Setting the Record Straight
Medicare Site Neutral Payment Policy

Within the last decade, the Outpatient Prospective Payment System (OPPS) payments to hospitals for new, off-campus Hospital Outpatient Departments (HOPDs), mid-build HOPDs, and certain clinic services (such as evaluation and management services) provided at off-campus HOPDs, have already been significantly reduced. This has occurred even as more patient procedures and services have shifted from inpatient to outpatient, a trend expected to continue.

1. Hospitals are Currently Prohibited from Flipping Physician Practices to HOPDs to Increase Payments

-- "New" HOPDs Already Paid Under PFS Instead of OPPS

Section 603 of the Bipartisan Budget Act of 2015 (BBA 15) required CMS (beginning in 2017) to adjust the OPPS payments to "new" off-campus provider-based departments (HOPDs) of hospitals. "New" HOPDs were defined as sites located more than 250 yards from the hospital's main campus. These "new" HOPDs are now paid under the PFS instead of the OPPS payment rates, eliminating any perceived incentive to acquire "new" sites to receive the OPPS rate. Off-campus HOPDs billing under the OPPS before November 2015 were "excepted" and allowed to continue to bill under OPPS. Click here for information from the MedPAC on the OPPS payment system.

- A hospital can NOT purchase a "new" physician practice and bill Medicare for the services at the HOPD rates. The purchase of a physician practice would constitute a change of ownership for the physician practice and the regulations expressly prohibit billing as an HOPD under this scenario. To read the reg, click here and see PDF page 158.
- Physician practices are being acquired – mostly by private equity entities, other physician practice groups and health insurers. Click here. Hospitals may also purchase physician practices, but they can NOT bill Medicare for HOPD services. Click here for a fact check from Stat News.

The 21st Century Cures Act of 2016 established an exception for off-campus HOPDs that were under construction (mid-build) when the BBA 15 was enacted. These "non-excepted" sites are reimbursed at only 40% of the OPPS rate.

Yet another cut began in 2019 when CMS extended the site neutral payment rate to clinic visits at all off-campus HOPDs (excepted and non-excepted), paying the PFS-equivalent rate, which is 40% of the standard OPPS rate. This non-budget-neutral policy cut payments to hospital clinics by an estimated $800 million in 2020 alone. In the 2023 OPPS final rule, CMS provided an exemption from the site-neutral clinic visit cuts for rural sole community hospitals because of the access issues that were created by the payment cuts.

2. Payments for Outpatient Services ARE Increasing BECAUSE Hospital Care is Shifting from Inpatient to Outpatient

Click here for MedPAC chart showing a cumulative 1.5 percent decline in inpatient stays but a 2.1 percent growth in outpatient visits from 2016-2019. The chart discounts 2020 as a potential outlier due to Covid. We anticipate that outpatient care will continue to grow with advances in medical technology and patient demand, while inpatient services decrease. In fact, CMS continues to move items off the Inpatient Only List.

3. Current Site Neutral Bills are NOT What MedPAC Has Recommended

-- Budget Neutrality Must Be Maintained (MedPAC)

HOPDs are different from freestanding offices and ambulatory surgical centers (ASCs), with regulatory requirements that increase costs. These include licensing and accreditation requirements, Medicare conditions of participation, standby capacity for emergency care, Emergency Medical Treatment & Labor Act (EMTALA) requirements, and more stringent building and life-safety codes among others. Additionally, patients in HOPDs tend to be more medically complex than patients who receive the same type of service in ASCs or freestanding physician offices.

Any additional payment cuts to HOPDs must at a minimum maintain budget neutrality to preserve sufficient access to Medicare revenue. As the non-budget neutral cuts in 2019 demonstrated, lack of Medicare revenue leads to increased access issues. **MedPAC addressed these concerns in its June 2023 report-**– click here - and recommended a budget neutral approach, in addition to close monitoring to assess the impact its recommended payment rate alignment for select services would have on beneficiary access to those services

Conclusion

1. Current site neutral bills must be analyzed in light of these recent site neutral payment cuts.

2. They must take into account the potential impact additional payment reductions may have on the continued availability of services and providers to care for an increasingly aging population.

3. As hospitals struggle to regain financial stability post Covid, most are unable incur additional financial losses without making changes to the services offered or the locations served. This would have a detrimental impact, particularly on communities that are already underserved.