



December 3, 2018

VIA ELECTRONIC SUBMISSION THROUGH www.regulations.gov

Seema Verma
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-1695-FC
Mail Stop C4-26-05
7500 Security Boulevard
Baltimore, MD 21244-1850

RE: Medicare Program: Changes to Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs (CMS-1695-FC)

Dear Administrator Verma:

As members of the Alliance for Site Neutral Payment Reform, we appreciate the opportunity to comment on the Calendar Year (CY) 2019 Outpatient Prospective Payment System (OPPS) and Ambulatory Surgical Center (ASC) final rule (CMS-1695-FC) as published on November 21, 2018 in the *Federal Register*.

The Alliance for Site Neutral Payment Reform is a coalition of patient advocates, providers, employers and payers advocating for payment parity across sites of service in order to decrease Medicare and commercial spending, ensure patients receive the right care in the right setting, lower taxpayer and beneficiary costs and increase patient access and choice.

The Alliance applauds CMS for expanding site neutral payments in the 2019 outpatient payment rule and continuing to move Medicare toward paying the same rate for the same service despite the setting. CMS appropriately builds upon policies implemented over the past two years to reduce the incentive for hospitals to acquire physician practices by removing payment differentials for certain outpatient services. The Alliance fully supports these payment policies and encourages CMS to advance additional site neutral payments for all clinically appropriate outpatient services.

Method to Control for Unnecessary Increases in the Utilization of Outpatient Services

CMS finalized its proposal to institute the PFS-equivalent rate for clinic visit services performed at excepted off-campus provider-based departments (PBDs). The policy will be phased-in over a two-year period. The Alliance strongly supports payment parity for Evaluation & Management (E&M) services performed at all off-campus PBDs.

The Alliance supports CMS utilizing its authority to control for unnecessary increases in the volume of outpatient services to implement this payment policy. It is well documented that higher reimbursement

rates at off-campus PBDs encourage volume. Currently, Medicare pays \$51 more for a basic E&M visit and \$145 more for chemotherapy administration when performed in an off-campus PBD rather than in a physician's office. According to MedPAC's March 2018 report, from 2011 to 2016, the volume of OPSS clinic visits increased by 43.8% and OPSS chemotherapy administration increased by 56.1%. Meanwhile, in freestanding physician offices, the volume of office visits grew by only 0.4%, and chemotherapy administration decreased by 13.4%.¹

Congress attempted to correct this misaligned incentive through passage of the Bipartisan Budget Act of 2015 which directed CMS to institute a site neutral payment policy for certain off-campus PBDs beginning January 1, 2017. However, as CMS correctly observes, most off-campus PBDs continue to be paid the higher OPSS rate for their services. In 2015, Medicare OPSS expenditures were \$56 billion and increased annually at about 7%. In 2019, CMS estimates OPSS expenditures will be \$74.5 billion, an annual increase of 9% over 2018 spending. This data indicates the need to expand the site neutral payment policy to further address the growth in outpatient spending due to unnecessary increases in the volume of outpatient services.

As the most commonly billed outpatient service, the Alliance strongly supports CMS' payment alignment for clinic visit services. This proposal is a step toward ensuring patients receive the right care in the right setting and will lower patient copays by \$80 million and save Medicare \$300 million in 2019 alone. **The Alliance encourages CMS to examine other frequently billed outpatient services to determine where further use of the authority to control unnecessary increases in utilization is appropriate.**

New Clinical Families of Services at Excepted Off-Campus Provider-Based Departments (PBDs)

CMS did not finalize the proposal to reimburse new clinical families of services at excepted off-campus PBDs at the PFS-equivalent rate and intends to monitor the expansion of services provided at these facilities.

The Alliance appreciates CMS revisiting this proposal and urges CMS to identify a practical methodology to implement site neutral payments for new clinical families of services at excepted off-campus PBDs to discourage consolidation and prevent higher costs for patients and Medicare.

Stemming consolidation in the health care marketplace was the primary goal in the creation of Section 603 of the Bipartisan Budget Act of 2015 (BBA). The Alliance agrees with CMS' concern that allowing excepted off-campus PBDs to furnish new types of services under OPSS could perpetuate the acquisition of independent physicians as hospitals can fold those physicians into excepted off-campus PBDs and continue charging Medicare and patients higher rates.

The Alliance disagrees with comments insinuating site neutral payments for new clinical families of services would stifle innovative care delivery and use of new technologies. Rather, instituting site neutral payments for these services simply eliminates a loophole for hospitals to gain higher reimbursement rates through consolidation. In fact, it is precisely because excepted off-campus PBDs are abusing their exemption that the loophole must be closed. The Alliance encourages CMS to utilize data from the "PO" modifier to identify changes in billing patterns and monitor utilization of services in excepted off-campus PBDs.

It is important to note CMS' proposal would not have prevented excepted off-campus PBDs from expanding the services available at their facilities. New clinical families of services would simply be

¹ MedPAC: Report to Congress, March 2018

reimbursed at the more appropriate PFS-equivalent rate rather than the higher OPPS rate. **The Alliance urges CMS to propose and finalize a site neutral payment policy for new clinical families of services at excepted off-campus PBDs.**

On behalf of the Alliance for Site Neutral Payment Reform, thank you for the consideration of our comments on the Calendar Year (CY) 2019 Outpatient Prospective Payment System (OPPS) and Ambulatory Surgical Center (ASC) final rule (CMS-1695-FC). We are happy to serve as a resource to you and welcome any questions about the issues, concerns and suggestions discussed above.

Sincerely,

The Alliance for Site Neutral Payment Reform

www.siteneutral.org