



Summary of Site Neutral, 340B and Price Transparency Policies Contained in the CMS Proposed 2020 OPPS Rule

July 30, 2019

On July 29, 2019, CMS released the agency's 2020 Outpatient Prospective Payment System (OPPS) proposed rule. Click [here](#) for the CMS fact sheet and [here](#) for the 819-page rule. Below are summaries of the changes proposed for site neutral payments, 340B drug rates, and price transparency policies.

Price Transparency – This will impact CAHs **(CMS would require hospitals to post payer-specific negotiated charges)**

CMS makes several proposals to implement President's Executive Order on Improving Price and Quality Transparency. First, CMS clarifies that the existing requirements that hospitals make standard charges available in a machine-readable format means that hospitals must make public gross charges and payer-specific negotiated charges for all items or services. Additionally, CMS proposes that hospitals make public standard charge data available for at least 300 "shoppable services," which are services that can be scheduled in advance.

CMS proposes to require hospitals to make public a list of their payer-specific negotiated charges for as many of the 70 shoppable services that are provided by the hospital, and as many additional shoppable services selected by the hospital as is necessary for a combined total of at least 300 shoppable services. More specifically, CMS is proposing definition changes to "hospital," a hospital's "items and services," types of "standard charges" or gross charges and payer-specific negotiated charges in connection with an inpatient admission and an outpatient department visit that hospitals would be required to make public and proposing different reporting requirements that would apply to certain hospitals. CMS also proposes requirements to make public a machine-readable file that contains a hospital's gross charges and payer-specific negotiated charges for all items and services provided by the hospital, requirements for making public payer-specific negotiated charges for select hospital-provided items and services that are "shoppable" and that are displayed in a consumer-friendly manner.

See moreover pages 568, ff. CMS lists at page 627 Table 37 that provides the proposed list of 70 CMC-specified shoppable services. There is no list of "300 shoppable services" provided by CMS. It appears CMS will require a significant increase in the initial 300 services to be added to the disclosed pricing list each year. CMS believes it is reasonable to require a portion (i.e. the 70 listed) of the 300 shoppable services to be CMS-selected in order to ensure standardization that would provide consumers with the ability to compare prices across hospital settings. CMS believes it would be prudent to permit hospitals to select a portion of the shoppable services themselves, recognizing that some hospitals may specialize in certain services or may serve populations that utilize other shoppable services with more frequency or are more relevant than the ones we have identified for purposes of the CMS-selected services.

Concerning how CMS is proposing to monitor price transparency regulations see the discussion beginning at page 638, titled “Proposed Monitoring and Enforcement of Requirements for Making Standard Charges Public.” Concerning civil monetary penalties, at page 644 CMS states, “We are proposing that we may impose a CMP upon a hospital for a violation of each requirement of proposed 45 CFR part 180. The maximum daily dollar amount for a CMP to which a hospital may be subject would be \$300. We are proposing that even if a hospital is in violation of multiple discrete requirements, the maximum total sum that a single hospital may be assessed per day is \$300.”

Site Neutral Payments – No Changes Impacting CAHs
(CMS’ proposed rule fully implements HOPD payment cuts that started in January 2019)

In 2019, CMS expanded site neutral payment policy provisions under Section 603 of the 2015 Balanced Budget Act (BBA) to include clinic visits (HCPCS code G0463) for excepted - or grandfathered - off-campus Hospital Outpatient Physician Departments (HOPDs), or as CMS terms Physician Based Departments (PBDs). Because six percent of hospitals would have shouldered 73% of the proposed payment reduction in 2019, CMS chose to phase-in the reimbursement reduction over two years with visits being paid at 70 percent of the outpatient PPS rate for CY 2019 and transitioning to the full physician fee schedule rate for CY 2020.

In the proposed 2020 rule, CMS states it will continue with the agency’s two-year implementation of payment modification to excepted off campus HOPDs/PBDs. CMS estimates the proposal will save the Medicare program \$810 million in 2020. (See pages 426, ff.)

340B Payment Policy – No Changes Impacting CAHs
(Despite a federal court ruling against the rule, CMS continues the 340B payment cuts)

In 2018, CMS decreased payment for separately payable Part B drugs (excluding vaccines and drugs on pass-through payment status), acquired through the 340B program from average sales price (ASP) +6% to ASP - 22.5%. In the CY 2019 CMS expanded this provision to non-excepted, off-campus HOPDs/PBDs as well as finalized a policy to pay non-pass-through biosimilars acquired under the 340B program at ASP -22.5% of the biosimilar’s own ASP rather than ASP -22.5% of the reference product’s ASP. CMS proposes to continue this policy for CY 2020. (See pages 327, ff.)

In response to litigation filed by the AHA and others, CMS states in the proposed rule that, should the agency ultimately lose in court, it is seeking comments on whether reimbursing qualifying 340B claims at a rate of ASP +3% would be an acceptable remedy for 2020 as well as an “appropriate” retrospective remedy for 2018 and 2019. CMS is also seeking comments on whether the agency should over-pay in future payments for a set period of time to account for under-payments during the two previous years. If it does ultimately lose in court, CMS states it would in its proposed 2021 rule identify specific remedies for 2018, 2019 and possibly 2020 underpayments. (See page 20 and page 342, ff for more on the litigation and remedy.)

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