



OPPS Final Rule Issued by CMS

On November 2, 2023, the Centers for Medicare & Medicaid Services (CMS) released its finalized Outpatient Prospective Payment System (OPPS) for calendar year (CY) 2024.¹ The finalized payment update increases payments to outpatient facilities and finalizes changes to their hospital price transparency rule, among other provisions.² This Health Capital Topics article discusses the various OPPS changes and updates included in the final rule.

Payment Rate Updates

For CY 2024, CMS will increase OPPS payment rates to hospital outpatient departments (HOPDs) and ambulatory surgery centers (ASCs) that meet specific quality reporting criteria by 3.1% – higher than the proposed increase of 2.8%, but lower than the CY 2023 increase of 3.8%.³ For CY 2024, the ASC conversion factor is \$53.514, and the HOPD conversion factor is \$87.382.⁴ The finalized update is based on a projected hospital market basket percentage of 3.3% and a productivity adjustment of -0.2%.⁵

Hospital Price Transparency

As healthcare costs continue to rise, price transparency has become an increasing focus of regulatory rulemaking. In 2021, CMS implemented a final rule mandating all U.S. hospitals to publicly display prices.⁶ Hospitals were required to post on their website 300 shoppable services and their corresponding prices in a consumer-friendly manner.⁷ However, as of February 2023, just over two years after the final rule went into effect, only about 25% of hospitals were in compliance with all of the rule's requirements.⁸ The final rule currently allows for fines up to \$2 million for hospitals that do not post prices, but there is no mechanism through which CMS can audit hospitals to determine if they are posting accurate prices and data.⁹ To date, 14 hospitals have been fined a total of \$4.6 million by CMS for noncompliance with the rule.¹⁰

In response to CMS's problems enforcing meaningful performance, the CY 2024 OPPS final rule includes a number of provisions to streamline price transparency enforcement.¹¹ Starting in 2024, CMS will communicate directly with hospital leadership should price transparency performance be insufficient, and the agency will reserve the right to post any measures of enforcement online.¹² To improve public understanding, compliance, and the automated use of hospital information, CMS

finalized changes to how hospitals must display their standard charges (i.e., the hospital's regular rate for a given item or service).¹³ CMS Administrator Chiquita Brooks-LaSure stated that "[t]he final rule strengthens hospital price transparency by improving the standardization of hospital standard charges and enhancing CMS' enforcement capabilities, thereby better enabling the American people to understand and meaningfully use hospital standard charges for items and services."¹⁴

Rural Emergency Hospital Designation

Consistent with CMS's overarching equity goals, the agency established the Rural Emergency Hospital (REH) provider type in 2023.¹⁵ Medicare-participating hospitals are eligible to convert to an REH if they are a rural or critical access hospital with no more than 50 beds.¹⁶ Converted REHs receive enhanced rates for services and a monthly fixed facility payment.¹⁷

In the CY 2024 OPPS final rule, CMS implemented a policy that Indian Health Service (IHS) and Tribal facilities that convert to REHs will receive payment under the same all-inclusive-rate that would apply to services performed by IHS and Tribal facilities that are not REHs.¹⁸ This approach is expected to bring stability to IHS and Tribal facilities that convert their statuses to REHs, and overall promote better access to the IHS and Tribal facilities.¹⁹

Intensive Outpatient Program

The OPPS final rule also included a policy to improve access to behavioral health. CMS originally established payment for Intensive Outpatient Program (IOP) services to resolve a gap in coverage which was faced by patients when they required more intensive care than outpatient therapy, but less care than an inpatient hospitalization would provide.²⁰ IOP services can be furnished in community mental health centers (CMHCs), hospital outpatient departments, federally qualified health centers (FQHCs), opioid treatment programs, and rural health clinics.²¹

340B Payment

The 340B Drug Pricing Program allows hospitals and clinics that treat low-income, medically underserved patients to purchase certain "specified covered outpatient drugs" at discounted prices and then receive reimbursement under the OPPS at the same rate as all other providers.²² This results in a margin for these

participants between the amount paid for the drug and the amount received, which enables covered entities to stretch scarce federal resources as far as possible, reaching more patients and providing more comprehensive services.²³

CMS must follow a statutory formula in setting the annual reimbursement rate for 340B drugs. From 2006 to 2018, the reimbursement rate for these outpatient drugs was the drug's average sales price (ASP) plus 6%.²⁴ In the 2018 OPPTS, however, CMS finalized a reduction to this reimbursement rate, specific to 340B participants only, of ASP minus 22.5%.²⁵ Hospitals and hospital associations subsequently sued CMS to challenge the cuts, and the U.S. Supreme Court unanimously found in June 2022 that CMS exceeded its authority in changing drug reimbursement rates for a subset of hospitals.²⁶

For CY 2024, consistent with CY 2023, CMS finalized their proposal to continue payment for 340B acquired biologicals and drugs at the default statutory rate, which is generally 6% added to the ASP.²⁷ The payment rate for 340B-acquired biologicals and drugs will not be different from the payment rate for biologicals and drugs that are not acquired through the 340B program.²⁸

