Policy Brief

December 18, 2020

The next edition of the Policy Brief will be released on January 8th.
AHPA wishes you and your family a wonderful holiday season!

CMS Releases Final Outpatient Payment Regulation

CMS has finalized the Outpatient Prospective Payment System (OPPS) and Ambulatory Surgical Center (ASC) Payment System final rule for Calendar Year (CY) 2021. The rule governs Medicare payment policies for outpatient services, including care received at ASCs. With this year's final rule, CMS demonstrates its desire to move more services into the outpatient setting. In general, policies included become effective on January 1, 2021. For a detailed regulatory summary, click here. For top takeaways from the OPPS final rule, read more.

The new OPPS rule phases out the Inpatient Only (IPO) list over the next three years.

The IPO list is scheduled to be eliminated over the course of three years, beginning in CY2021. The first phase of the list's retirement involves the removal of 266 musculoskeletal-related services as well as an additional 16 services as recommended by the Hospital Outpatient Payment Panel. Procedures removed from the IPO list will be exempt from medical review activities for two years.

It also includes updated reporting requirements for COVID-19-related data as a Condition of Participation.

The new rule introduces additional data elements that hospitals and Critical Access Hospitals will be required to report. As a Medicare Condition of Participation, hospitals must report inventory levels and usage rates for COVID-19-related therapies and provide information on patients with

acute respiratory illnesses (e.g. the seasonal flu or severe respiratory infections). No civil monetary penalties will be imposed, however, CMS cautions that it will use "all enforcement and payment authorities available" to promote compliance. CMS is including a 30-day request for comments on this portion of the final rule.

CMS will cover approximately 280 more services when delivered in ASCs, including hip replacements.

The rule also revises the standards for excluding services from the ASC Covered Procedures List, resulting in roughly 280 procedures being added to this list. Total Hip Arthroplasty (CPT 27130) will now be allowed in the ASC setting; CMS plans to refine the Bundled Payments for Care Initiatives (BPCI) Advanced and Comprehensive Care for Joint Replacement (CJR) models to account for this change. These services can be found in Tables 59 and 60 of the final rule.

Finalized Policies Included in the Physician Fee Schedule

CMS recently released the CY 2021 Physician Fee Schedule final rule. Key proposals finalized include expanding telehealth, reforming scope of practice and modifying certain Evaluation and Management (E/M) payments. The changes to E/M payments will increase payment rates for office and outpatient visits and reduce some specialty services, such as radiology and Emergency Medicine. This budget neutral effort has caught providers' attention. Providers' concerns have already sparked initial legislative efforts. Find a summary of the final rule here.

Key Finalized Proposals

Below are the key proposals finalized in the Physician Fee Schedule rule:

- Adds several permanent and temporary services to the approved list of Medicare telehealth services.
- Temporarily extends payment for telehealth services during the Public Health Emergency.
- Creates nine new payment codes for immunization administration services.
- Increases payment rates for E/M visits, favoring office-based care.
- Enables health care professionals to practice at the top of their licenses.
- Defers proposals for the MIPS Value Pathways (MVPs).
- Applies "extreme and uncontrollable circumstances" policy to ACOs until 2023.

Implications of the Evaluation and Management (E/M) Payment Changes

CMS finalized the proposal to increase payment rates for office and outpatient E/M visits. This increases benefits provided by office-based care physicians, such as family practices and endocrinology. Since the statute requires that changes to the PFS rule be budget neutral, the rule offsets this payment increase with cuts to certain specialties, such as Radiology and Emergency Medicine. These changes can be found on Table 106 of the final rule.

Will We See Political Movement Surrounding PFS Policies?

There is an overall trend of CMS supporting more primary care and preventative services. Due to budget neutrality, these changes could lead to more reductions in other areas, which has concerned providers. There are already a few bills introduced in Congress to tackle the reduction made by the recent PFS final rule. While they do not have a high chance of passing as standalone bills, providers are hoping these measures are included in an omnibus appropriations bill or a Continuing Resolution.

Congress Prepares for Lame Duck Session

With the year shortly ending and an upcoming change of Administration, Congress is in ongoing negotiations to pass a legislative package that will tackle key health care priorities. This includes a deal to fund the government for the remainder of FY 2021, an additional COVID-19 relief bill, a package to extend funding for various Medicare/Medicaid programs and surprise billing legislation. While everything in Congress can change within the hour, below is what we know about current efforts to pass year-end legislation.

COVID-19 Relief Bill: On Monday, a bipartisan group of House and Senate legislators unveiled two COVID-19 relief bills. The first bill is a $748 billion package that includes $35 billion in additional funding for the Provider Relief Fund. The second bill includes the two provisions most controversial among policymakers—liability protections related to COVID-19 and $160 billion in state and local aid. The bills also tackle issues such as telehealth waivers and support for vaccine distribution and administration. Congressional leaders have said they hope to include a COVID-19 relief package in a full-year spending bill currently being negotiated.

Surprise Billing: House and Senate Committee leaders announced a bipartisan agreement to address surprise medical bills. The "No Surprises Act" would protect patients from surprise bills by only requiring them to pay their health plan's in-network rate for out-of-network services provided during an emergency or without the patient's informed consent. Balance billing beyond this rate would not be allowed. The legislation also establishes an arbitration process for insurers and providers to dispute out-of-network bills that unlike previous legislation does not have a benchmark for rates. Other provisions of the bill include requiring that providers give patients "good faith estimates" prior to furnishing a service, directing the HHS Secretary to develop a patient-provider dispute resolution process for uninsured patients, and requiring the consolidation of all services rendered during a visit into a single itemized bill. It is uncertain whether this legislation will be successful; when asked about the deal, Senator Majority Leader McConnell stated that there was not enough time left in the session to reach an agreement on such a controversial issue.

