OPPS and PFS Proposed Rules – Including Price Transparency and Telehealth Provisions

July 14, 2023

On July 13, CMS released the Outpatient Prospective Payment System (OPPS) and the Physician Fee Schedule (PFS) proposed rules for FY2024. Comments are due on both proposed rules on Monday, September 11, 2023.

OPPS

- Click here for the 963-page OPPS proposed rule.
- Click here for the CMS Fact Sheet on the OPPS proposed rule.
- Click here for the CMS Fact Sheet on the hospital price transparency provisions.
- Click here for the CMS press release on behavioral health access and price transparency.

PFS

- Click here for the 1,920 page PFS proposed rule.
- Click here for the CMS Fact Sheet on the PFS proposed rule including telehealth provisions.
- Click here for the CMS Fact Sheet on the PFS proposed rule and MSSP.
- Click here for the CMS Fact Sheet on QPP.
- Click here for the CMS Press Release on the PFS and the advancement of health equity.

Significant Provisions in the Proposed OPPS Rule:

OPPS Payment Update

CMS proposes to increase payments under the outpatient prospective payment system by 2.8 percent that is derived from a projected hospital market basket percentage increase of 3.0 percent, reduced by a 0.2 percentage point for the productivity adjustment.

340B-Acquired Drugs Payment

CMS will continue to apply the default rate, generally average sales price (ASP) plus 6 percent, to 340B acquired drugs and biologicals.

In a separate earlier proposed rule (click here), the agency CMS proposed to make a one-time lump-sum payment to each 340B-covered entity hospital that was paid less due to the now-invalidated payment cuts. To maintain budget neutrality, CMS proposed to reduce future non-drug item and service payments by adjusting the OPPS conversion factor by minus 0.5 percent starting in CY 2025 for all hospitals, only excluding new hospitals, beginning in 2025 and continuing for 16 years.

Hospital Price Transparency – PDF pages 752 - 801 of the OPPS

- Requires the use of a CMS template to display the data, rather than the current flexibility
- Requires affirmation that the information is true, accurate and complete
- Requires updating the hospital's website with additional links and access to the file
- Requires certification by an authorized hospital official as to accuracy and completeness of data
- Requires the addition of a consumer friendly "expected allowed amount" – a dollar amount instead of a percentage amount - discussion begins on PDF page 772
- For a chart comparing current and proposed cdata elements, see PDF pages 780-781
- Seeks comment on aligning the existing hospital price transparency regulations with the Transparency in Coverage requirements for payers and the No Surprises Act transparency requirements. See PDF pages 801-808.

Payment for Intensive Outpatient Services in Behavioral Health – PDF pages 342 - 422 of the OPPS

- Beginning in CY 2024, CMS proposes to pay for intensive outpatient programs (IOPs) under Medicare and defined as "a distinct and organized intensive ambulatory treatment program that offers less than 24-hour daily care other than in an individual's home or in an inpatient or residential setting and furnishes the services"
- IOP services may be furnished in hospital outpatient departments, community mental health centers (CMHCs), federally qualified health centers (FQHC), and rural health clinics (RHC)
- Proposal will also establish payment for intensive outpatient services provided by opioid treatment programs (OTPs) under the existing OTP benefit
- Intensive outpatient services must be furnished in accordance with a physician certification and plan of care and are not intended for those who otherwise need an inpatient level of care
- Intended for patients who:
    1. require a minimum of 9 hours per week of therapeutic services as evidenced in their plan of care;
    2. are likely to benefit from a coordinated program of services and require more than isolated sessions of outpatient treatment;
    3. do not require 24-hour care;
    4. have an adequate support system while not actively engaged in the program; (5)
    5. have a mental health diagnosis;
    6. are not judged to be dangerous to self or others; and

7. have the cognitive and emotional ability to participate in the active treatment process and can tolerate the intensity of the intensive outpatient program

- Proposed payment table begins on page 382

Significant Provisions in the PFS Proposed Rule:

PFS Payment Update

CMS proposes to decrease physician payments overall by 3.34 percent in CY 2024. As required by statute, the update to the PFS conversion factor for CY 2024 is 0.00 percent, after accounting for this update, a 1.25 percent decrease to PFS payments for CY 2024 as required by the Consolidated Appropriations Act (CAA) of 2023. Along with the budget neutrality adjustment, the proposed conversion factor for CY 2024 is $32.75, a decrease of $1.14 from the CY 2023 conversion factor of $33.89.

Telehealth – See PDF page 68 of the PFS; click here for the CMS Fact Sheet with telehealth provisions.

- Implements telehealth provisions in the CAA, 2023 which extend the following through calendar year 2024 – PDF page 100
    - Expands the scope of originating sites to include where the beneficiary is located, including the beneficiaries' home
    - Expands practitioners to include qualified occupational therapists, qualified physical therapists, and qualified audiologists;
    - Continues payment for telehealth services furnished by RHCs and FQHCs;
    - Delays requirement for in-person visit with the physician or practitioner within 6 months prior to initiating mental health services; and
    - Continues coverage and payment of telehealth services on the Medicare List of Services as of 3/15/22
- Extends the Covid waivers that allowed for virtual direct supervision, virtual supervision of residents and the ability for therapy providers in HOPDs to bill for telehealth services through the end of 2024 – PDF page 111
- See chart on PDF page 125 for the Medicare Telehealth Originating Site Service Fee.
- Clarifications for Remote Patient Monitoring – PDF page 117