

CMS FINALIZES SEVERAL CHANGES FOR OFF-CAMPUS PROVIDER-BASED CLINICS

On November 1, 2018, the Centers for Medicare & Medicaid Services (“CMS”) released its final rule for the Calendar Year (“CY”) 2019 Medicare Physician Fee Schedule (“MPFS Final Rule”). Among many other changes, CMS finalized maintaining payments for certain non-excepted (non-grandfathered) off-campus provider-based hospital departments (“PBDs”) at 40 percent of the Outpatient Prospective Payment System (“OPPS”) payment rate.

One day later, CMS released its final rule for the CY 2019 Outpatient Prospective Payment System (“OPPS Final Rule”) where it continued to target payment for services rendered in off-campus PBDs. Specifically, CMS finalized proposals to: (1) equalize payment for E/M visits with the MPFS rate (i.e., at 40 percent of the OPPS rate) at *all* off-campus PBDs; and (2) 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 percent (which will be discussed in a separate health alert). However, CMS did not finalize its proposal to limit the expansion of clinical families for grandfathered off-campus locations.

BACKGROUND

As discussed in a previous [article](#) from November 3, 2016, CMS implemented Section 603 of the Bipartisan Budget Act of 2015 (“Section 603”) in its CY 2017 OPPS Final Rule issued on November 1, 2016, which established that services at non-excepted (non-grandfathered) off-campus PBDs will be paid under the MPFS as the “applicable payment system” beginning January 1, 2017 rather than the OPPS ambulatory payment classification (“APC”) payment amount.

Simultaneously, CMS issued an interim final rule with comment period (“IFC”) to establish new payment rates under the MPFS for items and services provided by non-excepted (non-grandfathered) off-campus provider-based locations. For CY 2017, CMS scaled the OPPS payment rate by 50 percent in an effort to strike a balance between payment for services furnished in a non-excepted off-campus PBD and services furnished in other settings for which payment is made under the MPFS. CMS arrived at this percentage by comparing the payment under the OPPS to the payment under the MPFS for the 25 most frequently billed HCPCS codes at off-campus PBDs that contained the “PO” modifier between January 1 and August 26, 2016. This adjustment is known as the “MPFS Relativity Adjuster,” which refers to the percentage of the OPPS payment amount paid under the MPFS for a non-excepted item or service to the non-excepted off-campus PBD. In the IFC, CMS stated that it considered this payment reduction to be a transitional policy until it has more precise data to value services provided by non-excepted off-campus PBDs.

Beginning in CY 2018, CMS adopted a MPFS Relativity Adjuster based on 40 percent of the OPPS rate (i.e., a 60 percent payment reduction) based on updated data and included the relative payment rate for HCPCS Code G0463 (the most commonly billed service in the off-campus PBD setting under OPPS) into the analysis.

MPFS RELATIVITY ADJUSTER FOR CY 2019

For CY 2019, CMS employed the same fundamental methodology it used to calculate the MPFS Relativity Adjuster for CY 2017 and CY 2018. Based on its analysis, CMS will continue to apply the 40 percent MPFS Relativity Adjuster for services furnished in non-excepted PBDs. That is, the MPFS 40 percent Relativity Payment Adjuster will continue to be applied for services furnished in non-excepted PBDs, non-excepted PBDs will continue to bill on an institutional claim form using the PN modifier, the OPPS packaging policies will still apply for non-excepted services paid at 40 percent of the OPPS rate, and CMS will continue to apply the same hospital wage index for non-excepted services that would otherwise apply to the hospital’s payments under OPPS.

CMS acknowledged that for certain specialties, service lines and non-excepted off-campus PBDs, Medicare payment for the same services might be lower when furnished in a non-excepted off-campus PBD rather than in a physician office – contrary to site neutrality.

Further, CMS acknowledged that for a majority of HCPCS codes, there is no established methodology for separately valuing the resource costs incurred by a provider while furnishing a service from those incurred exclusively by the facility in which the service is furnished. In recognition of this issue, CMS stated that it is continuing to explore alternatives to their current estimates to better reflect the technical component portion of the non-excepted items and services.