CMS acknowledged in the OPPTS final rule that, in accordance with the Supreme Court ruling, it issued a separate final rule outlining the remedy for the unlawful reduced payments made between 2018 and 2022. The remedy is comprised of two components:

- (1) The Department of Health & Human Services (HHS) will repay the 340B hospitals that were unlawfully underpaid between 2018 and 2022 via a single-lump sum payment in or around the beginning of CY 2024; and
- (2) HHS will recoup funding from hospitals that were overpaid between 2018 and 2022 by adjusting the OPPTS conversion factor for those facilities by -0.5% beginning in CY 2026, continuing the adjustment until the amount has been offset in full. HHS anticipates the recoup to take a total of 16 years.²⁹

Stakeholder Comments

Stakeholders' reactions to the 2024 OPPTS final rule were somewhat mixed. The executive vice president of the American Hospital Association (AHA) stated that:

"The AHA is concerned that CMS has again finalized an inadequate update to hospital payments. Today's increase for outpatient hospitals of only 3.1% comes in spite of persistent financial headwinds facing the field. Most hospitals across the country continue to operate on negative or very thin margins that make providing care and investing in their workforce very challenging day to day."³⁰

Further, "hospitals' and health systems' ability to continue caring for patients and providing essential services for their communities may be in jeopardy, which is why the AHA is urging Congress for additional support by the end of the year."³¹ The Ambulatory Surgery Center Association's (ASCA) Chief Executive Officer, Bill Prentice, expressed his appreciation for the final ruling, and stated the following: "We thank CMS for heeding our request to move additional surgical procedures—including total shoulder arthroplasty—onto the ASC payable list."³² Prentice also said that "doing so benefits both Medicare beneficiaries, who now have a lower-cost choice for the care they need, and the Medicare program itself, which will save millions of dollars as volume moves to the high-quality surgery center site of service."³³

1 "Fact sheet: CY 2024 Medicare Hospital Outpatient Prospective Payment System and Ambulatory Surgical Center Payment System Final Rule (CMS 1786-FC)" Centers for Medicare and Medicaid Services, November 2, 2023, <https://www.cms.gov/newsroom/fact-sheets/cy-2024-medicare-hospital-outpatient-prospective-payment-system-and-ambulatory-surgical-center-0> (Accessed 11/17/23).

2 *Ibid.*

3 *Ibid.*; "Medicare Program: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems; Quality Reporting Programs; Payment for Intensive Outpatient Services in Rural Health Clinics, Federally Qualified Health Centers, and Opioid Treatment Programs; Hospital Price Transparency; Changes to Community Mental Health Centers Conditions of Participation, Proposed Changes to the Inpatient Prospective Payment System Medicare Code Editor; Rural Emergency Hospital Conditions of Participation Technical Correction" Centers for Medicare and Medicaid Services, July 31, 2023, [https://www.federalregister.gov/documents/2023/07/31/2023-14768/medicare-program-hospital-outpatient-prospective-](https://www.federalregister.gov/documents/2023/07/31/2023-14768/medicare-program-hospital-outpatient-prospective-payment-and-ambulatory-surgical-center-payment)

payment-and-ambulatory-surgical-center-payment (Accessed 11/17/23). "Medicare Program: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; Organ Acquisition; Rural Emergency Hospitals: Payment Policies, Conditions of Participation, Provider Enrollment, Physician Self-Referral; New Service Category for Hospital Outpatient Department Prior Authorization Process; Overall Hospital Quality Star Rating; COVID-19" Federal Register, Vol. 87, No. 225 (November 23, 2022), p. 71751.

4 "Medicare Program: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems; Quality Reporting Programs; Payment for Intensive Outpatient Services in Hospital Outpatient Departments, Community Mental Health Centers, Rural Health Clinics, Federally Qualified Health Centers, and Opioid Treatment Programs; Hospital Price Transparency; Changes to Community Mental Health Centers Conditions of Participation, Proposed Changes to the Inpatient Prospective Payment System Medicare Code Editor; Rural Emergency Hospital Conditions of Participation Technical Correction" Centers for Medicare and Medicaid Services, November 11,

