Policy Brief

July 22, 2022

CMS Proposes CY 2023 Outpatient Payment Rule

The Centers for Medicare and Medicaid Services (CMS) has issued a proposed rule updating payments in outpatient facilities and Ambulatory Surgical Centers (ASCs) for calendar year 2023. The rule increases payments by 2.7%, allows more services to be provided in the outpatient setting, and sets payment policies for the newly-created Rural Emergency Hospital (REH) designation. Click here for AHPA's summary of the proposed rule; comments are due September 13th.

CMS proposes a 2.7% update to OPPS and ASC payment rates. These increases are expected to result in a $6.2 billion increase over CY 2022 payments. In its latest statement, the AHA expressed deep concerns that these increases will not be enough to offset the extraordinary financial pressures that health systems continue to face while fighting the COVID-19 pandemic.

CMS continues its commitment to "the outpatient shift" with more procedures allowed in outpatient settings. The Agency proposes to remove ten more services from the Inpatient Only List, which is used to dictate which procedures *must* be performed in a hospital in order to receive Medicare payments. CMS plans to add one service, a lymph node biopsy or excision, to the ASC Covered Procedures List.

The Agency proposes reimbursing for 340B-acquired drugs at ASP -22% but notes it will revert this policy in light of the recent Supreme Court ruling. CMS notes that it "fully anticipates" applying the rate of ASP +6%. Should this happen, the Agency will make a corresponding decrease to the conversion factor to preserve budget neutrality.

As promised in the Rural Emergency Hospital (REH) proposed rule, CMS proposes specific payment policies for its new REH designation. Rural hospitals are critical to their communities' health, but more than 130 rural hospitals have closed over the last ten years—mainly due to financial challenges. To help support rural communities, the OPPS proposed rule sets increased payment rates for facilities with an REH designation. These facilities would also receive an additional monthly payment to assist with their financial viability. In order to be considered an REH, a facility must have less than 50 beds and cannot provide acute inpatient services (except for special circumstances involving skilled nursing facility care).

Proposed Rule: Physician Fee Schedule

CMS has issued a proposed rule to update the Physician Fee Schedule (PFS) rates for calendar year 2023. The rule reduces physician payments by decreasing the conversion factor by $1.53, a policy that can only be addressed by Congress. Additionally, this rule contains changes related to the Medicare Shared Savings Program (MSSP), telehealth and behavioral health. Click here for AHPA's summary of the proposed rule; comments are due September 6th.

Payment System Update

CMS is proposing to cut the conversion factor to $33.08 in CY 2023, as compared to $34.61 in CY 2022. This is due to the expiration of the 3% PFS conversion factor increase. Unfortunately, CMS cannot reverse these payment reductions unless Congress takes action. While there is speculation that Congress may reduce the amount of these payment cuts in an end-of-year legislative package, it is still uncertain.

Medicare Shared Savings Program

CMS expressed its concern that growth in beneficiaries assigned to Accountable Care Organizations (ACOs) in the MSSP has plateaued. Since the MSSP was changed to a regionally-adjusted benchmark, higher spending populations are increasingly underrepresented in the program. Additionally, access to ACOs appears inequitable as data indicate that minority populations are less likely to be assigned to a MSSP ACO than their white counterparts. CMS' proposed changes to address these concerns include:

- **Allowing eligible ACOs to receive a one-time fixed payment of $250,000 and quarterly payments for the first two years of the five-year agreement period.** Additionally, certain low-revenue ACOs will be allowed into the BASIC track to share in savings, even if the ACO does not meet the required Minimum Savings Rate (MSR).
- **Adopting a more gradual transition to performance-based risk by allowing ACOs inexperienced with performance-based risk to participate in one five-year agreement under a one-sided shared savings model only by entering the BASIC track's glide path.** These ACOs may be eligible for a second agreement period within the BASIC track's glide path, with two additional years under a one-sided model for a total of seven years before transitioning to two-sided risk.
- **Strengthening the financial incentives for long-term participation in ACOs.** CMS would reduce the impact of ACOs' benchmark performance by using prospectively projected administrative, national and regional grown rates. The Agency would also incorporate an adjustment for prior savings into the benchmark for returning/renewing ACOs to ensure ACOs do not have to continually beat their own performance.
- **Adopting a health equity adjustment**. CMS will adjust an ACO's quality performance category score to reward high-quality care delivered to underserved populations.

Telehealth Services and Flexibilities

- Adding 53 new CPT codes through the end of CY 2023 to the temporary Category 3 basis. All existing Category 3 codes are set to expire at the end of 2023.
- Creating three new permanent telehealth codes for prolonged E/M services
- Continuing to allow certain telehealth flexibilities for 151 days after the PHE's expiration that would otherwise not be available after the PHE, as required by Congress.
- Postponing the effective date of the telemental health six-month rule until 151 days after the PHE ends. This rule requires an in-person visit six months after a telemental health visit.

