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Client Alert

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2017 OPPS Final Rule: Big Changes for Off-Campus Provider Based Departments

By Jennifer R. Breuer

The Centers for Medicare and Medicaid Services (CMS) has issued the Outpatient Prospective Payment System (OPPS) Final Rule for calendar year 2017, which includes regulations implementing the site-neutral payment provisions of the Section 603 of the Bipartisan Budget Act of 2015 (BBA). With this Final Rule, CMS begins to implement the mandate of the BBA to eliminate incentives for hospitals to purchase physician practices and convert them to off-campus outpatient provider-based departments (OPDs).

Per the BBA, effective January 1, 2017, certain items and services provided by certain off-campus outpatient departments of a provider are excluded from the definition of covered OPD services, and thus are not eligible for payment under the OPPS. Instead, such items and services will be paid under the Medicare Physician Fee Schedule (MPFS). Locations that are ineligible for OPPS reimbursement as of January 1, 2017, are referred to as "Non-Excepted OPDs."

OPDs not located on the campus of a provider (i.e., off-campus OPDs) or within 250 yards of a remote location of a hospital facility that billed under OPPS as of November 2, 2015 (the date of enactment of Section 603 of the BBA), are "excepted" from the BBA exclusion ("Excepted OPDs") and thus "grandfathered" in as eligible for continued payment under OPPS. Also excepted are items and services (whether or not related to emergency services) furnished by a dedicated emergency department. The BBA does not affect items and services provided in on-campus OPDs.

To effectuate payment for items and services provided in Non-Excepted OPDs, hospitals will continue to bill on a CMS-1450 (UB-04). CMS has created a new site of service identified by the "PN" modifier, which must be appended to such claims. Use of the PN modifier will trigger payment under the MPFS in an amount intended to reflect the resource costs incurred in furnishing the technical component of services in a Non-Excepted OPD setting. For CY2017, technical component rates generally will be set at 50 percent of OPPS payment rate and will be further adjusted geographically based on the hospital wage index. CMS acknowledges its 50 percent adjuster to be a "placeholder" that was derived by reviewing claims data for the 25 most frequently billed services provided in off-campus OPDs, as well as the payment differential between the OPPS and the ASC payment system. CMS is soliciting comments on this new payment methodology and will make adjustments as necessary in light of comments received. However, it anticipates retaining this methodology through at least CY2018, at which time a long-term payment approach may be adopted. CMS remains concerned that the general 50 percent payment reduction may be too small. Thus, hospitals should anticipate further reductions toward office-level payment rates.

There are several significant exceptions to the standard 50 percent reduction, including services currently paid under OPPS based on other Medicare fee schedules (including the MPFS, the Clinical Lab Fee Schedule or the Ambulance Fee Schedule) on an institutional claim, which will continue to be paid without payment reduction. Similarly, drugs and biologicals that are separately payable under the OPPS will be paid in a manner consistent with payment rules in the physician office setting (typically at Average Sales Price + 6 percent). Partial hospitalization programs—intensive outpatient psychiatric day treatment programs furnished as an alternative to inpatient treatment or to shorten an inpatient stay—will be paid at the Community Mental Health Center per diem payment rate for APC 5853, for providing three or more partial hospitalization service per day.

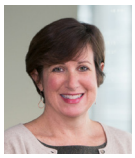
In adopting the new site of service methodology for payment of Non-Excepted OPD claims, CMS makes clear that it intends to eliminate incentives for hospitals to purchase physician practices and convert them to off-campus OPDs. Despite extensive lobbying efforts by the American Hospital Association and others, the Final Rule offers no flexibility for hospitals that had new off-campus OPDs under construction or otherwise in development as of November 2, 2015, but that were not yet billing for services under the OPPS. Once operational, these will be treated as Non-Excepted OPDs. Similarly, if items or services currently provided in Excepted OPDs (or in on-campus provider-based departments) are moved from their addresses as listed on their provider enrollment forms as of November 2, 2015, to a new, off-campus location, these will become Non-Excepted OPDs and will no longer qualify for payment under the OPPS.

As set forth above, CMS is seeking comments on its new MPFS payment methodology, including whether to use Medicare claims data to compare services

provided in Non-Excepted OPDs to those provided in other locations to develop a MPFS relativity adjuster that incorporates the specific mix of services provided in Non-Excepted OPDs. CMS is aware that other proposed methodologies for equalizing payment between Non-Excepted OPDs and physician offices may be more disruptive to hospital operations, including use of billing platforms, and could require contractual or other relationship changes to avoid or reduce fraud and abuse risk. Comments may be submitted until December 31, 2016.

Health Care Industry Team

Primary Contact



Jennifer R. Breuer
Partner

Chicago
(312) 569-1256
Jennifer.Breuer@dbr.com