- 2023,
<https://www.federalregister.gov/documents/2023/11/22/2023-24293/medicare-program-hospital-outpatient-prospective-payment-and-ambulatory-surgical-center-payment#p-80>
 (Accessed 11/22/23).
- 5 Centers for Medicare and Medicaid Services, November 2, 2023.
 6 “Secret shopper” study finds errors, discrepancies in inquiries about hospital prices” UTMB Health, September 18, 2023,
<https://www.utmb.edu/news/article/utmb-news/2023/09/18/secret-shopper-study-finds-errors-discrepancies-in-inquiries-about-hospital-prices> (Accessed 11/22/23).
- 7 “Hospitals share differing medical prices online versus over the phone, secret shopper survey finds” By Rebecca Pifer, Healthcare Dive, September 18, 2023,
<https://www.healthcarediver.com/news/hospital-price-variation-online-phone-transparency/693866/#:~:text=Price%20discrepancies%20could%20be%20due,hospital's%20online%20price%20estimator%20ool.> (Accessed 11/22/23).
- 8 “Fourth Semi-Annual Hospital Price Transparency Report” Patient Rights Advocate, February 2023, available at:
<https://www.patientrightsadvocate.org/february-semi-annual-compliance-report-2023> (Accessed 11/22/23).
- 9 UTMB Health, September 18, 2023.
 10 “Hospitals share differing medical prices online versus over the phone, secret shopper survey finds” By Rebecca Pifer, Healthcare Dive, September 18, 2023,
<https://www.healthcarediver.com/news/hospital-price-variation-online-phone-transparency/693866/#:~:text=Price%20discrepancies%20could%20be%20due,hospital's%20online%20price%20estimator%20ool.> (Accessed 11/22/23).
- 11 “CMS bumps up pay increase to 3.1% in final FY24 OPSS rule” By Paige Minemyer, Fierce Healthcare, November 2, 2023,
<https://www.fiercehealthcare.com/regulatory/cms-bumps-pay-increase-31-final-fy24-opss-rule> (Accessed 11/17/23).
 12 *Ibid.*
 13 Centers for Medicare and Medicaid Services, November 2, 2023.
 14 “CMS Makes Hospital Prices More Transparent and Expands Access to Behavioral Health Care” Centers for Medicare and Medicaid Services, November 2, 2023,
<https://www.cms.gov/newsroom/press-releases/cms-makes-hospital-prices-more-transparent-and-expands-access-behavioral-health-care> (Accessed 11/17/23).
- 15 Centers for Medicare and Medicaid Services, November 2, 2023.
 16 *Ibid.*
 17 *Ibid.*
 18 *Ibid.*
 19 *Ibid.*
 20 “CMS Will Issue OPSS Providers Lump-Sum Payments to Remedy 340B Losses” By Victoria Bailey, RevCycleIntelligence, November 3, 2023,
<https://revcycleintelligence.com/news/cms-will-issue-opss-providers-lump-sum-payments-to-remedy-340b-losses>
 (Accessed 11/17/23).
- 21 *Ibid.*
 22 “Supreme Court Will Determine Whether 340B Hospitals Retain Discounts on Medicare Part B Drugs” Allison Hoffman, Commonwealth Fund, November 21, 2021,
<https://www.commonwealthfund.org/blog/2021/supreme-court-340b-hospitals-discounts-medicare-part-b> (Accessed 11/17/23).
 23 “340B Drug Pricing Program”, HRSA, October 2023,
<https://www.hrsa.gov/opa/index.html> (Accessed 11/17/23).
 24 “Federal Court Says 2018 OPSS 340B Program Rate Cuts Unlawful, Orders Briefing to Avoid Havoc on Medicare Program” By Lee Nutini, JDSupra, January 3, 2019,
<https://www.jdsupra.com/legalnews/federal-court-says-2018-opss-340b-87971/> (Accessed 11/17/23).
- 25 “CMS Issues Hospital Outpatient Prospective Payment System and Ambulatory Surgical Center Payment System and Quality Reporting Programs Changes for 2018 (CMS-1678-FC)” Centers for Medicare & Medicaid Services, November 1, 2017,
<https://www.cms.gov/newsroom/fact-sheets/cms-issues-hospital-outpatient-prospective-payment-system-and-ambulatory-surgical-center-payment> (Accessed 11/17/23).
 26 “American Hospital Association et al. v. Becerra, Secretary of Health and Human Services, et al.” 596 U.S. ____ (2022), Slip Opinion, Certiorari to the United States Court of Appeals for the District of Columbia Circuit, available at:
https://www.supremecourt.gov/opinions/21pdf/20-1114_09m1.pdf (Accessed 11/17/23).
 27 Centers for Medicare and Medicaid Services, November 2, 2023.
 28 *Ibid.*
 29 “CMS Proposes Remedy for 340B-Acquired Drug Payment Policy for CY 2018-2022 “ By Anil Shankar and Stephanie Schwartz, July 26, 2023,
<https://www.foley.com/insights/publications/2023/07/cms-remedy-340b-acquired-drug-payment-policy/> (Accessed 11/22/23); “HHS issues final remedy for its unlawful 340B payment cuts from 2018 to 2022” American Hospital Association, November 2, 2023,
<https://www.aha.org/news/headline/2023-11-02-hhs-issues-final-remedy-its-unlawful-340b-payment-cuts-2018-2022#:~:text=2%20issued%20a%20final%20rule,a%20single%20Dlump%20sum%20payment.> (Accessed 11/17/23).
 30 “In OPSS rule, CMS increases payment rates by 3.1%, modifies price transparency rules” American Hospital Association, November 2, 2023, <https://www.aha.org/news/headline/2023-11-02-opss-rule-cms-increases-payment-rates-31-modifies-price-transparency-rules> (Accessed 11/17/23).
 31 *Ibid.*
 32 “CMS Releases 2024 Final Payment Rule” Ambulatory Surgery Center Association, November 2, 2023,
<https://www.ascassociation.org/asca/news-and-publications/news/2023/cms-releases-2024-final-payment-rule-2023-11-01> (Accessed 11/2/23).
 33 *Ibid.*



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