

CMS Continued Payment System Overhaul: OPPTS Proposed Rule

The *Centers for Medicare & Medicaid Services* (CMS), under the Trump Administration, has proposed numerous changes to various healthcare payment systems in efforts to empower patients and provide more affordable healthcare options.¹ On July 25, 2018, CMS released an advance copy of the proposed rule for the *Calendar Year (CY) 2019 Medicare Hospital Outpatient Prospective Payment System* (OPPS),² which includes changes to both OPPTS and the *ambulatory surgical center* (ASC) payment system,³ and drives home the Administration's initiatives through expanding site-neutral payments, increasing transparency, and lowering drug prices.⁴ This rule would update Medicare outpatient payment rates by 1.25% in CY 2019, with the total payments to OPPTS providers estimated to be \$7.4 billion, an increase of \$4.9 billion from CY 2018.⁵ These proposed changes, and their potential effect on the current healthcare delivery system, as well as relevant stakeholder reactions and predictions for the future, will be discussed below.

Four proposed changes are expected to significantly impact *hospital outpatient provider-based departments* (HOPDs), specifically as regards: (1) off-campus provider-based emergency departments (EDs); (2) site-neutral payments for clinic visits in all off-campus HOPDs; (3) payments for separately payable, covered outpatient drugs and biologicals acquired through the 340B Program; and, (4) expansion of services in excepted off-campus HOPDs.⁶ Of note, rural sole community hospitals, children's hospitals, and certain cancer hospitals are exempt from these rules.⁷ This proposal's focus on HOPDs integrates Section 603 of the *Bipartisan Budget Act of 2015* (BBA), which provides that, as of January 2017, no off-campus HOPD (i.e., an outpatient department of a hospital located off the hospital's main campus) may bill under OPPTS unless: (1) it is a "*dedicated emergency department*"; or, (2) it is *excepted* or *grandfathered*.⁸ All non-excepted HOPDs have to bill under a different payment system, i.e., the *Medicare physician fee schedule* (MPFS).⁹ Notably, reimbursement rates for HOPD-furnished services are generally much higher under Medicare OPPTS than under other payment systems,¹⁰ explaining the desire of healthcare organizations to be eligible to bill under OPPTS.

Off-Campus Provider-Based EDs

One of the proposed changes addresses the June 2017 *Medicare Payment Advisory Commission* (MedPAC)

recommendation to collect data (for tracking purposes) regarding which OPPTS services have shifted to off-campus provider-based EDs.¹¹ As proposed, a new modifier "*ER*" would be implemented to identify these items and services furnished and would become effective on January 1, 2019.¹²

Site-Neutral Payments for Clinic Visits

CMS also proposes imposing site-neutral payments for clinic visits in *all* off-campus HOPDs.¹³ Concerned about the payment incentives that shift services from physician offices to HOPDs, CMS believes that these site-neutral payments will address the beneficiary financial burden caused by this shift, i.e., higher copayments and coinsurance.¹⁴ This CMS proposal aims to extend beyond what is required by the BBA, which currently reduces payments to off-campus HOPDs to the amount paid to physician offices for the same service.¹⁵

340B Program Payments

Currently, there is a difference between *excepted* off-campus HOPD and *non-excepted* off-campus HOPD receivable payments for furnished 340B-acquired drugs, with services in non-excepted off-campus HOPDs garnering providers a higher payment for these drugs.¹⁶ The 340B Program allows participating hospitals and providers to purchase certain covered outpatient drugs from the manufacturer at discounted prices.¹⁷ However in 2017, CMS finalized a payment policy, for excepted HOPDs, to cover outpatient drugs and biologicals at a rate of the drug's average sales price (ASP) *minus* 22.5%, rather than that under the previous payment system, i.e., ASP *plus* 4.3%, resulting in both large cuts to the 340B Program and significantly higher drug expenditures for hospitals participating in the program.¹⁸ Consequently, CMS proposes to extend the 2017 340B Drug Payment Policy (i.e., ASP *minus* 22.5%) to non-excepted off-campus HOPDs, to eliminate the incentive for hospitals to move 340B-acquired drug services to non-excepted off-campus HOPDs solely to receive the higher payment amounts for these drugs.¹⁹

