Weekly Checkup

Medicare Final Rule-ah Palooza

JACKSON HAMMOND | NOVEMBER 9, 2023

Late last week, the Centers for Medicare and Medicaid Services (CMS) dropped three annual final rules: the 2024 Medicare Outpatient Prospective Payment System and Ambulatory Surgical Center Payment System (OPPS/ASC) final rule, the Remedy for the 340B-Acquired Drug Payment Policy for Calendar Years 2018–2022 (340B remedy) final rule, and the 2024 Medicare Physician Fee Schedule (PFS) final rule. **There are over 5,500 pages between these rules, but this author has two new insights covering all three (here for the OPPS/ASC and 340B rules, and here for the PFS rule). Let's dive into the highlights below.**

First, the OPPS/ASC final rule. **Hospitals and ASCs will be pleased to know they are receiving an overall bump of 3.1 percent in payments. Hospitals will see payments increase by an estimated $6 billion for a total of $88.9 billion in 2024, up from $82.9 billion in 2023.** ASCs will see an estimated increase of $207 million for a total of $7.1 billion in payments in 2024. One of the biggest policy changes in the final rule is the creation of 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 will also be cracking down further on price transparency rules, requiring a uniform layout for standard charge information and increased enforcement provisions that will allow easier auditing and publicizing of hospitals for noncompliance.

Then there's the 340B remedy rule. A quick background on why CMS needs a remedy for the program: In 2018, the Trump Administration implemented a final rule cutting Part B drug payments to 340B entities from the average sales price (ASP) plus 6 percent to the ASP minus 22.5 percent. After a lengthy court process, the Supreme Court ruled that the federal government had acted unlawfully in making the rule and needed to compensate 340B providers for lost funds – $9 billion in total after accounting for previous repayments. **The 340B remedy final rule fixes this by paying a single lump sum to affected 340B hospitals, while cutting payments for non-drug items and services by $7.8 billion.**

CMS will recoup this money two ways: by reducing the OPPS conversion factor 0.5 percent for 16 years starting in 2026 and raising Part B premiums and deductibles. Beneficiaries are going to see their monthly premiums increase from $164.90 to $174.70, and their annual deductibles will increase from $226 to $240.

Finally, we have the PFS final rule. Physicians will not be happy to see that overall payment rates will decrease 1.25 percent in 2024, and the PFS conversion factor will drop 3.4 percent – from $33.89 in 2023 to $32.74 in 2024. According to CMS, the decrease is "90 percent" due to the increase in payments for evaluation and management visits, new behavioral health services, and clinical labor. This is intentional: CMS wants to pay more for primary care and other longitudinal care services in order to promote them. Among the behavioral health services newly eligible for PFS payments are those of marriage and family therapists, as well as mental health counselors, both of whom will now be able to provide services in Rural Health Centers and Federally Qualified Health Centers. CMS is also implementing new payments for social determinants of health services – factors outside of clinical care that affect patient health – as well as disease navigation services. Additionally, **numerous COVID-19 public health emergency telehealth flexibilities have been extended for at least another year.** Last but not least, accountable care organizations (ACOs) are getting some new quality measures and risk adjustment updates that CMS believes will boost Shared Savings Program participation by 10 to 20 percent.

The winners this year were clear: primary care and behavioral health providers, as well as 340B hospitals. **The losers: most other physician specialties, non-340B hospitals that just got their payments cut for a program they don't benefit from, and most important, Part B beneficiaries facing increased premiums and deductibles.** CMS is trying to increase lagging numbers of primary care providers, and their hands were tied by recent statute on behavioral health policy and by the courts when it comes to 340B. Time will tell if these goals eventually come to fruition, but in the meantime, Congress can expect a few angry stakeholders on their doorstep demanding changes before the end of the year.