August 4, 2020

To: Strategic Health Care Clients

From: David Introcaso, Ph.D., VP, Regulatory Affairs (david.introcaso@shcare.net)

Re: CMS Publishes the Agency's Proposed Outpatient Physician Payment System Rule

This morning CMS published the agency's proposed 2021 Outpatient Prospective Payment System (OPPS) rule. The proposed rule is here. As of this moment there appears to be no press release nor fact sheet. Comments on the proposed rule are due no later than 5 pm ET, October 5th.

Here is a brief summary of the proposed rule's major provisions.

Payment Rate Updates

CMS proposes a fee schedule increase factor of 2.6 percent or an increase of $7.5 billion compared to estimated CY 2020 OPPS spending. Estimated total 2021 spending is $83.9 billion. The agency proposes to continue to implement the statutory 2.0 percentage point reduction in payments for hospitals failing to meet the hospital outpatient quality reporting requirements. CMS also proposes to eliminate the IPO list over the course of three calendar years beginning with the removal of approximately 300 musculoskeletal-related services. CMS is also soliciting comments on whether three years is an appropriate time frame for transitioning to eliminate the IPO list.

340B-Acquired Drugs

CMS is proposing for CY 2021 and subsequent years to pay for drugs acquired under the 340B program at ASP minus 34.7 percent, plus an add-on of 6 percent of the product's ASP for a net payment rate of ASP minus 28.7 percent based on the results of the Hospital Acquisition Cost Survey for 340B-Acquired Specified Covered Drugs. Similar to the 340B drug payment policy implemented in CY 2018, CMS is also proposing that Rural SCHs, PPS-exempt cancer hospitals and children's hospitals would be exempted from the 340B payment policy for CY 2021 and subsequent years.

Supervision of Outpatient Therapeutic Services in Hospitals and Critical Access Hospitals

CMS proposes for 2021 and subsequent years to change the minimum default level of supervision for non-surgical extended duration therapeutic services (NSEDTS) to general supervision for the entire service, including the initiation portion of the service, for which the agency had previously required direct supervision. CMS also proposes that, for CY 2021 and subsequent years, direct supervision for pulmonary rehabilitation, cardiac rehabilitation, and

intensive cardiac rehabilitation services would include virtual presence of the physician through audio/video real-time communications technology subject to the clinical judgment of the supervising physician.

Cancer Hospital Payment Adjustment

CMS proposes to continue to provide additional payments to cancer hospitals so that a cancer hospital's payment-to-cost ratio (PCR) after the additional payments is equal to the weighted average PCR for the other OPPS hospitals using the most recently submitted or settled cost report data. However, the 21st Century Cures Act requires that this weighted average PCR be reduced by 1.0 percentage point. Therefore, CMS proposes that a target PCR of 0.89 would be used to determine the CY 2021 cancer hospital payment adjustment to be paid at cost report settlement. That is, the payment adjustments will be the additional payments needed to result in a PCR equal to 0.89 for each cancer hospital.

ASC Payment Update

For CY 2021, CMS is proposing to increase payment rates under the ASC payment system by 2.6 percent for ASCs that meet the quality reporting requirements under the ASCQR Program. CMS estimates that total payments to ASCs would be approximately 5.45 billion, an increase of approximately 160 million compared to estimated CY 2020 spending.

ASC Coverage Changes

For 2021, CMS proposes to add eleven procedures to the ASC covered procedures list (CPL), including total hip arthroplasty. Additionally, CMS proposes two alternatives for changing the way procedures are added to the ASC CPL. Under the first alternative, CMS proposes to establish a nomination process beginning in CY 2021 for procedures that would be added beginning in CY 2022 under which external stakeholders, such as professional specialty societies, would use suggested parameters to nominate procedures that can be safely performed in the ASC setting and meet all other regulatory standards. CMS would review nominated procedures and propose and finalize procedures to be added to the ASC CPL through annual rulemaking. Under the second alternative proposal, CMS proposes to revise the criteria for covered surgical procedures for the ASC payment system under law by keeping the general standards and eliminating five of the general exclusions. The revised criteria would result in the addition of approximately 270 surgery or surgery-like codes to the CPL that are not on the CY 2020 IPO list. CMS solicits comments on whether the conditions for coverage for ASCs should be revised if we adopt the second alternative proposal described above.

Hospital Outpatient Quality Reporting (OQR) and Ambulatory Surgical Center Quality Reporting (ASCQR) Programs

CMS is not proposing any measure additions or removals for either program.

Overall Hospital Quality Star Ratings

CMS proposes to establish and update the methodology that would be used to calculate the Overall Hospital Quality Star Ratings beginning with 2021 and for subsequent years. CMS is proposing to, among other proposals, update and simplify how the ratings are calculated, reduce the total number of measure groups, and stratify the readmission measure group based on the proportion of dual-eligible patients.

Addition of New Service Categories for Hospital Outpatient Department Prior Authorization Process

CMS is proposing the addition of the following two categories of services to the prior authorization process beginning for dates of service on or after July 1, 2021: cervical fusion with disc removal; and, implanted spinal neurostimulators.

Clinical Laboratory Date of Service (DOS) Policy

CMS proposes to exclude cancer-related protein-based MAAAs, which are not generally performed in the HOPD setting, from the OPPS packaging policy and add them to the laboratory DOS provisions.

Physician-Owned Hospitals

CMS proposes the removal of unnecessary regulatory restrictions on high Medicaid facilities and including beds in a physician-owned hospital's baseline consistent with state law.