

# CMS Publishes Proposed Rules for OPPS, ASC and PFS for Calendar Year 2024

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The Centers for Medicare & Medicaid Services (“CMS”) has announced its proposed rules for the [Hospital Outpatient Prospective Payment \(“OPPS”\) and Ambulatory Surgical Center \(“ASC”\) Payment Systems](#), as well as its calendar year (CY) [2024 proposed Physician Fee Schedule \(“PFS”\)](#), (collectively the “Proposed Rules”).

The OPPS and ASC proposals focus on expanding access to behavioral health services through coverage of Intensive Outpatient Program Services—an intermediate level of behavioral healthcare—and provide more hospital price transparency. Key initiatives under the PFS for CY 2024 also reflect the Biden-Harris administration’s goal to create a more equitable and accessible healthcare system in the country.

## Notable OPPS and ASC Proposals:

- A 2.8% increase to OPPS payment rates for CY 2024 for hospitals that meet certain quality reporting requirements.
- An increase of 2.8% to the ASC rates for CY 2024.
- Establishment of payment and program requirements for Intensive Outpatient Program Services conducted in hospital outpatient departments, community mental health centers, federally qualified health centers and rural health clinics effective January 1, 2024.
- Development of payments for Intensive Outpatient Program Services provided by Opioid Treatment Programs (“OTPs”) effective January 1, 2024.
- Modification of the standard charge display requirements at 45 CFR 180.50 and the enforcement provisions at 45 CFR 180.70 to streamline and improve the enforcement process for the Hospital Price Transparency regulations.
- CMS is seeking comments related to the alignment of the Hospital Price Transparency regulations with other price transparency initiatives such as the Transparency in Coverage regulation and the No Surprises Act.

## Notable CY 2024 Medicare PFS Proposals:

- Decrease the conversion factor by 3.34% to \$32.75.
- Delay of the implementation of a split (or shared) visit based on time spent by the billing practitioner until at least January 1, 2025.
- Creation of new benefit categories for behavioral health services for marriage and family therapists and mental health counselors.
- Extension of several waivers for telehealth services including reimbursement for telehealth services performed in the patient's home.
- Development of five new optional Merit-Based Incentive Payment System Value Pathways for the Quality Payment Program for reporting beginning in 2024.
- CMS proposes an expansion of the regulations related to exclusion from the Medicare program. The proposed rule would allow CMS to revoke a provider's or supplier's Medicare enrollment if convicted of a federal or state misdemeanor within the previous 10 years. For exclusion to apply, CMS would have to determine that the misdemeanor in question is detrimental to the best interests of the Medicare program. Currently, exclusion is based only on felonies.

CMS will accept comments on the Proposed Rules through September 11, 2023. Final rules should be issued in November of 2023.

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