Medicare’s CY2017 rates and payment policies for hospital outpatient departments and ambulatory surgery centers

By Carolyn Jacoby Gabbay

The Centers for Medicare and Medicaid Services (CMS) has released a “display copy” (available here) of the final rule with comment period that updates the payment rates and implements policy changes in the Medicare Outpatient Prospective Payment System (OPPS) and payment rates for Ambulatory Surgical Centers (ASCs) beginning January 1, 2017. This Alert summarizes the key provisions of the final rule, which will be published in the Federal Register on November 14, 2016. Additional Alerts will focus on specific policies included in the final rule with comment period.

Overview

CMS’s annual update to OPPS payment policies and rates will be effective on January 1, 2017.

The Hospital Outpatient Quality Reporting (OQR) Program and the ASC Quality Reporting (ASCQR) Program are being refined.

For organ transplantation, there are changes to the conditions for coverage (CfCs) for organ procurement organizations (OPOs), as well as revisions to the outcome requirements for solid organ transplant programs, transplant enforcement and transplant documentation requirements. There is also a technical correction to enforcement provisions for organ transplant centers.

The Medicare and Medicaid Electronic Health Record (EHR) Incentive Programs are being modified in an effort to reduce administrative burdens so hospitals can focus more on patient care.

The HCAHPS Pain Management dimension is being removed from the Hospital Value-Based Purchasing (VBP) Program.

Provider-Based Entity (PBE) rules are being updated to implement Section 603 of the Bipartisan Budget Act of 2015. CMS is also issuing a new interim final rule with comment period that establishes payment rates under the Medicare Physician Fee Schedule (MPFS) for non-excepted items and services furnished by non-excepted hospital off-campus provider-based departments (PBDs).
Major Provisions

- **CY 2017 OPPS Update**: The Outpatient Department (OPD) fee schedule increase factor will be 1.65%, with CMS continuing to implement the statutory 2% payment rate reduction for hospitals that fail to meet the hospital outpatient quality reporting requirements.

- **Rural Adjustment**: CMS is continuing the 7.1% adjustment to OPPS payments to certain rural sole community hospitals (SCHs), including essential access community hospitals (EACHs) for all services paid under OPPS (excluding separately payable drugs and biologicals, devices paid under the pass-through payment policy and items paid at charges reduced to cost).

- **Packaging Policies**: OPPS now packages many categories of items and services that are typically provided as part of the outpatient hospital service (for example, operating and recovery room, and anesthesia, among others). CMS is aligning the packaging logic for all conditional packaging status indicators so that packaging would occur at the claim level (instead of based on the date of service) to ensure that items and services that are provided during a hospital stay spanning more than one day are appropriately packaged according to OPPS packaging policies.

- **Payment Modifier for X-Ray Films**: To implement a 20% statutorily mandated reduction in the payment under the OPPS for imaging services that are X-rays taken using film (including the X-ray component of a packaged service), CMS is requiring that, for services furnished on or after January 1, 2017, hospitals use a modifier on claims for X-rays that are taken using film.

- **Provider-Based Entities and Site-Neutral Payment for Non-excepted Items and Services Furnished by Non-excepted Off-Campus Departments**: CMS is implementing Section 603 of the Bipartisan Budget Act of 2015, which required that certain items and services furnished in certain off-campus Provider Based Departments (PBDs) not be considered covered hospital OPD services for purposes of OPPS unless the PBD was billing under OPPS as of November 2, 2015. Instead, non-excepted items and services are to be paid “under the applicable payment system” beginning January 1, 2017. CMS is finalizing, with modification, policies it proposed for off-campus PBDs and which items and services furnished by such off-campus PBDs may be excepted from application of payment changes under this provision. Additionally, CMS is establishing that the MPFS will be the “applicable payment system” for most non-excepted items and services furnished by non-excepted off-campus PBDs, and is establishing new site-of-service payment rates under the MPFS to pay non-excepted off-campus PBDs for non-excepted items and services. Non-excepted items and services must be reported on the institutional claim form and identified with a newly established claims processing modifier. However, off-campus PBDs that qualify as dedicated emergency departments will continue to be paid under OPPS. CMS also finalized its proposal that requires off-campus PBDs that were billing under OPPS prior to November 2, 2015 must remain at the same physical address, except in limited circumstances such as a natural disaster. CMS is still developing policy for certain situations, such as changes of hospital ownership, and is monitoring the expansion of clinical services at off-campus PBDs to determine whether limitations on service line expansion should be promulgated.

- **ASC Payment Update**: ASCs that meet the quality reporting requirements under the Ambulatory Surgical Center Quality Reporting (ASCQR) Program will receive a 1.9% rate increase.

- **Hospital Outpatient Quality Reporting (OQR) Program**: CMS is establishing measures and policies for the CY 2018 payment determination, the CY 2019 payment determination and the
ASCQR Program: CMS is finalizing its proposals for the CY 2018 payment determination, the CY 2019 payment determination, and the CY 2020 payment determination and subsequent years.

Hospital Value-Based Purchasing (VBP) Program Update: CMS is removing the Hospital Consumer Assessment of Healthcare Providers and Systems (HCAHPS) Pain Management dimension from the Hospital VBP Program, beginning with the FY 2018 program year.

Medicare and Medicaid Electronic Health Record (EHR) Incentive Programs: CMS is changing the objectives and measures of meaningful use (MU) for Modified Stage 2 and Stage 3 starting with the EHR reporting periods in CY 2017. CMS is eliminating the Clinical Decision Support (CDS) and Computerized Provider Order Entry (CPOE) objectives and measures, and lowering the reporting thresholds for a subset of the remaining objectives and measures, generally to the Modified Stage 2 thresholds, under both Modified Stage 2 in 2017 and Stage 3 in 2017 and 2018, for eligible hospitals and CAHs attesting to MU. CMS is also changing the EHR reporting period in CY 2016 and 2017 for eligible professionals, eligible hospitals, and CAHs; reporting requirements for eligible professionals, eligible hospitals, and CAHs that are new participants in 2017; and the policy on measure calculations for actions outside the EHR reporting period. CMS is also making a one-time significant hardship exception from the 2018 payment adjustment for certain eligible professionals who are new participants in the EHR Incentive Program in 2017 and are transitioning to the Merit-Based Incentive Payment System in 2017.

Transplant Performance Thresholds: For solid organ transplant programs, CMS is restoring the effective tolerance range for clinical outcomes that was allowed in its original 2007 rule. CMS expects these changes will increase access to organ transplants while continuing to protect Medicare beneficiaries.

Organ Procurement Organizations (OPOs): CMS is changing the current “eligible death” definition to be consistent with the Organ Procurement Transplantation Network definition, modifying CMS current outcome measures to be consistent with yield calculations currently utilized by the Scientific Registry Transplant Recipients, and modifying current requirements for documentation of donor information that is sent to the transplant center along with the organ.

For more information on the content of this alert, please contact your usual attorney in the Nixon Peabody Health Care practice group or:

- Laurie T. Cohen at lauriecohen@nixonpeabody.com or 518-427-2708
- Carolyn Jacoby Gabbay at cgabbay@nixonpeabody.com or 617-345-6112
- Lynn Gordon at lgordon@nixonpeabody.com or 312-977-4134
- Jill H. Gordon at jgordon@nixonpeabody.com or 213-629-6175
- Rebecca Simone at rsimone@nixonpeabody.com or 516-832-7524
- Stephen D. Zubiago at szubiago@nixonpeabody.com or 401-454-1017