On Wednesday July 25, 2018, the Centers for Medicare and Medicaid Services (CMS) released an advance copy of the CY 2019 Medicare Hospital Outpatient Prospective Payment System (OPPS) proposed rule. While it contains a variety of proposed payment changes for CY 2019, we wanted to bring your attention to those changes affecting hospital outpatient provider-based facilities.

Specifically, CMS proposed four changes affecting: (1) off-campus provider-based emergency departments; (2) site-neutral payments for clinic visits in all off-campus provider-based departments (PBDs); (3) payments for separately payable, covered outpatient drugs and biologicals acquired under the 340B Program; and (4) expansion of services in excepted off-campus PBDs. These provisions renew some previously considered proposals, but they would go even further in eliminating what CMS views as unwarranted and detrimental payment disparities between physician clinics and off-campus PBDs, whether the PBD is excepted from the existing PBD payment reductions or not. Each is further discussed below.
A. Collecting Data on Services Furnished in Off-Campus Provider-Based Emergency Departments

In the proposed rule, CMS agreed with MedPAC’s recommendation to develop data to assess the extent to which OPPS services are shifting to off-campus provider-based emergency departments. As a result, CMS is proposing to implement a new modifier (ER) effective beginning January 1, 2019. The “ER” modifier would identify items and services furnished by a provider-based off-campus emergency department and would have to be reported with every claim line of the UB-04 for outpatient hospital services furnished in an off-campus provider-based emergency department. Critical access hospitals would be exempt from this requirement.

B. Proposal to Impose Site-Neutral Payment for Clinic Visits in All Off-Campus PBDs

CMS remains concerned with the shift of services from freestanding physician offices to the hospital outpatient department setting and the financial effect of such shifts on beneficiaries. CMS believes this shift is fueled by payment incentives that remain despite implementation of the relativity payment adjustment for non-excepted provider-based hospital outpatient departments.

Outpatient evaluation and management visits are the target of the proposed rule, with CMS devoting significant analysis to the payment differential for clinic visits when provided in a physician office as opposed to an off-campus PBD. While non-excepted off-campus PBDs already receive a reduced site-specific Physician Fee Schedule (PFS) rate for clinic visits (identified by HCPCS code G0463), CMS proposes to extend that reduced rate for clinic visits to all off-campus PBDs in CY 2019, even those excepted under Section 603 of the Bipartisan Budget Act of 2015.

C. Proposal to Apply the 340B Drug Payment Policy to Non-excepted Off-Campus PBDs of a Hospital

In last year’s OPPS final rule, CMS finalized its policy that separately payable, covered outpatient drugs and biologicals (other than drugs on pass-through payment status and vaccines) acquired under the 340B Program (Separately Payable 340B Drugs) would be paid at a formula determined by Average Sales Price (ASP) minus 22.5%, rather than ASP plus 6%, when furnished and billed by a PBD paid under the OPPS.

CMS remains concerned that the difference in the payment amounts for 340B acquired drugs furnished by hospital outpatient departments – excepted off-campus PBDs versus non-excepted off-campus PBDs – creates an incentive for hospitals to move drug administration services for 340B-acquired drugs to non-excepted off-campus PBDs to receive a higher payment amount for these drugs. To remove this incentive, CMS is proposing to change the Part B drug payment methodology for Separately Payable 340B Drugs that are furnished and billed by non-excepted off-campus PBDs to the same formula applied to excepted off-campus PBDs, i.e., ASP minus 22.5%.

CMS would exempt rural sole community hospitals, children’s hospitals, and PPS-exempt cancer hospitals from this payment adjustment.
D. Expansion of Clinical Families of Services at Excepted Off-Campus PBDs of a Provider

Consistent with the 2018 OPPS rulemaking, CMS is still concerned that if excepted off-campus PBDs are allowed to furnish new types of services not provided at that location prior to enactment of the Bipartisan Budget Act of 2015 (November 2, 2015), hospitals may purchase additional physician practices to operate within existing excepted off-campus PBDs, resulting in newly purchased physician practices furnishing services paid at OPPS rates, rather than the relativity adjusted PFS rates.

For CY 2019, CMS is once again proposing that if an excepted off-campus PBD furnishes services from any clinical family of services (as defined at Table 32 of the proposed rule) from which it did not furnish and bill for an item or service during the period from November 1, 2014 through November 1, 2015, such items and services would be paid the reduced rate applied to non-excepted off-campus PBDs. To effectuate this change, CMS would revise the definition of “excepted items and services” at 42 C.F.R. 419.48.

If an excepted off-campus PBD furnishes a new item or service from a clinical family of services in Table 32 of the proposed rule from which the off-campus PBD furnished a service from November 1, 2014 through November 1, 2015, such service would continue to be paid under the OPPS.

For providers that met the mid-build requirement, CMS proposes a 1-year baseline period that begins on the first date the off-campus PBD furnished a service billed under the OPPS rather than November 1, 2014 through November 1, 2015.

While only a proposed rule, CMS continues to try to eliminate payment differentials between physician clinics and PBDs. This rule indicates that CMS may go even further in decreasing that disparity for both excepted and non-excepted PBDs. Given the broad implications of CMS’s proposed rule on hospitals and health systems, Polsinelli’s national health care practice will continue to assess the CY 2019 OPPS proposed rule to identify the practical implications of this rulemaking should it be finalized and potential solutions for our healthcare clients. We encourage every hospital and health system to assess the potential impact of this proposed rule and to consider submitting comments outlining the financial and operational impacts on the delivery of care for beneficiaries and potential alternatives to CMS’s proposals. We are happy to assist you with the comment development process.

© Polsinelli PC, Polsinelli LLP in California


\[page\]