

## CMS Publishes 2020 OPPS/ASC PPS Proposed Rule

The Centers for Medicare & Medicaid Services (CMS), in response to President Donald Trump's June 24, 2019 executive order entitled, "*Improving Price and Quality Transparency in American Healthcare to Put Patients First*,"<sup>1</sup> has proposed "historic changes to various healthcare payment systems in an effort to "lay[] the foundation for a patient-driven healthcare system."<sup>2</sup> On August 9, 2019, CMS released the proposed rule for the *Calendar Year (CY) 2020 Medicare Hospital Outpatient Prospective Payment System (OPPS) and Ambulatory Surgical Center (ASC) Payment Systems*,<sup>3</sup> which includes significant changes to both payment systems. This proposed rule would update Medicare outpatient payment rates by 2.7% in CY 2020,<sup>4</sup> a substantial increase from the 1.25% rate adjustment in 2019.<sup>5</sup> Three proposed changes are expected to significantly impact *hospital outpatient provider-based departments (HOPDs)*, specifically as regard: (1) price transparency of hospital standard charges; (2) site-neutral payments for clinic visits in all off-campus HOPDs; and, (3) payments for separately payable, covered outpatient drugs and biologicals acquired through the 340B Program. These proposed changes, their potential effect on the current healthcare delivery system, and relevant stakeholder reactions, are discussed below.

### Price Transparency

Perhaps the most contested proposed change requires hospitals to disclose their "*standard charges*," i.e., their "*gross charges and payer-specific negotiated charges*,"<sup>6</sup> including for 300+ "*shoppable services*," i.e., "*those [services] that are routinely provided in non-urgent situations that do not require immediate action or attention to the patient, thus allowing patients to price shop and schedule a service at a time that is convenient for them*,"<sup>7</sup> such as lab tests, outpatient visits, and some procedures.<sup>8</sup> Under this proposal, hospitals will be required to publicly disclose, and annually update, these charges.<sup>9</sup> The penalty for not complying with this rule would be (after a written warning) a civil

monetary penalty of up to \$300 per day, which penalties would be publicly recorded on CMS's website.<sup>10</sup>

Regarding this new requirement, CMS reasons that "*healthcare markets work more efficiently and provide consumers with higher-value healthcare if...policies that encourage choice and competition*" are promoted.<sup>11</sup> However, provider trade groups, such as the American Hospital Association (AHA), assert that such requirements could, in fact, limit patient choices, as these revealed prices may set a floor for rates, and not a ceiling as intended, ultimately resulting in higher rates.<sup>12</sup>

### Site-Neutral Payments

CMS proposes completing the two-year phase-in of site-neutral payments for clinic visits in grandfathered off-campus HOPDs.<sup>13</sup> Established in the CY 2019 final rule, this policy is currently at issue in a number of lawsuits brought by the AHA and the Association of American Medical Colleges (AAMC).<sup>14</sup> However, CMS believes that these site-neutral payments will address the payment incentives that shift services from physician offices to HOPDs, as well as the beneficiary financial burden caused by this shift, i.e., higher copayments and coinsurance, ultimately saving Medicare and patients \$810 million in 2020.<sup>15</sup>

### 340B Program Payments

CMS also proposes to continue the steep payment cuts to participants in the 340B Drug Discount Program. The 340B Program allows participating hospitals and providers (including nonexcepted off-campus HOPDs<sup>16</sup>) to purchase certain covered outpatient drugs from the manufacturer at discounted prices.<sup>17</sup> However in 2017, CMS finalized a payment policy 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* 6%,<sup>18</sup> resulting in both large cuts to the 340B Program and significantly higher drug expenditures for program

participants. Consequently, the AHA (and other hospital association groups) filed a lawsuit in the District of Columbia, claiming that the cuts exceeded the statutory authority of the *U.S. Department of Health and Human Services* (HHS); the court has previously found that the 340B reimbursement rates in 2018 and 2019 were unlawful, and remanded those rules back to HHS for the purpose of “crafting appropriate remedial measures.”<sup>19</sup>

### Changes to ASC Payment Rates

The proposed rule seeks to increase payment rates by 2.7% for ASCs (note that this is the same percent increase as payment rates for HOPDs), provided that they meet the quality reporting requirements under the *Ambulatory Surgical Center Quality Reporting (ASCQR) Program*.<sup>20</sup> Additionally, CMS proposes using the CY 2020 hospital *Inpatient Prospective Payment System (IPPS)* post-reclassified wage index for urban and rural areas as the OPSS wage index.<sup>21</sup> The wage index helps to account for local differences in wages for hospital labor; tying the OPSS wage index to the IPPS wage index would standardize those adjustments.

Regarding the procedures for which Medicare will pay under the OPSS, CMS proposes removing total hip arthroplasty from the Inpatient Only (IPO) list,

so that going forward, providers may be reimbursed for performing that procedure at an ASC or HOPD.<sup>22</sup> CMS also proposes adding several services to the *ASC Covered Procedures List*, “a list of covered surgical procedures that are eligible for payment under Medicare when furnished in an ASC,” including Total Knee Arthroplasty (TKA), Knee Mosaicplasty, and three additional coronary intervention procedures.<sup>23</sup>

### Conclusion

Overall, CMS estimates that outpatient hospital payments for 2020 will increase by approximately \$6 billion from 2019 with the total payments to OPSS providers estimated to be \$79 billion, while ASC payments will increase by approximately \$200 million from 2019, to \$4.89 billion.<sup>24</sup> Although a number of these proposals offered by CMS are being strongly contested by providers, including in the courts, CMS and the Trump Administration continue to push forward their agenda to “*Improv[e] Price and Quality Transparency in American Healthcare to Put Patients First*”; the consequential impact of this agenda on providers is yet to be determined. Stakeholder comments related to the proposed rule are due September 27, 2019.

