

CMS Issues 2009 Final Rule Regarding HOPD/ASC Payments

On October 30, 2008, CMS issued a *Final Rule* that updated payments to *Ambulatory Surgery Centers* (ASC) and *Hospital Outpatient Departments* (HOPD) for CY 2009.¹ In the *Final Rule*, CMS added twenty-seven new surgical procedures to Medicare's ASC payment list (fourteen of which were previously excluded) and added an additional thirteen CPT codes. The *Final Rule*, which does not delete any procedures, will *increase reimbursement for 2,475 procedures and decrease reimbursement for 92 procedures* performed in ASCs.² According to CMS, the updated rates "*constitute[] the second year of a four-year transition to align [the rates paid to ASCs] with those paid to HOPDs for similar services.*"³

With regard to ASCs, payment rates are generally set at a percentage of the *Hospital Outpatient Prospective Payment System* (HOPPS) rate, with an exception for device-intensive services where device costs account for more than 50% of the total cost of the service, in which case ASCs would receive the same reimbursement that is paid under the HOPPS. Another exception to the basic ASC percentage payment system is in those circumstances under which ASC services are performed predominantly in physicians' offices, in which case, the ASC payment is limited to what the physician would receive under the Medicare Physician Fee Schedule (MPFS) for the same service provided in a physician office setting.⁴

A significant part of the *Final Rule* relating to ASCs is the *Final Rule's* revision of the provisions related to Medicare's ASC Conditions for Coverage (CfC) by changing the definition of an ASC for purposes of coverage under Medicare. Under the new definition, an ASC is "*a distinct entity that operates exclusively for the purpose of providing surgical services to patients not requiring hospitalization and in which the expected duration of services would not exceed 24 hours following admission.*"⁵ This definition revises the original proposed language related to an "overnight stay" (i.e., anything lasting past 11:59 p.m. on the day of admission), which would have prevented ASCs from providing services requiring a patient to stay past 11:59 p.m. on the date of admission to the ASC.⁶

As a result of the *Final Rule*, CMS is projecting that payments to Medicare beneficiaries in HOPDs will

increase under the HOPPS to \$30.1 billion in CY 2009 from \$28.5 billion in CY 2008. Further, payments to ASCs are projected to increase from \$3.5 billion to \$3.9 billion for the same time period.⁷

While on the surface the *Final Rule* may appear to be beneficial to ASCs, many ASC providers are very concerned by the new reimbursement rates. Critics of the *Final Rule*, including members of both Congress and the Senate, argue that the ASC reimbursement rates that use relative weights that are 2.47% lower than HOPPS rates is unreasonable. Furthermore, according to critics, the proposed rates for ASCs in 2009 will be 59% of the HOPPS rate, a significant drop from the 2008 rate of 63%.⁸ Given that many ASCs received over 80% of the HOPPS in 2003, critics argue that the continual decline in reimbursement may result in the inability of ASCs to continue to providing services. Additionally, critics are particularly concerned due to the fact that, according to a 2006 report by the US Government Accountability Office (GAO), the same procedure performed in an ASC costs Medicare substantially less than the same procedure being provided in a HOPD.⁹ Specifically, the GAO found that, "*The median cost ratio among all ASC procedures was 0.39 and when weighted by Medicare was 0.84. The median cost ratio for OPSS procedures was 1.04.*"¹⁰

Because Medicare and Medicaid account for an average of 34% of an ASC's revenues, changing reimbursement rates from CMS greatly affect the ASC's ability to provide quality patient care services.¹¹ The *Final Rule* provides HOPPS a 3.6% update for inflation while ASCs received 0% update for inflation.¹² Additionally, the 2009 rates will reduce both gastroenterology and pain management reimbursement by six percent in addition to the five percent cut for gastroenterology in 2008.¹³

The *Final Rule* also includes a provision that will reduce payments by up to two percentage points for failure to report quality measures under the requirements of the Hospital Outpatient Quality Data Reporting Program (HOP QDRP) for CY 2009. Additionally, CMS is considering a policy under its Value-Based Purchasing initiatives whereby it would not pay for medical care in a HOPD which results in harm to patients or preventable complications. CMS also intends to implement a voluntary test validation program whereby it will review

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hospital record data accuracy. Such a test program may be included in the 2010 rulemaking cycle for the CY 2011 payment updates.¹⁴

¹ “Fact Sheets: Final 2009 Policy, Payment Changes for Hospital Outpatient Departments and Ambulatory Surgical Centers,” Centers for Medicare and Medicaid Services, October 30, 2008, http://www.cms.hhs.gov/apps/media/fact_sheets.asp (Accessed 11/05/08).