Expansion of Services in Excepted Off-Campus HOPDs

CMS has proposed to require *new* (not furnished between November 2014 and November 2015) types of furnished services provided at *excepted* off-campus HOPDs (i.e., those allowed to bill under OPPTS in accordance with the BBA) to be paid at the reduced rate applied to *non-*

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excepted off-campus HOPDs,²⁰ specifically at a rate of 40% of the OPPOS rate.²¹ This proposal is aimed at addressing CMS concern that if excepted off-campus HOPDs are allowed to furnish new services that were not provided prior to the enactment of the BBA, then hospitals will furnish these services with newly purchased physician practices, which will be paid at OPPOS rates instead of under the “MPFS Relativity Adjuster,” a rate of 50% of the OPPOS rate.²² With the clinic visit being the most commonly billed service under OPPOS, CMS estimates this proposed change would reduce 2019 Medicare expenditures by \$760 million.²³ It is also anticipated that this change would lower clinic visit coinsurance payments for Medicare beneficiaries, from approximately \$23, the current average payment, to \$9.²⁴

Changes to ASC Payment Rates

The CMS 2019 rule also proposes to increase payment rates by 2% for ASCs that meet the quality reporting requirements under the *Ambulatory Surgical Center Quality Reporting (ASCQR) Program*, and suggests expanding the number of procedures payable at ASCs to ensure they remain competitive with HOPDs.²⁵ CMS is, however, reconsidering whether to pay for spinal surgeries at ASCs, based on an investigation finding that, since 2008, 14 seniors have died from same-day spine operations at ASCs; now, CMS considering whether these procedures “pose a significant safety risk” to the patients.²⁶ Since 2015, CMS has added 38 procedures as payable for ASCs, 25 of them which involve spine surgery.²⁷

Stakeholder Reactions

The 2019 OPPOS proposed rule has been very controversial among the pertinent stakeholders, with the *American Hospital Association (AHA)* and *America’s Essential Hospitals (AEH)* both releasing statements largely disapproving the proposal.²⁸ AHA Executive Vice President, Tom Nickels, wrote:

“CMS has once again showed a lack of understanding about the reality in which hospitals and health systems operate daily...[i]n 2015, Congress clearly intended to provide current off-campus hospital clinics with the existing outpatient payment rate...CMS’s proposal runs counter to this and will instead impede access to care for the most vulnerable patients.”²⁹

Nickels also made clear that AHA believes that CMS’s proposal invokes a legal issue, i.e., that CMS has misconstrued congressional intent as established in the BBA and, thus, lacks statutory authority to propose these rules.³⁰ Bruce Siegel, President and CEO of AEH, has asserted that these proposals will neither protect nor support America’s most vulnerable patient populations, and will severely undermine the foundation of safety net hospitals and those other hospitals that are least able to afford this latest Medicare cost-savings approach.³¹ 340B Health, a representative for safety net hospitals, released a statement criticizing CMS for extending the already detrimental cuts to drugs provided in off-campus hospital clinics, which they noted includes, “facilities providing infusion therapy for cancer patients and other high-cost drug therapies to treat chronic and life threatening conditions.”³²

Conclusion

Overall, CMS estimates that outpatient hospital payments for 2019 will decrease by \$80 million nationwide, or by a net of 0.1%, with teaching hospitals taking the biggest hit – a payment decrease of 0.8%.³³ On average, other hospitals would see a 0.5% increase in payments, and ASCs, gaining the most, would see increases of 2% in 2019 – an estimated payment increase of \$32 million.³⁴ Controversial changes are a constant in the U.S. healthcare industry, and the Trump Administration continues to push forward their agenda to “empower patients”³⁵ and increase the affordability of healthcare; the consequential effect this may have on hospitals and health systems remains to be determined.

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