

CMS Finalizes 2022 OPPS/ASC Final Rule

On November 2, 2021, the Centers for Medicare & Medicaid Services (CMS) released the calendar year (CY) 2022 Outpatient Prospective Payment System (OPPS) and Ambulatory Surgical Center (ASC) payment system final rule, in which the agency finalized several of the policies it proposed in July 2021.¹ In summary, the final rule updated payment rates and addressed issues such as health equity and patient-centered care, increasing price transparency, patient safety, and access to quality care generally.² This *Health Capital Topics* article will briefly review those major updates and changes to, as well as the possible impacts of, CMS's 2022 final rule, which will go into effect on January 1, 2022.

Payment Rate Updates for Hospital Outpatient Departments (HOPDs)

Each year, CMS updates the payment rates that affect the way physicians are paid by Medicare. In the proposed rule, CMS suggested a 2.3% increase in OPSS payment rates to hospital outpatient departments (HOPDs) that meet specific quality reporting criteria.³ The final rule backed off that amount, increasing the payment rates by only 2.0%, comprised of a 2.7% market basket increase *minus* a productivity adjustment of 0.7%.⁴ The 2021 conversion factor of \$82.797 will be increased to \$84.177 for CY 2022.⁵ Further, because of the COVID-19 pandemic (and related quality integrity concerns related to the claims during that year), CMS will continue using CY 2019 data to set the CY 2022 OPSS and ASC payment system rates, rather than CY 2020 data.⁶ CMS estimates that this will extrapolate to nearly \$82.08 billion in total payments to HOPDs in 2022, an increase of approximately \$1.3 billion from 2021 Medicare payments.⁷

Payment Rate Updates for Ambulatory Surgical Centers (ASCs)

Similar to the OPSS, CMS also updates the payment rates for ASCs on a yearly basis. In the proposed rule, CMS suggested a 2.3% increase in payment rates to those ASCs that meet specific quality reporting criteria.⁸ The final rule backed off that amount, increasing the payment rates at the same rate as for HOPDs – an update of 2.0%, comprised of a 2.7% market basket increase *minus* a productivity adjustment of 0.7%.⁹ CMS estimates that this will extrapolate to approximately \$5.41 billion in

total payments to ASCs in 2022, an approximately \$40 million increase from 2021 Medicare payments.¹⁰

Price Transparency of Hospital Standard Changes

On January 1, 2021, the Hospital Price Transparency final rule went into effect, wherein all U.S. hospitals are required to provide online pricing information in a clear, accessible manner.¹¹ Under the OPSS/ASC final rule, CMS substantially increased financial penalties for noncompliance under the hospital price transparency rules.¹² The final rule maintained a minimum civil monetary penalty (CMP) of \$300 per day for hospitals with 30 or fewer beds,¹³ but increased the amount for larger hospitals. Starting January 1, 2022, a penalty of \$10 per bed per day would apply to hospitals with more than 30 beds, not to exceed a maximum daily dollar amount of \$5,500.¹⁴ Under this approach, for a full calendar year of noncompliance, the minimum total penalty amount would be \$109,500 per hospital, and the maximum total penalty amount would be \$2,007,500 per hospital that fails to provide the charge information.¹⁵

340B Drug Pricing Program Reimbursement

The federal 340B Drug Pricing Program is a drug price control program that allows qualifying providers, generally hospitals, specialty clinics, and their associated outpatient facilities serving uninsured and low-income patients in rural communities, to purchase outpatient drugs from manufacturers at discounted prices.¹⁶ The CY 2021 rule reduced Part B reimbursement for separately payable, non-pass-through Part B drugs purchased through the 340B Program from average sales price (ASP) *plus* 6% to ASP *minus* 22.5%.¹⁷ CMS's reasons for the reimbursement cut included increases in patient copayment amounts, the number of 340B covered entities, and Part B drug prices.¹⁸ The final rule maintained this reduced payment rate for 2022, and continued its exemption of rural community hospitals, prospective payment-exempt cancer hospitals, and children's hospitals from the reduced payment policy.¹⁹

Inpatient Only (IPO) List

The IPO list, established as part of the initial implementation of the OPSS, contains approximately 1,740 services for which Medicare will make payment only when they are furnished in the inpatient hospital setting.²⁰ In the 2021 OPSS/ASC final rule, CMS eliminated the IPO list over a three-year transitional

period.²¹ In response to stakeholder concerns, the 2022 final rule reversed course and halted this elimination, reinstating most of the services removed in CY 2021, except for CPT codes 22630 (lumbar spinal fusion), 23472 (reconstruct shoulder joint), and 27702 (reconstruct ankle joint), as well as their corresponding anesthesia codes.²² The final rule also codifies longstanding criteria for removal of procedures from the IPO list to clarify how future procedures will be evaluated for removal.²³

Conclusion

Overall, CMS furthered its overarching goal of moving care from high-cost inpatient treatment to ASCs and other outpatient facilities.²⁴ While providers will

generally receive slightly higher reimbursement in 2022 due to the payment rate updates, some of them will continue to receive reduced 340B drug discount payments and others will face stricter penalties if they do not comply with hospital price transparency rules. Further, those providers who invested in their outpatient facilities over the past year in anticipation of performing a plethora of new surgeries as a result of the IPO list elimination will not be able to recognize those investments with the CMS reversing its position on the IPO list. Therefore, whether or not these updates and changes will be financially positive for outpatient providers in the aggregate remains to be seen.

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- 2 *Ibid.*
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- 4 “Medicare Program: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; Price Transparency of Hospital Standard Charges; Radiation Oncology Model: Final rule with comment period” Federal Register, Vol. 86, No. 218 (November 16, 2021), p. 63460.
- 5 *Ibid.*, p. 63500.
- 6 *Ibid.*, p. 63509, 63535.
- 7 *Ibid.*, p. 63460, 63463.
- 8 Federal Register, Vol. 86, No. 147 (August 4, 2021), p. 42231.
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- 15 *Ibid.*

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