



Insight

CMS' New Rules on Outpatient Reimbursement

JACKSON HAMMOND | NOVEMBER 8, 2023

Executive Summary

- The Centers for Medicare and Medicaid Services (CMS) released its Calendar Year 2024 Medicare Outpatient Prospective Payment System and Ambulatory Surgical Center Payment System final rule, containing a variety of payment and policy updates for Medicare Part B services, and which will result in hospitals and ambulatory surgical centers seeing payment rates increase by 3.1 percent, with total payments to providers in 2024 estimated at \$96 billion, up from \$89.9 billion in 2023.
- CMS is also establishing payments for intensive outpatient program services to fill the gap between traditional therapy and partial or full hospitalization and is making regulatory and technical changes to implement new benefits covering the services of marriage and family therapists, as well as mental health counselors.
- CMS also released its 340B final rule, which will remedy previous underpayments to 340B hospitals, resulting in \$9 billion in repayments to 340B hospitals and a \$7.8 billion cut in non-drug items and services.

Introduction

The Centers for Medicare & Medicaid Services (CMS) [recently released](#) the Calendar Year 2024 Medicare Outpatient Prospective Payment System (OPPS) and Ambulatory Surgical Center (ASC) Payment System final rule. This rule finalizes payment and policy updates to hospital outpatient and ASC services, which are both covered under Medicare Part B. The updates, required annually by statute, affect some 3,500 hospitals and 6,000 ASCs. The CY 2024 rule contains a wide variety of updates and responses to earlier requests for comment. The major updates summarized below include payment updates for OPPS and ASC rates, mental health policy changes, and hospital price transparency policy changes.

CMS also released a 340B Drug Pricing Program payment update. Following the 2022 Supreme Court decision in *American Hospital Association v. Becerra*, CMS has been required to provide remuneration to 340B hospitals that faced reduced compensation due to an earlier policy begun in the Trump Administration. That payment remedy is also summarized below.

Hospital and ASC Payment Updates

For CY 2024, under the new rule hospitals and ASCs will see OPPS payment rates increase by 3.1 percent. This increase is based on the 3.3 percent in the inpatient hospital market basket percentage, further reduced by a productivity adjustment of 0.2 percentage points. CMS estimates that the hospital update will increase payments to providers by \$6 billion for a total \$88.9 billion in CY 2024, compared to \$82.9 billion in CY 2023, while the ASC update will result in \$7.1 billion in total payments, an increase of \$207 million for CY 2023.

Mental Health Policy Updates

CMS is establishing payments for intensive outpatient program (IOP) services, which fill the gap between traditional outpatient therapy and partial or full hospitalization for mental health issues. CMS is creating a scope of benefits, including services that are already covered by Medicare under partial or full hospitalization, as well as new service codes involving care coordination, discharge planning, and the role of caregivers and peer support specialists. Physicians will be required to certify, on a bi-monthly basis, that a patient needs a minimum of nine hours of IOP services a week. There will be two IOP Ambulatory Payment Classifications (APCs) for both hospitals and community mental health centers (CMHCs): one for days with three services per day, and one for days with four or more services per day. Payment rates will be based on cost per day using OPPS data from partial hospitalization program (PHP) days and non-PHP days. Rural Health Centers (RHCs) and Federally Qualified Health Centers (FQHCs) will have slightly different payment setups: RHCs will be paid the three-services-per-day payment that hospital outpatient departments are paid, while FQHCs will receive the lesser of the FQHC's actual charges or the three-services-per-day amount for hospital outpatient departments. CMS is establishing a weekly add-on payment adjustment for IOP services furnished by Opioid Treatment Programs (OTPs) and including IOP services in the regulatory definition of opioid use disorder treatment services. Payment rates for OTPs will be based on the rates finalized for hospitals, RHCs, and FQHCs.

The rate structure for PHP payments has been expanded to two new APC types: one for three services in a day and one for four or more services in a day. Payment rates will increase in for higher-intensity days in all provider settings. CMS clarified that Medicare

will cover PHP days for the treatment of substance use disorder.

To implement changes made by the Consolidated Appropriations Act of 2023 to allow coverage of IOP services, as well as marriage and family therapist and mental health counselor services, CMS is modifying conditions of participation (CoPs) for CMHCs to include IOP services. CMS is also modifying CMHC CoPs to add a definition of marriage and family therapist and to revise the current definition of mental health counselor in order to implement the new benefits covering marriage and family therapist and mental health counselor services.

Price Transparency

CMS is requiring hospitals to display standard charge information via a CMS template layout, data specifications, and data dictionary. Hospitals will be required to include a link to their machine-readable file on their homepage. Additionally, hospitals must include a statement affirming that, to the best of the hospital's knowledge, it has included all applicable standard charge information, and that the information is accurate. CMS updated its enforcement provisions, including: requiring (as needed) certification by an authorized hospital official as well as additional documentation needed to determine compliance; notifying the health system a hospital belongs to of noncompliance issues and working to address potential noncompliance across the health system; and publication of a hospital's compliance assessment and any actions taken against a hospital.

Miscellaneous

CMS is aligning over 240 dental codes with payment provisions in the CY 2023 Physician Fee Schedule final rule by assigning them to clinical APCs. CMS is also adding 26 separately payable dental surgical procedures to the ASC Covered Procedures List, as well as 78 ancillary dental services to the list of covered ancillary services. Additionally, CMS is implementing a new policy to pay Indian Health Service and Tribal facilities that convert to Rural Emergency Hospitals the all-Inclusive rate that IHS and Tribal facilities are normally paid, on top of the monthly REH payments.

340B Remedy Final Rule

The CY 2018 OPPI/ASC final rule, finalized in 2017, changed Medicare Part B drug payment rates for 340B drugs. Namely, the rule stated that Medicare would pay average sales price (ASP) minus 22.5 percent, rather than the standard Medicare Part B rate of ASP plus 6 percent. This policy was in effect until the middle of 2022, when the U.S. Supreme Court [ruled](#) that the Department of Health and Human Services did not have the authority to change the 340B rates without a survey of hospitals' acquisition costs, and thus rendered

the policy defunct. CMS followed budget neutrality rules and redistributed the 340B drug savings in the form of increased payments for non-drug items and services. As a result, CMS owes \$9 billion to certain 340B hospitals.

To remedy this, CMS has issued a [final rule](#) separate from the CY 2024 OPPI/ASC final rule stating it is making a one-time lump-sum payment to each 340B hospital that was affected by the 2018 final rule - roughly 1,700 hospitals. CMS will be ensuring that beneficiary cost sharing, which would have made up around 20 percent of the 340B drug payments, is included in the lump sum and has prohibited hospitals from billing beneficiaries for the coinsurance those beneficiaries would have paid on 340B drugs. CMS estimates that hospitals (both 340B and non-340B) were paid \$7.8 billion more for non-drug items and services than they otherwise would have. As such, to return all providers to the same fiscal ground they would have been on if the 2018 final rule had not existed, CMS is reducing future non-drug item and service payments. This will be done by reducing the OPPI conversion factor by minus 0.5 percent starting in CY 2026 and will continue this adjustment until the full \$7.8 billion is recouped, which CMS estimates will take 16 years. In part because of the 340B remedy, Part B premiums and deductibles for 2024 [have increased](#). Monthly premiums will increase from \$164.90 to \$174.70, and annual deductibles will increase from \$226 to \$240.