REDUCTION IN PAYMENTS FOR ALL CLINIC VISITS AT OFF-CAMPUS PBDs

In the OPps Final Rule, CMS finalized its proposal to reduce payment for E/M services (as described by HCPCS code G0463) at *all* off-campus PBDs. CMS noted that clinic visits (i.e., HCPCS code G0463) are the most common services billed under the OPps and are also furnished in the physician office setting. Accordingly, it is targeting this service in an attempt to control the volume of these services under the OPps.

CMS will pay for these services using the same MPFS Relativity Adjuster that is used for payment at non-excepted PBDs, but it will phase the impact in over two years. In other words, if a hospital bills for a E/M service at an excepted (grandfathered) off-campus PBD, as indicated by billing with the PO modifier, it would be paid at 70 percent of the OPps rate in 2019 (a 30 percent payment reduction) and at 40 percent of the OPps rate in 2020 (a 60 percent payment reduction). It is important to note that on-campus PBDs (including those on the campus of a remote location) and dedicated emergency departments appear to be excluded from these payment cuts since they do not use the PO modifier.

Importantly, CMS is making this change in a non-budget neutral manner, and CMS estimates that this change will result in reduced payments (between the Medicare Program and beneficiary copayments) of \$380 million for 2019.

CMS also signaled that it will continue to explore how it may expand its authority to additional items and services paid under the OPps that may represent unnecessary increases in hospital outpatient department utilization. In the future, additional types of services could be subject to payment cuts, even if they are furnished in an excepted (grandfathered) PBD.

EXPANSION OF SERVICES AT EXCEPTED (GRANDFATHERED) OFF-CAMPUS PBDs

In CY 2017 OPps rulemaking, CMS proposed, but did not finalize, a policy that excepted (grandfathered) PBDs could continue to be paid at OPps rates for items and services in each of the 19 proposed “clinical families of services” if that PBD furnished and billed for a service in that clinical family of services prior to November 2, 2015. While CMS did not finalize this policy in CY 2017, CMS noted that it would continue to monitor the volume of services at excepted PBDs to determine if future rulemaking should address service line expansion.

In the CY 2019 OPps Proposed Rule, CMS once again proposed this concept because it does “not believe that Congress intended to allow for new service lines to be paid OPps rates” even though there was no Congressional record to support this. However, in response to numerous comments, CMS once again *did not* finalize its proposed policy with respect to service line expansion. CMS was “concerned that the implementation of this payment policy may be operationally complex and could create an administrative burden for hospitals.”

This means that excepted (grandfathered) off-campus PBDs will continue to receive full payments under OPps as long as it remains excepted (but for clinic visits). CMS stated that it will continue to monitor the volume of services at excepted locations to determine if future rulemaking is necessary for service expansions.

PRACTICAL TAKEAWAYS

- CMS’s 40 percent MPFS Relativity Adjuster will continue for CY 2019 for services furnished in non-excepted PBDs.
- Under the OPps Final Rule, hospitals will get paid for clinic visit services (as described by HCPCS code G0463) at 70 percent of the OPps rate at excepted (grandfathered) off-campus PBDs in 2019. In 2020, such services will be paid at 40 percent of the OPps rate. Hospitals should analyze the impact of this reduction in payments. Whether CMS has the authority to make these payment cuts in a non-budget neutral manner is being evaluated.
- Although CMS cut the payment for Medicare covered drugs furnished by non-excepted off campus sites to match the reduced payment for excepted off campus and on campus drugs, it is important to note that eligible drugs furnished to all patients by a non-excepted site that is enrolled as a child site are still eligible for the 340B discount.
- CMS did not finalize its proposal to pay for services at excepted (grandfathered) off-campus PBDs in new clinical families at the lower rate. However, CMS signaled that it will continue to explore this issue in the future.
- The OPps Final Rule is scheduled to be published in the Federal Register on November 21 and the MPFS Final Rule is scheduled to be published in the Federal Register on November 23.

If you have questions or would like additional information about this topic, please contact:

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