

CMS Finalizes Site-Neutral Payments for Hospital Outpatient Clinics; Legal Battle with Hospitals Looms

November 9, 2018 – Dorsey Health Law

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On Friday, November 2, 2018, the Centers for Medicare and Medicaid Services (“CMS”) issued its calendar year 2019 Medicare Hospital Outpatient Prospective Payment System (“OPPS”) and Ambulatory Surgical Center

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Payment System final rule. Despite significant resistance and concerns from hospitals, CMS finalized its proposed site-neutral payment policy for clinic visit services provided at off-campus provider-based departments (“PBDs”), including PBDs that were excepted under the Bipartisan Budget Act of 2015. Currently, clinic visit services receive a higher payment when provided at PBDs. Under the new site-neutral payments rule, PBD clinic visit services will be paid at the same rate as clinic visit services provided in standalone physician offices, even when the PBD is excepted. The site-neutral payments will be phased in over two calendar years, 2019 and 2020.

The services that will be affected are described by HCPCS code G0463: hospital outpatient clinic visit for assessment and management of a patient. These services are the most common services paid for under OPPS, and in calendar year 2017 represented about one-third of all OPPS claims. In 2017, PBDs received \$184 for a new patient clinic visit, compared to \$109 reimbursement in a physician office setting. For established patients, the same service is \$158 compared to \$74, respectively. Under the new site-neutral payments rule, the OPPS reimbursement for the clinic visit service will be cut by 30 percent in calendar year 2019 and 60 percent in 2020 and onward.

CMS justified the change as a cost cutting measure, citing Medicare Payment Advisory Commission (“MedPAC”) reports that have long called for site-neutral payments to combat the shift of services from lower-cost physician offices to higher-cost PBDs. CMS’ concern—based on OPPS payment growth and the MedPAC report—is that “payment incentives, rather than patient acuity or medical necessity, are affecting site-of-service

decision-making.” In sum, CMS believes increasing OPPS payments are a result of services shifted to PBDs to pursue higher reimbursement (not care-centered factors), and therefore switching to site-neutral payments will not affect patient care and outcomes.

Affected hospitals and providers have vigorously disagreed with CMS’ reasoning for site-neutral payments, believing patients, especially those in rural and disadvantaged communities, will suffer. Opponents of site-neutral payments noted many reasons why costs are higher at PBDs than



independent physician offices: patients are typically poorer and have more chronic health problems, hospitals have higher overhead, and more regulatory compliance is required. In addition, in responses to the CMS proposed rule in July, many commenters disputed CMS’ statutory authority to enact site-neutral payments. CMS disagreed, stating in the final rule, that it had broad authority to develop a method for controlling unnecessary increases in the volume of covered outpatient department services. The American Hospital Association has already released a statement that it, along with the Association of American Medical Colleges and others, intend to challenge the site-neutral payment provisions in court.

Beyond finalizing site-neutral payments, the 1,100 page final rule included other important developments. Notably, in response to comments on the proposed rule and upon further consideration by CMS, the proposal to limit service expansion for excepted, off-campus PBDs was not adopted. The proposal would have limited new items and services excepted off-campus PBDs could provide to clinical groups of services that were in place by a set date. Many commenters opposed the service limitation plan and found it irrational that services would not be allowed to change along with community and provider demand and evolution. CMS stated it may still pursue future rulemaking limiting service expansions. Additionally, CMS finalized its proposal to reduce 340B drug reimbursements for 340B drugs dispensed at off-campus PBDs.

A copy of the final rule is available [here](#), which will be officially published in the Federal Register on November 21, 2018.