Disproportionate Share Hospital (DSH) Payments: Congress is seeking to include in its final end-of-year package a measure delaying $4 billion in cuts to DSH payments. Congress has both delayed and eliminated the cuts multiple times in the past and is likely to do the same, particularly given the current pandemic.

Medicare and Medicaid Extenders: Congress is seeking to extend funding for programs that are set to expire before the end of the year, such as funding for Medicare Dependent Hospitals and Community Health Centers.

2% Medicare Sequester: Another top Congressional priority is to further delay an annual 2% Medicare payment cut that was created in 2011 by the Budget Control Act to control federal spending. Congress delayed this payment reduction in the CARES Act but only through the end of this year and it is uncertain whether they will do it again.

The Biden Transition Update

President-elect Joe Biden has announced many of his nominees to lead federal agencies, including many relevant to public health. Here are some of the President-elect's top choices to lead:

Health and Human Services: California Attorney General Xavier Becerra (D)

Appointing an Attorney General is unorthodox for this position, causing concern for some health policy experts who would rather have a leader with expertise in medicine during the pandemic. However, Becerra has political experience related to health policy, perhaps most notably his recent legal defense of the ACA.

Centers for Disease Control and Prevention: Dr. Rochelle Walensky

Dr. Walensky is an infectious disease expert currently serving at Massachusetts General Hospital in Boston.

Surgeon General: Dr. Vivek Murthy

Dr. Murthy currently leads President-elect Biden's COVID-19 advisory task force and previously served as Surgeon General under President Obama.

COVID-19 Equity Task Force Chair: Professor Marcella Nunez-Smith

Professor Nunez-Smith is currently a scholar of internal medicine, public health and management at the Yale Medical School's Equity Research and Innovation Center.

Transportation Secretary: Former Mayor Pete Buttigieg

This position could give this former South Bend mayor and 2020 presidential candidate the platform to roll out his $1 trillion infrastructure plan. The nomination could also give Buttigieg the experience needed to be more successful in a future presidential election.

Climate Envoy: Mr. John Kerry

Mr. Kerry is a previous U.S. Senator and Secretary of State; he has dedicated much of his career to tackling climate change.

New Health Information Technology Proposed Rule

CMS and the Office of the National Coordinator for Health IT (ONC) have released a proposed rule that would outline new requirements for the electronic exchange of health care data. The proposal is segmented into five parts and includes:

1. Requiring CMS-regulated payers include information on patients' pending and active prior authorization decisions in their Patient Access APIs;
2. Requiring payers build and maintain a Provider Access API for better payer-to-provider data sharing of claims and encounter data (not cost data);
3. Refining the prior authorization process to make it more efficient and transparent, beginning in January of 2023;
4. Clarifying payer-to-payer data exchange requirements;
5. Adopting Health IT standards and implementation specifications from the ONC by HHS.

COVID-19 Vaccine Distribution Begins

COVID-19 vaccine distribution has begun across the country; all 50 states have now released their criteria for determining how to prioritize initial doses. While each state's vaccine distribution strategy is tailored for their population, some commonalities have emerged:

- Nearly all states will prioritize health care workers and long-term care residents for the first phase of distribution;
- More than 20 states further segment these groups depending on their level of exposure and risk;
- Most states plans are complete through Phase 1 of vaccine distribution, with future phases of the plan still in development.

Updates to COVID-19 Regulations

AHPA continues to follow new COVID-19 regulations, guidance and other government actions. The updates below are the latest guidance and other developments since December 7th to help mitigate the impacts of COVID-19. For earlier COVID-19 regulations and guidance, visit the previous Policy Brief.

Executive Order on Ensuring Access to U.S. Government COVID-19 Vaccines

- President Trump has issued an executive order prioritizing American patients for domestic vaccines. The order directs the Secretary of HHS to coordinate with public and private entities to establish vaccine distribution strategies, prioritizing vulnerable populations.

HHS Creates *False Claims Act* Working Group to Enhance Efforts to Combat Fraud

- HHS has announced the creation of a False Claims Act working group to identify those who fraudulently claim COVID-19 federal relief.

Additional Highlights from the Federal Register

Confidentiality of Substance Use Disorder (SUD) Patient Records

CMS has released the final rule amending regulations governing the confidentiality of SUD

patient records to clarify the conditions under which a court may authorize disclosure of confidential communications. This final rule is effective January 13, 2021.

340B Drug Pricing Program: Administrative Dispute Resolution Regulation

HHS has released a final rule outlining the administrative dispute resolution process for the 340B Program. This final rule is effective January 13, 2021.

Regulatory Sprint to Coordinated Care, HIPAA Changes

HHS has released a proposed rule that includes proposed changes to patients' access rights to Protected Health Information and electronic health information exchange. Comments will be due 60 days after its publication on the Federal Register.

AHPA Resources

- **Save the Date!** AHPA is hosting a webinar on the final OPPS and PFS rules on **Friday, January 8, 2021** from 1:30 – 2:30 PM EST.
  Request a Calendar Invitation
- Webinar Recording: FY 2021 IPPS Final Rule

IN OTHER NEWS

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