OIG RELEASES REPORT RECOMMENDING REDUCTION OF OPPS PAYMENT RATES TO ASC RATES

EXECUTIVE SUMMARY

On April 16, 2014, the U.S. Department of Health and Human Services Office of the Inspector General ("OIG") released Report A-05-12-00020 entitled "Medicare and Beneficiaries Could Save Billions If CMS Reduces Hospital Outpatient Department Payment Rates For Ambulatory Surgical Center-Approved Procedures To Ambulatory Surgical Center Payment Rates" ("Report") - a Report title that is self-explanatory. In a study commissioned by Congress, OIG assessed the impact on total Medicare expenditures of providing surgical services in an ambulatory surgical center ("ASC") as compared with a hospital outpatient department paid under the outpatient prospective payment system ("OPPS"). Since Medicare ASC payment rates are generally lower than hospital OPPS payment rates for the same procedures, Medicare saves when surgical procedures that do not pose significant risk to patients are performed in an ASC instead of in a hospital. The Report quantifies these savings, and OIG found:

1. During CY 2007 through 2011, Medicare saved $7 billion for surgical procedures performed in ASCs instead of in other outpatient settings. It stands to save $12 billion for CY 2012 through 2017.
2. Medicare could potentially save up to an additional $15 billion for CY 2012 through 2017, if CMS reduces hospital outpatient department payment rates to ASC payment levels for ASC-approved procedures performed in outpatient departments on no-risk to low-risk beneficiaries. OIG consulted with the Agency for Healthcare Research and Quality to obtain patient risk statistics and used the risk profiles to estimate the potential additional savings possible if payment rates for ASC procedures performed in outpatient departments are lowered to ASC rates.
3. Beneficiaries have saved and should continue to save billions of dollars attributable to reduced cost-sharing amounts.

OIG made the following recommendations to CMS:

1. CMS should draft and submit for review a legislative proposal that would exempt the reduced expenditures attributable to reduced OPPS payment rates from budget neutrality adjustments. This would be necessary because both the OPPS and the ASC fee schedules are required by statute to be budget neutral to insulate both payment systems from Medicare payment fluctuations.
2. If a budget neutrality exemption for the reduced expenditures is secured, CMS should reduce OPPS payment rates to ASC fee schedule rates for ASC-approved procedures performed in outpatient departments on beneficiaries with no-risk or low-risk clinical needs.
3. CMS should "develop and implement a payment strategy" providing for the continued standard OPPS payment rate for beneficiaries whose clinical needs require their ASC-approved procedures to be performed in an outpatient department for safety and quality reasons.

CMS had an opportunity to review a pre-publication draft report and did not concur with OIG's recommendations, noting, first, that such a legislative initiative to change the payment system is not currently included in the President's budget. Further, CMS was concerned that the recommended changes introduced a "circularity" problem insofar as most ASC payment rates are based on the OPPS payment rates that OIG is recommending that CMS reduce. Finally, CMS was concerned that OIG did not provide specific clinical criteria to distinguish patient risk levels.

OIG countered that CMS could propose budget neutrality legislation for future legislative initiatives and that, historically, it has done so based on OIG recommendations. As to CMS's concerns on circularity and the absence of specific patient risk criteria, OIG effectively responded that CMS should "take the necessary steps" to implement OIG's recommendations, regardless.

The Report can be found here.

IS THIS REALLY ANYTHING NEW?

The OIG Report effectively quantifies savings to the Medicare program but does not provide novel payment reform ideas. Certain

stakeholders and advisory bodies believe (and already have published) their respective justifications for equalizing payment rates and implementing "site-neutral" payment policies. Some commercial insurers have already instituted payment policies limiting hospital outpatient payment to the free-standing ASC payment rate even if a former ASC was acquired by a hospital and, after the acquisition, the ASC met the Medicare provider-based rule permitting higher hospital OPPS payment. Commercial payors are not bound to follow Medicare payment rules.

The Medicare Payment Advisory Commission ("MedPAC"), an independent Congressional agency established by the Balanced Budget Act of 1997 to advise Congress on matters impacting the Medicare program, voted at its January 16-17 meeting to recommend that Congress decrease the reimbursement differential between services provided in an outpatient hospital setting and services provided in a physician's office for select ambulatory payment classifications ("APCs"). These recommendations were published in MedPAC's March 2014 report to Congress. Similar proposals addressing site-neutral payment reform have been discussed in the last several years but have never been approved or finalized.

IMPACT OF THE REPORT

If CMS follows OIG's recommendations, such action would significantly limit outpatient reimbursement for hospitals, including hospitals' outpatient provider-based departments and, thus, could result in fewer ASC acquisitions and/or fewer conversions of ASC services to hospital provider-based services.

Hospitals will oppose the Report recommendations. Traditionally, hospitals have functioned as health safety nets, providing very expensive emergency room and trauma care as well as 24/7 access to care and disaster preparedness/response only they can provide. The higher OPPS rates incorporate the cost and added expense of providing this higher level of service, which is not available in ASCs or physician offices. The American Hospital Association ("AHA") believes that implementing site-neutral payment policies would erode hospital outpatient departments' Medicare margins and threaten access to care. The AHA sets forth its position here.

Notably, CMS itself identified issues with the proposal: the circular logic of the payment methodology and the need for clinical criteria to determine the payment methodology that will be applied to hospital outpatients. Both of these issues would be difficult to address and implement, and they would be controversial.

With increasing pressure on CMS and Congress to develop and adopt payment changes to pay for other health care costs, including the repair of the sustainable growth rate formula, providers should expect proposals and payment reforms to establish site-neutral payment.

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