

PUBLICATION

CY 2013 Outpatient Prospective Payment System (OPPS) and Ambulatory Surgical Center (ASC) Proposed Rules Released by CMS [Ober|Kaler]

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CMS has released its Calendar Year (CY) 2013 Proposed Rule for outpatient services furnished in hospitals and ASCs. CMS anticipates that total payments under the OPPS for CY 2013 will be \$48.1 billion, and that payments to ASCs will be \$4.1 billion.

The proposed rule may be viewed [here \[PDF\]](#) and will be published in the July 30, 2012 Federal Register. Comments are due no later than September 4, 2012.

Major highlights of the proposed rule are discussed below. Future issues of *Payment Matters* will discuss specific issues in the proposed rule in greater detail.

Proposed Changes to the OPPS

The proposed rule projects a payment rate increase of 2.1 percent. This reflects the 3.0 percent market basket update projected for inpatient prospective payment system (IPPS) services, minus .9 percent in adjustments mandated by the Affordable Care Act. To implement the statutory 2.0 percent reduction in payments for hospitals that fail to meet outpatient quality reporting requirements, CMS proposes to apply a reporting ratio of 0.980 to the OPPS payments and copayments.

Among other changes, the proposed rule would:

- Change the method of determining the relative payment weights of services within an Ambulatory Payment Classification (APC) group by using the geometric mean costs of services within an APC, rather than the median costs of services.
- Continue the adjustment of 7.1 percent to OPPS payments for certain rural sole community hospitals.
- Continue to increase payments to cancer hospitals' OPPS payments, in order to reflect CMS's conclusion that the reasonable cost of services provided in cancer hospitals significantly exceeds the cost of services furnished in other hospitals. Each cancer hospital would receive a hospital-specific payment adjustment that reflects the difference between such hospital's profit to cost ratio (PCR) and the average PCR of hospitals for services furnished under the OPPS. The proposed target PCR is 0.91 percent, resulting in an additional payment to each cancer hospital at cost report settlement.
- Create a payment adjustment for CY 2013 to cover the marginal cost of hospital acquisition of radioisotopes from sources that do not use highly enriched uranium. This reflects the Administration's agenda to eliminate domestic reliance on reactors outside of the US that produce highly enriched uranium.
- Set payment for the acquisition and pharmacy overhead costs of separately payable drugs and biologicals that do not have pass-through status at the statutory default rate of the manufacturer's average sales price plus 6 percent.
- Clarify physician supervision requirements for hospital outpatient physical therapy, speech-language pathology and occupation therapy furnished in OPPS and critical access hospitals (CAHs). CMS also

proposes to extend for one final year the enforcement of physician supervision requirements for CAHs and certain small rural hospitals.

- Solicit comments on the potential clarifications or changes to policies regarding patient status as inpatient or outpatient/observation. This stems from CMS's concern that, in an effort to avoid inpatient admissions that might subsequently be deemed unnecessary by a Medicare reviewer, hospitals are keeping patients in observation status for extended periods of time. Among other issues, CMS is seeking comments on whether to establish a specific point in time after which the encounter becomes an inpatient stay and other alternative approaches to defining inpatient status.
- Not add any additional measures to the Outpatient Quality Reporting Program and would not propose any new targeting criteria to select hospitals for validation of medical records. CMS also proposes applying the criteria for retiring measures in the Inpatient Quality Reporting Program to the Outpatient Quality Reporting Program, as well as changes to forms used in the program.

New Technology Intraocular Lenses (NTIOLs)

CMS proposes significant revisions to the regulations on payment for NTIOLs. These include a requirement that the FDA-approved labeling contain a claim of specific clinical benefit based on a new lens characteristic in comparison to currently available IOLs, and that such benefit be supported by evidence demonstrating a measurable, clinically meaningful improved outcome.

Payment to ASCs

CMS anticipates a 1.3 percent update to ASC payments in CY 2013, which reflects a consumer price index for urban consumers of 2.2 percent, minus a productivity adjustment of .9 percent.

Under the ASC Quality Reporting Program, CMS seeks comments on the approach for future selection of quality measures, and proposes requirements for dates of submission, payment and completeness for claims-based measures for CY 2015 payment determinations.

Electronic Health Record (EHR) Incentive Program

CMS proposes extending the 2012 Medicare EHR incentive program through 2013, exactly as finalized for 2012.

Inpatient Rehabilitation Facility (IRF) Quality Reporting Program (QRP)

CMS proposes to adopt updates on previously adopted measures that will affect payment in FY 2014, as well as a policy that measures adopted for use will remain in use for the IRF QRP until actively removed, suspended or replaced.

Ober|Kaler's Comments

Hospitals and ASCs should consider whether comments are warranted on specific provisions of the rules. In particular, hospitals should take advantage of the opportunity to comment and seek clarification on CMS's policies for determining a patient's status as inpatient or outpatient. Comments are **due by September 4, 2012**.