² “ASC Medicare Payment System,” ASCA, 2008, www.ascassociation.org/medicarepayment/ (Accessed 11/05/08); “Medicare Posts 2009 Payment ASC Coverage Rules,” Outpatient Surgery, November 2008, <http://www.outpatientsurgery.net/news/2008/11/1.php> (Accessed 11/05/08).

³ “Fact Sheets: Final 2009 Policy, Payment Changes for Hospital Outpatient Departments and Ambulatory Surgical Centers,” Centers for Medicare and Medicaid Services, October 30, 2008, http://www.cms.hhs.gov/apps/media/fact_sheets.asp (Accessed 11/05/08).

⁴ “Fact Sheets: Final 2009 Policy, Payment Changes for Hospital Outpatient Departments and Ambulatory Surgical Centers,” Centers for Medicare and Medicaid Services, October 30, 2008, http://www.cms.hhs.gov/apps/media/fact_sheets.asp (Accessed 11/05/08).

⁵ “Fact Sheets: Final 2009 Policy, Payment Changes for Hospital Outpatient Departments and Ambulatory Surgical Centers,” Centers for Medicare and Medicaid Services, October 30, 2008, http://www.cms.hhs.gov/apps/media/fact_sheets.asp (Accessed 11/05/08).

⁶ “Medicare Posts 2009 Payment, ASC Coverage Rules,” By David Bernard, Outpatient Surgery Magazine, OutpatientSurgery.net, <http://www.outpatientsurgery.net/news/2008/11/1.php> (Accessed 11/11/08).

⁷ “Fact Sheets: Final 2009 Policy, Payment Changes for Hospital Outpatient Departments and Ambulatory Surgical Centers,” Centers for Medicare and Medicaid Services, October 30, 2008, http://www.cms.hhs.gov/apps/media/fact_sheets.asp (Accessed 11/05/08).

⁸ “2009 Final ASC Payments: Policies and Rates,” American Surgery Center Association. www.ascassociation.org/medicare2009, (Accessed 11/24/08); Letter to CMS from the American Gastroenterological Association “Re: Medicare Program: Proposed Changes to the Hospital Outpatient Prospective Payment System and CY 2009 Payment Rates; Proposed Changes to the Ambulatory Surgery Center Payment System and 2009 Payment Rates”, (September 2, 2008) www.amsurg.com (Accessed 11/24/08)

⁹ “Payment for Ambulatory Surgical Centers Should be Based on the Hospital Outpatient Payment System,” Highlights of GAO Report 07-86, US Government Accountability Office, www.gao.gov (November 2006).

¹⁰ “Payment for Ambulatory Surgical Centers Should be Based on the Hospital Outpatient Payment System,” Highlights of GAO Report 07-86, US Government Accountability Office, www.gao.gov (November 2006).

¹¹ “10 interesting facts and statistics for ASCs,” By S. Becker, Becker’s ASC Review, January 2008, <http://www.beckersasc.com/ambulatory-surgery-center/surgery-center-education/10-interesting-facts-and-statistics-for-asc.html> (Accessed 11/05/08).

¹² “CMS Issues 2009 OPPI/ASC Final Rule,” American Academy of Professional Coders, November 2008, <http://www.aapc.com/news/index.php/2008/11/cms-issues-2009-oppi-asc-final-rule> (Accessed 11/6/08).

¹³ “Ambulatory Surgery Center Association letter to CMS,” By Kathy Bryant, Ambulatory Surgery Center Association, <http://www.ascassociation.org/publications/ASCAssociation2009Payments.pdf> (Accessed 11/05/08); “Letter from Congress to CMS,” United States Congress, <http://www.ascassociation.org/house.pdf> (Accessed 11/05/08); “Letter from Senate to CMS,” United States Senate, <http://www.ascassociation.org/senate.pdf> (Accessed 11/05/08).

¹⁴ “Fact Sheets: Final 2009 Policy, Payment Changes for Hospital Outpatient Departments and Ambulatory Surgical Centers,” Centers for Medicare and Medicaid Services, October 30, 2008, http://www.cms.hhs.gov/apps/media/fact_sheets.asp (Accessed 11/05/08).



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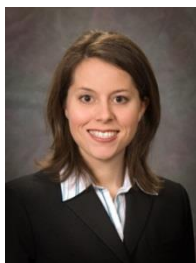
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