Behavioral Health Services

CMS is proposing to allow behavioral health services to be furnished under the general supervision of a physician or a Non-Physician Practitioner (NPP) when the services are provided by auxiliary personnel incident to the services of a physician or NPP. Additionally, CMS proposes establishing a new service code describing services furnished using the Psychiatric Collaborative

Care Model. This code would account for monthly care integration where the mental health services are furnished by a clinical psychologist or clinical social worker.

Evaluation and Management (E/M) Visits

CMS is proposing a year delay in implementing the definition of "substantive portion" of non-critical care split (or shared) visits as the performance of either one of the three key components of a visit (history, physical exam or medical decision-making) or more than half of the total time performing the visit. It is believed that this would have resulted in a reduction in physician revenue.

Healthy Future Task Force

The House GOP recently announced new updates on its Healthy Future Task Force, which aims to improve and lower the cost of health care through technological innovations. This task force was created by House Republican Leader Kevin McCarthy and is now made up of seventeen Republican representatives. Policies recommended by the task force have so far included unleashing new innovative medicines and devices, promoting American-made medicines to strengthen the supply chain and lowering drug costs. Read more about the Healthy Futures Task Force, why it matters and what it hopes to accomplish.

Who Are the Key Members of the Task Force?

The Healthy Future Task Force will be led by Energy and Commerce Health Subcommittee Republican Leader Brett Guthrie (R-KY) and Ways and Means Health Subcommittee Republican Leader Vernon Buchanan (R-FL). The Task Force is made up of five new Republican subcommittees. The AHPA state representatives include:

- Security Subcommittee, chaired by Rep. Richard Hudson (R-NC)
- Affordability Subcommittee, chaired by Rep. Keven Hern (R-OK) with Rep. Rick Allen (R-GA) as a member
- Treatment Subcommittee, chaired by Rep. Brad Wenstrup (R-OH)

- Doctor/Patient Relationship Subcommittee, chaired by Rep. Larry Bucshon (R-IN) with Rep. Greg Murphy (R-NC) and Rep. Beth Van Duyne (R-TX) as members
- Modernization Subcommittee, chaired by Rep. Mariannette Miller-Meeks (R-IA).

The Healthy Future Task Force's mission is to "modernize, personalize and improve health care in the United States." Its policy priorities include expanding the range of available providers, providing a strong safety net for vulnerable Americans, and encouraging investments in new cures and therapies. Each subcommittee will focus on different areas of health care and have their own agenda. While not all subcommittee agendas have been released, some of the policy priorities that have been made public include safeguarding and maintaining expanded telehealth access, increasing choices through competition, and cracking down on fraud, waste and abuse.

Based on the composition of the subcommittees, we anticipate that major Republican health care proposals will come from this task force. AHPA will continue to monitor this task force for updates. With policy experts projecting the Republican party will regain the House after the mid-term elections, the work of this task force is becoming increasingly important.

Updated Guidance: Abortion Access

HHS recently released new guidance on EMTALA clarifying the requirements that hospitals have to comply with in relation to pregnancy terminations. The guidance reminds health providers that EMTALA supersedes state law and that hospitals have an obligation to provide any necessary medical treatment to stabilize a patient, even if that includes pregnancy termination. Texas soon filed a lawsuit arguing that the federal government does not have the authority to force health care providers to perform abortions. To read a more detailed summary of the guidance, click here.

Report to Congress: Unified Payment System for Post-Acute Care

The Department of Health and Human Services (HHS) and the Office of the Assistant Secretary for Planning and Evaluation released a report to Congress outlining a unified payment model for long-term care hospitals, rehab facilities, nursing homes and home health agencies. The new payment system would base payments on several factors related to the cost of care and unify payments into three general categories: rehabilitation, medical diagnosis and medical

management, teaching and assessment. The proposal is receiving heavy criticism from industry leaders who are pointing out that the model has the potential to endanger access to care, especially for the most critically ill patients.

Legislative and Regulatory Dates to Know: A Look Ahead

Date	Event
August	Release of final IPPS and post-acute care rules.
September 30th	Major Medicare programs expire, including: - Low-Volume Hospital Program - FDA user fees for prescription drugs and medical products - Behavioral health and other programs under the 21st Century Cures Act
November 8th	Midterm Congressional election
Early to Mid-November	Release of OPPS and PFS final rules
November 29th	Lame Duck session of Congress
January 1, 2023	Medicare Access CHIP Reauthorization Act (MACRA) bonus expires; Enhanced Health Insurance Exchange subsidies expire

AHPA Resources

To read AHPA's summaries of current legislation and requests for information, click below:

- Cures 2.0 Act | SAVE Act
- IPPS Summary | IPPS Comment | IPPS Comment Summary

WHAT WE'RE READING…

New 988 Suicide Hotline Goes Live – Axios

Manchin Balks at Climate and Tax Pieces of Biden's Agenda, Backs Health Care – NBC

She Was Already Battling Cancer. Then She Had to Fight the Bill Collectors – NPR

Bill Aimed at Lowering Medicare Drug Prices Faces Next Test in Senate – CNN

Amazon to Buy One Medical in Push into Health Care – Washington Post