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To: Strategic Health Care Clients

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Re: Proposed 2021 OPPS Eliminates the Inpatient Only List

In the proposed 2021 OPPS rule published August 4, CMS discusses the agency's intention to eliminate the IPO, or the "Inpatient Only" list of 1,740 services that currently can only be performed and reimbursed as an inpatient service. The discussion begins at page 374 of the proposed rule. Click here for the rule.

On background, CMS typically discusses the IPO list in its annual OPPS rule making. As early as 2001, the agency recognized in its OPPS rule making given advances in technology and surgical technique IPO list procedures could eventually be performed safely in the outpatient setting. Most recently, CMS, for example, removed TKA in 2018 from the IPO list and THA in 2020 in response to previous rule making comments that, for example, argued regulations should not supersede the physician's knowledge and assessment of a patient's condition, that the physician can appropriately determine whether a procedure can be safely performed in a hospital outpatient setting, and excluding procedures from the outpatient setting could have an adverse effect on advances in surgical care. CMS has also received previous comments noting alternatively, without the IPO list, patient safety and quality could be put at risk or decline.

In the proposed 2021 OPPO rule, CMS states, "while we agree with commenters in previous rule makings that the IPO list was necessary," the agency has "reconsidered the various stakeholders comments requesting that we eliminate the IPO list." "We have concluded," the agency states, "that we no longer believe there is a need for the IPO list in order to identify services that require inpatient care. Instead, we agree with past commenters that the physician should use his or her clinical knowledge and judgment, together with consideration of the beneficiary's specific needs, to determine whether a procedure can be performed appropriately in a hospital outpatient setting or whether inpatient care is required." CMS restates advances in medicine, for example, laparoscopy, improved perioperative anesthesia and expedited rehabilitation protocols, that have today blurred "the difference between the need for inpatient care and the sufficiency of outpatient care." (The proposed at least suggests, clinicians will still have the discretion to perform what was an IPO listed service in the inpatient setting.) CMS states further "we now believe that quality of care is unlikely to be negatively affected by the elimination of the IPO list."

Procedurally, CMS proposes to eliminate the IPO list over a three-year period, i.e., between 2021 and 2023, or to entirely eliminate the IPO list by January 1, 2024. CMS proposes to eliminate in 2021 the 266 musculoskeletal services on the IPO list. Table 31 in the proposed rule lists the 266 musculoskeletal-related services and CPT codes. Concerning reimbursement for the 1,740 IPO listed services under the OPPS, CMS states only, "they will be newly priced under the OPPS." Concerning related revenue effects, the proposed contains no related economic analysis.

CMS is seeking a range of comments regarding this proposed regulatory reform. Among others, should the IPO list be eliminated and if so under what period of time? Should CMS restructure or create new APCs (Ambulatory Payment Classification) to allow for OPPS payment for services that are removed from the IPO list and what effect will eliminating the list have on care quality? Comments are due by October 5th.