1 “Executive Order on Improving Price and Quality Transparency in American Healthcare to Put Patients First” Donald J. Trump, The White House, June 24, 2019, <https://www.whitehouse.gov/presidential-actions/executive-order-improving-price-quality-transparency-american-healthcare-put-patients-first/> (Accessed 8/12/19).

2 “CMS Takes Bold Action to Implement Key Elements of President Trump’s Executive Order to Empower Patients with Price Transparency and Increase Competition to Lower Costs for Medicare Beneficiaries” *Centers for Medicare & Medicaid Services, Press Release, July 29, 2019*, <https://www.cms.gov/newsroom/press-releases/cms-takes-bold-action-implement-key-elements-president-trumps-executive-order-empower-patients-price> (Accessed 8/12/19).

3 “Medicare Program: Proposed Changes to Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; Price Transparency of Hospital Standard Charges; Proposed Revisions of Organ Procurement Organizations Conditions of Coverage; Proposed Prior Authorization Process and Requirements for Certain Covered Outpatient Department Services; Potential Changes to the Laboratory Date of Service Policy; Proposed Changes to Grandfathered Children’s Hospitals-Within-Hospitals” Federal Register, Vol. 84, No. 154 (August 9, 2019), p. 39398.

4 *Ibid.*, p. 39401.

5 “Medicare Program: Proposed Changes to Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; Requests for Information on Promoting Interoperability and Electronic Health Care Information, Price Transparency, and Leveraging Authority for the Competitive Acquisition Program for Part B Drugs and Biologicals for a Potential CMS Innovation Center Model” Federal Register Vol. 83, No. 147 (July 31, 2018), p. 37046.

6 Federal Register, Vol. 84, No. 154 (August 9, 2019), p. 39402.

7 *Ibid.*, p. 39585.

8 “CMS OPSS Proposed Rule Would Require Hospitals to Disclose Negotiated Rates” AHLA Weekly, July 30, 2019, available at: <https://www.healthlawyers.org/News/Health%20Lawyers%20Weekly/Pages/2019/August%202019/August%2002%202019/CMS-Issues-Proposed-OPSS-Rule-That-Would-Require-Hospitals-to-Disclose-Negotiated-Rates.aspx> (Accessed 8/22/19).

9 Federal Register, Vol. 84, No. 154 (August 9, 2019), p. 39582-39584.

10 CMS, Press Release, July 29, 2019.

11 “CY 2020 Medicare Hospital Outpatient Prospective Payment System and Ambulatory Surgical Center Payment System Proposed Rule (CMS-1717-P)” *Centers for Medicare & Medicaid Services, July 29, 2019*, <https://www.cms.gov/newsroom/fact-sheets/cy-2020-medicare-hospital-outpatient-prospective-payment-system-and-ambulatory-surgical-center> (Accessed 8/12/19).

12 AHLA Weekly, July 30, 2019.

13 “Medicare Program: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs” Federal Register Vol. 82, No. 138 (June 20, 2017), p. 37084, 37142.

14 “AHA, AAMC File Lawsuit Over Outpatient Payment Policy That Threatens Patient Access to Care” American Hospital Association, Press Release, December 4, 2018, <https://www.aha.org/press-releases/2018-12-04-aha-aamc-file-lawsuit-over-outpatient-payment-policy-threatens-patient> (Accessed 8/23/19).

15 CMS, Fact Sheet, July 29, 2019.

16 For more information, see “CMS’s Continued Payment System Overhaul: OPSS Proposed Rule” Health Capital Topics, Vol. 11, Issue 8 (August 2018), [https://www.healthcapital.com/hcc/newsletter/08\\_18/HTML/OPSS/convert\\_final\\_opps\\_8.21.18.php](https://www.healthcapital.com/hcc/newsletter/08_18/HTML/OPSS/convert_final_opps_8.21.18.php) (Accessed 8/4/19).

17 “CMS Releases Proposed Updates to the CY 2019 Hospital Outpatient and ASC Prospective Payment Systems” Federal

- Issue Brief, Missouri Hospital Association, July 26, 2018,  
[https://www.mhanet.com/mhaimages/Issue%20Briefs/Issue%20Brief\\_Proposed%202019%20OPPS.pdf](https://www.mhanet.com/mhaimages/Issue%20Briefs/Issue%20Brief_Proposed%202019%20OPPS.pdf), p. 2 (Accessed 8/1/18).
- 18 Memorandum Opinion, *American Hosp. Association, et al. v. Azar*, Civil Action No. 18-2084 (RC) (D.D.C. May 6, 2019).
- 19 *Ibid*, p. 2.

- 20 Federal Register, Vol. 84, No. 154 (August 9, 2019), p. 39402.
- 21 *Ibid*, p. 39428-39430.
- 22 CMS, Fact Sheet, July 29, 2019.
- 23 *Ibid*.
- 24 Federal Register, Vol. 84, No. 154 (August 9, 2019), p. 39401-39402.

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