



September 27, 2019

VIA ELECTRONIC SUBMISSION THROUGH [www.regulations.gov](http://www.regulations.gov)

The Honorable Seema Verma  
Administrator  
Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
Attention: CMS-1717-P  
P.O. Box 8013  
Baltimore, MD 21244-1850

Re: Medicare Program: Proposed Changes to Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; Price Transparency of Hospital Standard Charges; etc. (CMS-1717-P)

Dear Administrator Verma:

As members of the Alliance for Site Neutral Payment Reform, we appreciate the opportunity to comment on the Calendar Year (CY) 2020 Proposed Changes to Hospital Outpatient Prospective Payment (OPPS) and Ambulatory Surgical Center (ASC) Payment Systems proposed rule (CMS-1717-P), as published on August 9, 2019, 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 its continued commitment to site neutral payment reform in the 2020 proposed rule and strongly supports its efforts toward ensuring the exact same service is reimbursed at the same rate despite the setting. In the proposed rule, CMS builds upon last year's proposal to implement site neutral payments for outpatient clinic visits by finalizing the second year of the two-year phase-in policy. The Alliance fully supports this proposal and encourages CMS to continue exploring opportunities to implement site neutral payments for all clinically appropriate outpatient services.

**Method to Control Unnecessary Increases in the Volume of Clinic Visit Services Furnished in Excepted Off-Campus Provider-Based Departments (PBDs)**

In the CY2019 Physician Fee Schedule Final Rule, CMS finalized a proposal to institute the Physician Fee Schedule (PFS)-equivalent payment rate for Evaluation & Management (E&M) services performed at excepted off-campus PBDs to control unnecessary volume increases in the outpatient setting for these services. The policy was to be phased-in over two years, by applying 50 percent of the total reduction in payment that would apply if these departments were paid the site-specific PFS rate for clinic visit services

in 2019. For CY2020, CMS is proposing to continue implementation of this policy, meaning these departments will be paid the site-specific PFS-rate for outpatient E/M services.

The Alliance continues to strongly support payment parity for E&M services performed at all off-campus PBDs. This policy results in real savings to both the Medicare program and Medicare beneficiaries. Previously, the average Medicare payment for a basic E&M visit when performed in a hospital outpatient department (HOPD) was \$116, with an average beneficiary copay of \$23. With the completion of the two-year phase-in, the cost of the visit would be reduced to \$46, and an average senior's copay would be \$9. Those savings add up. In 2020 alone, this policy is projected to save the Medicare program \$650 million and Medicare beneficiaries \$160 million.

As MedPAC has repeatedly recognized, the payment differential between the OPSS and the PFS incentivizes hospitals to acquire freestanding physician practices to gain access to higher reimbursement rates. Between July 2012 and January 2018, the number of physicians employed by hospitals grew by more than 70 percent nationwide. From July 2016 to January 2018 alone, the number of hospital-owned practices grew by approximately 8,000<sup>1</sup>. These acquisitions have resulted in a costly shift in site of service from the physician-office setting to the higher paid HOPD. From 2012-2015, hospital-based E&M visits per beneficiary grew by 22 percent, compared with a -1 percent decline in the physician-office setting<sup>2</sup>.

While the completed phase-in of the site neutral payment policy for E&M services in the proposed rule is an important step in the right direction, the majority of off-campus PBDs continue to receive the full OPSS payment, and the Alliance urges CMS to explore other opportunities to further payment parity in the outpatient setting. Data demonstrates that HOPDs drive up volume for several other common outpatient services, including:

- 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%.<sup>3</sup>
- Cardiac imaging procedures resulted in higher payments for a 3-day episode (217 percent) and 22-day episodes (80 percent) when performed in a HOPD compared to a physician's office<sup>4</sup>.
- For certain cardiology, orthopedic and gastroenterology services, employed physicians were 7 times more likely to perform services in a HOPD setting than independent physicians resulting in additional costs of \$2.7 billion to Medicare and \$411 million in patient co-pays over a three-year period<sup>5</sup>.

The Alliance strongly supports CMS' proposal to equalize payment rates between HOPDs and freestanding physician practices for E&M visits. This proposal is a step toward ensuring patients receive the right care in the right setting, and will result in an estimated \$810 million in savings for the Medicare program and taxpayers in 2020 alone. The Alliance is encouraged by the Administration's attention to the negative consequences payment disparities between outpatient settings have on patient access to care and consolidation in the health care marketplace and urges CMS to continue to advance additional site neutral payments for all clinically appropriate outpatient services.

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<sup>1</sup> PAI: Updated Physician Practice Acquisition Study: National and Regional Changes in Physician Employment, 2012-2018; February 2019.

<sup>2</sup> MedPAC: Report to Congress; March 2017.

<sup>3</sup> MedPAC: Report to Congress, March 2018.

<sup>4</sup> Avalere: Medicare Payment Differentials Across Outpatient Settings of Care; February 2016.

<sup>5</sup> Avalere, PAI: Physician Practice Acquisition Study: National and Regional Employment Changes, October 2016.

While implementation of the Bipartisan Budget Act of 2015 (BBA) marked an important step toward payment parity for outpatient care, it also created an additional layer of complexity for patients. Depending on the setting, outpatient care delivered at an off-campus PBD could be covered under the OPPI, PFS or ASC payment rules. This forces Medicare patients to navigate multiple payment systems with varying copayment amounts for the same services depending on whether that service is provided in an excepted off-campus PBD, nonexcepted off campus PBD, PPS-exempt cancer hospital, freestanding physician office or an ambulatory surgical center. This system is overly-complex and complicated. Both patients and Medicare should be paying the same amount for the same service regardless of where it is performed.

Section 603 of the BBA was estimated to save \$9 billion over 10 years, but substantial Medicare savings remain. Our own internal analysis estimates extending the BBA's site neutral policy to all off-campus PBD services where a comparable service exists under the PFS or ACS would save approximately \$33 billion over 10 years which is in line with the Administration's proposal in the fiscal year 2020 budget. The Alliance urges CMS and the Administration to take further regulatory action to provide vital transparency and certainty for patients and solvency for the Medicare program by applying the site neutral payment policy to all clinically appropriate off-campus PBD services.

On behalf of the Alliance for Site Neutral Payment Reform, thank you for the consideration of our comments on the CY2020 Proposed Changes to Hospital Outpatient Prospective Payment (OPPI) and Ambulatory Surgical Center (ASC) Payment Systems proposed rule (CMS-1717-P). 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](http://www.siteneutral.org)