

2022 OPSS and ASC Payment System Proposed Rule

Overview

On July 19, 2021, the Centers for Medicare and Medicaid Services (CMS) released a proposed rule aimed at increasing price transparency to ensure patients have the necessary information to make informed decisions when receiving treatment at hospitals. This proposed rule applies to the Hospital Outpatient Prospective Payment System (OPSS) and the Ambulatory Surgical Center (ASC) Payment System and would go into effect in January of 2022. CMS is currently soliciting comments on this proposed rule until September 17, 2021 and will finalize the rule in early November.

This proposed rule reflects a number of priorities for the Biden administration. Specifically, it attempts to:

- Update Medicare payment rates
- Address the health equity gap
- Fight the Covid-19 Public Health Emergency (PHE)
- Incentivize and increase price transparency in the health system, and
- Promote safe, effective, patient-centered care

These changes operate in accordance with the goals of Biden's Competition Executive order, which was signed on July 9, 2021.

Price Transparency and Standard Charges

On January 1, 2021, the Hospital Price Transparency final rule went into effect, which requires hospitals to publish a list of standard services and their cost and make it readily available to the public. These lists must be contained in a machine-readable file online, include standard charges for the services offered, and define key terms (e.g., "standard charges" or "items and services"). Failure to adhere to these requirements can result in penalties of up to \$300/day.

The new CMS proposal offers a few alterations to the Price Transparency rule, including:

- An increase in Civil Monetary Penalties (CMP) where \$300/day would be the minimum for hospitals with fewer than 30 beds, and larger hospitals would be fined \$10/bed/day. This would include a maximum penalty of \$5,500/day and \$2,007,500/year per hospital.
- Deeming state forensic hospitals as having met the requirements, as long as they only provide treatment to prisoners and not the general public.
- Clarifying expectations for online price estimator tools and their expected output.

CMS is also soliciting comments on best practices for online price estimator tools, clarifying what constitutes "plain language," identifying exemplar hospitals, and improving the standardization of machine-readable files.

Updates on OPSS and ASC Payment Rates

CMS proposes an increase of 2.3% in OPSS payment rates for hospitals that meet quality reporting requirements. Since the 2019 OPSS/ASC final rule established that the hospital market basket update would also apply to ASC system rates for 5 years, the ASC rates for 2022 would also be increased 2.3% for those that meet quality reporting requirements.



People. Trust. Results.
Since 1960

These rates usually draw on the most recent data for rate setting, but due to the unusual conditions created by Covid-19, CMS proposes using the data from 2019 to determine 2022 rates.

Additionally, the new proposed rule suggests reinstating safety criteria that was historically used to add covered surgical procedures to the ASC Covered Procedures List (CPL). These criteria were modified in 2021, which resulted in the CMS adding 267 surgical procedures to the ASC CPL. CMS proposes removing 258 of the 267 procedures added in 2021, but they are also soliciting comments to determine if any of those slated for removal actually meet the reinstated criteria.

Quality Reporting Programs and Health Equity

Finally, CMS proposes a number of changes to the Hospital Outpatient Quality Reporting (OQR) and Ambulatory Surgical Center Quality Reporting (ASCQR) Programs. These changes are intended to enhance meaningful measurement and reporting to increase the quality of care for outpatients. CMS requests comments that may help to improve data collection and reporting based on various underserved demographics (e.g., disability status, low SES, LGBTQ+, etc.). Furthermore, CMS is also soliciting feedback that will help address the increasing difficulty of serving rural communities. Since 2010, 138 rural hospitals have closed in the US—CMS is working to develop new requirements that would apply to Rural Emergency Hospitals (REHs) and has established a new provider type for REHs. The designation for this new provider type would apply to items or services provided beginning January 1, 2023.

Ultimately, the Biden administration has made it clear that they are cracking down on price transparency in order to encourage providing better information to patients and greater access to the healthcare they need. That is not to say that every action will have the intended effect, but it does mean that more changes are likely on the way as legislation attempts to shift the healthcare terrain in an attempt to incentivize certain behaviors and practices.

APS continues to monitor the developments and will work with providers and advocates during the comment period to ensure our clients' interests are being represented in these discussions. If you have any questions, please reach out to your Practice Manager.