations with regard to FSED required services; ownership structure; and, operational requirements. Thus, in more lenient jurisdictions, FSEDs represent an opportunity for affiliated hospitals to expand their geographic footprint and reduce hospital-based ED overcrowding by increasing access in a nearby FSED. Additionally, FSEDs may allow a hospital system to cut into a competitor's market service area to increase revenue by spending less money,[7] as FSEDs do not maintain operating rooms or trauma teams and do not require on-call specialists, as a hospital-based ED would.[8]

Hospital-affiliated *off-campus emergency departments* (OCEDs) – which comprised 64% of all FSEDs in 2016 – that are located within 35 miles of their affiliated hospital campus are paid the higher Type A rate for Medicare services (to compensate for the higher acuity patients treated), despite serving patients with acuity levels similar to those paid Type B rates.[9] Should the first of MedPAC's recommendations be passed, approximately 75% of OCEDs will face the recommended 30% payment reduction, saving Medicare anywhere from an estimated $50 to $250 million annually.[10]

This MedPAC recommendation is not the first action focused on reducing outpatient site payments. In the *Bipartisan Budget Act of 2015*, Congress mandated that any medical services provided in an "*off-campus provider-based department*" no longer be reimbursed under the OPPS; the only service exempted from this new rule was ED services.[11] The *Centers for Medicare & Medicaid Services* (CMS) consequently reduced payment for these entities to the applicable (and much lower) non-facility rate under the *Medicare Physician Fee Schedule* (MPFS).[12] These, and subsequent changes by CMS, effectively reduced reimbursement to 25% of the original OPPS reimbursement fee for these outpatient entities, as of 2018.[13] These changes have been met with criticism by the *American Hospital Association* (AHA), which called the previous payment reductions "*arbitrary and capricious*."[14] Similarly, in reaction to the first of MedPAC's most recent recommendations regarding adding FSED reimbursement reductions to the growing list, the AHA called the move "*unfounded and arbitrary*," citing a lack of appropriate analytical data to support the recommendation.[15]

Additionally, in 2016, MedPAC conducted an investigation regarding improving access to emergency care in rural areas, which included reviewing potential scenarios by which financially struggling, isolated hospitals, e.g., *critical access hospitals* (CAH), would be given the option to convert to outpatient-only facilities, e.g., an ED or a clinic with ambulance service, to preserve access and promote efficiency.[16] As noted in this 2016 investigation, should MedPAC's 2018

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recommendation be passed by Congress, it would result in a modest increase in spending, but with the benefit of potentially preserving access to emergency care in rural settings.[17]

Many of the MedPAC commissioners commented that these recommendations should be considered just the beginning of a much broader avenue of inquiry regarding the appropriateness of emergency care utilization.[18] The number of ED visits have grown 20% from 2000 to 2010; while more than three quarters of privately insured patients seen in the ED could be more appropriately cared for in a primary care setting, the average ED visit costs $580 more than an outpatient office visit, contributing to unnecessary healthcare spending.[19] While hospital investment in FSEDs may have historically been a smart financial business move, MedPAC appears to be cognizant of the fact that it may not be fiscally advantageous for federal health insurance programs. As Congress has historically agreed with MedPAC's recommendations regarding the reduction of payment for certain outpatient services,[20] investors and health systems should be wary of another imminent reimbursement reduction.

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1 "Public Meeting" Medicare Payment Advisory Commission, April 5, 2018, http://www.medpac.gov/docs/default-source/default-document-library/april-2018-meeting-transcript.pdf?sfvrsn=0 (Accessed 4/20/18), p. 9.
2 *Ibid*, p. 12.
3 "Report to the Congress; Medicare and the Health Care Delivery System" Medicare Payment Advisory Commission, June 2017, p. 251; "Using Payment to Ensure Appropriate Access to and Use of Hospital Emergency Department Services" By Jeff Stensland, Zach Gaumer, and Sydney McClendon, Medicare Payment Advisory Commission, April 5, 2018, http://www.medpac.gov/docs/default-source/default-document-library/april18_ed_presentation_public.pdf?sfvrsn=0 (Accessed 4/20/18), p. 6. Note that physicians may still bill Medicare for Medicare-covered professional services provided in a FSED under the Medicare physician fee schedule. "The Opportunities and Challenges of Freestanding Emergency Departments" By Kenneth Yood and Rachel Landauer, Sheppard Mullin, May 24, 2017, https://www.sheppardhealthlaw.com/2017/05/articles/healthcare/fsed/ (Accessed 4/20/18).
4 MPAC, June 2016, p. 212-213; *Ibid*, p. 245-264.
5 Stensland, Gaumer, McClendon, April 5, 2018, p. 3.
6 MPAC, June 2017, p. 256-257.
7 "The Opportunities and Challenges of Freestanding Emergency Departments" By Kenneth Yood and Rachel Landauer, Sheppard Mullin, May 24, 2017, https://www.sheppardhealthlaw.com/2017/05/articles/healthcare/fsed/ (Accessed 4/20/18).
8 "MedPAC Votes to Cut Payments for Free-Standing ERs" By Virgil Dickson, Modern Healthcare, April 5, 2018, http://www.modernhealthcare.com/article/20180405/NEWS/180409947 (Accessed 4/20/18).
9 MPAC, June 2017, p. 248; Stensland, Gaumer, McClendon, April 5, 2018, p. 5-6.
10 MPAC, April 5, 2018, p. 9.
11 "Fact Sheet: Changes to Site-Neutral Payment Provisions in CMS's Physician Fee Schedule Proposed Rule" American Hospital Association, September 2017, https://www.aha.org/system/files/2018-01/17-factsheet-site-neutral.pdf (Accessed 4/20/18); "Bipartisan Budget Act of 2015" Public Law 114-74 §603, 129 STAT. 597-598 (November 2, 2015).
12 "Medicare Program: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; Organ Procurement Organization Reporting and Communication; Transplant Outcome Measures and Documentation Requirements; Electronic Health Record (HER) Incentive Programs; Payment to Nonexcepted Off-Campus Provider-Based Department of a Hospital; Hospital Value-Based Purchasing (VBP) Program; Establishment of Payment Rates Under the Medicare Physician Fee Schedule for Nonexcepted Items and Services Furnished by an Off-Campus Provider-Based Department of a Hospital" Federal Register Vol. 81, No. 219, November 14, 2016, p. 79699-79719.
13 AHA, September 2017.
14 *Ibid.*
15 "RE: Draft Recommendation for Off-Campus Stand-Alone Emergency Departments" By Ashley B. Thompson, American Hospital Association, To Jim Mathews, Medicare Payment Advisory Commission, March 29, 2018, available at: https://www.aha.org/system/files/2018-04/180402-let-aha-medpac-off-campus-eds.pdf (Accessed 5/8/18).
16 MPAC, June 2016, p. 204.
17 MPAC, April 5, 2018, p. 12.
18 *Ibid*, p. 44-45.
19 "Reducing Inappropriate Emergency Department Use Requires Coordination with Primary Care" Robert Wood Johnson Foundation, Quality Field Notes, No. 1, September 2013, https://www.rwjf.org/content/dam/farm/reports/issue_briefs/2013/rwjf407773 (Accessed 4/24/18), p. 1.
20 Dickson, April 5, 2018.

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