Medicare 2008 OPPS Final Rule

The Centers for Medicare & Medicaid Services’ final rule covering rates paid to hospitals and ambulatory surgery centers under Medicare’s outpatient prospective payment system (OPPS) during calendar year 2008 went on display November 1. Taking into account the market basket update and other factors, CMS predicts that hospitals’ Medicare outpatient payments will increase by 3.8% under the rule. Total OPPS payments (including beneficiary coinsurance) should increase by about 10% to approximately $36 billion in CY 2008, up from $32.7 billion in 2007.

Among changes found in the rule is the elimination of certain ambulatory payment classifications (APC) through an expanded packaging of ancillary services. Currently, there are a number of outpatient services that are not paid separately, but are packaged into the APC rate for their related procedure or services. For CY 2008, CMS is adding to those services by packaging payment for procedure codes associated with guidance services, image processing services, interoperative services, imaging supervision and interpretation services, diagnostic radiopharmaceuticals, contrast agents and observation services.

The Final Rule will impact hospitals in these other key areas, too, including:

- **Quality reporting:** For CY 2008, CMS is requiring that hospitals report seven consensus quality measures, including five emergency department acute myocardial infarction transfer measures and two surgical care improvement measures. The reporting must be done in 2008 in order to receive their full OPPS market basket update in CY 2009; otherwise, the CY 2009 update will be reduced by 2.0 percentage points.

- **New composite APC groups:** CMS is creating a new type of APC called a “Composite APC.” For those new groups a single payment will be made when a certain combination of procedure codes are reported on the same date of service, rather than paying for individual services under service-specific APCs.

There is a total of five Composite APCs in the rule. Two were included in the proposed rule. They are APC 8000 (Cardiac Electrophysiologic Evaluation and Ablation Composite) and APC 8001 (LDR Prostate Brachytherapy Composite). In addition the Final Rule creates two new Composite APCs, 8002 (Level I Extended Assessment & Management Composite) and 8003 (Level II Extended Assessment & Management Composite), that will pay hospitals for extended observation care provided to patients with a Level 5 clinic visit, a Level 4 or 5 emergency department visit, or direct admission to observation. Plus, one current APC, 0034 (Mental Health Services), will now be identified as a Composite APC.

- **Implantable device credits:** Medicare payment and beneficiary liability for certain device-dependent APC groups will be reduced when a hospital receives a substantial partial credit from the manufacturer toward the cost of a replacement device implanted in a procedure. This parallels Medicare’s inpatient hospital policy and extends the current OPPS payment reduction policy when a hospital replaces an implantable device without cost.

Click on [http://www.cms.hhs.gov/HospitalOutpatientPPS/](http://www.cms.hhs.gov/HospitalOutpatientPPS/) to read the Final Rule. It will be published in the *Federal Register* on November 27, 2007.
Physician Fees To Be Cut

CMS’ final physician payment rule for 2008, which was posted on November 1, contained no surprises. As expected, the proposal reduces physician payments by 10.1% in 2008. The statutory formula, which by law is used to set the rates, requires the agency to implement the reduction. The formula compares the actual rate of growth in spending to a target rate, which is based on such factors as the growth in the number of Medicare fee-for-service beneficiaries and statutory or regulatory changes in benefits. Under the Medicare law, if the actual rate of spending growth exceeds the target rate, the update is decreased; if it is less, the update is increased.

Because Medicare payments for physician services have been increasing faster than projections, the statutory update formula has dictated that physician payments be cut every year since 2002. However, Congress suspended those requirements between 2003 and 2007, essentially keeping the physician fees unchanged for that period. The 10.1% reduction for 2008 will stand, unless Congress again takes steps to block it from happening.

The proposal also contains payment changes related to Part B drugs and other services; establishes payment incentives for 2008 quality measures under the Physician Quality Reporting Initiative; and increases the value of the work component of anesthesia services by 32%. It includes one physician self-referral provision finalizing the proposal for anti-markup provisions for diagnostic tests, and requires physical and occupational therapy providers to meet state licensing and other requirements.

The rule is now on display and will be published in the Federal Register on November 27, 2007. The rule can be found at http://www.cms.hhs.gov/center/physician.asp.

“Governing Leadership Essentials” Program Available

Building and maintaining focused, accountable, visionary trustee leadership is one of the principal challenges for hospitals in today’s turbulent healthcare environment. Dealing with the complexity of healthcare policy, increased financial strain and demands for new levels of accountability requires trustees who are confident, motivated, highly-skilled and visionary in their thinking. All are leadership qualities essential to governance and organizational success.

The eleventh in a series of governance online education programs, “Governing Leadership Essentials for a Complex Healthcare World,” previously scheduled for November 20, will not be available live. You are invited to purchase a CD of the program, which we encourage you to present at your board meeting and/or provide to individual trustees to watch independently. Larry Walker, president of The Walker Company, will be the presenter.

This one-hour program will explore the challenges and requirements of building a highly effective governance team and ensuring a dynamic and focused leadership environment. Trustees will gain new insights into a wide range of important strategic leadership roles and responsibilities, and gain practical knowledge about ways the board of trustees can improve its capacity to deliver the strong leadership required to sustain success in challenging times. To order a copy of the CD, click on http://www.walkercompany.com/knowledgeplace/governing_leadership_essentials.htm.
New Approvals Required For Transplant Centers

All hospital transplant centers, which are currently approved for Medicare participation under either the ESRD Conditions of Coverage or the National Coverage Decisions, must submit a request for new approval under the Conditions of Participation established by the new regulation that was issued by CMS on March 30, 2007. The request must be submitted to CMS by December 26, 2007 (180 days from the effective date of the regulation). Any Organ Transplant Center not submitting a request for approval under the new Conditions of Participation by that date is subject to having its Medicare approval withdrawn.

There is no application form. Transplant centers must send a request (e.g., a letter) to CMS with specific information. For a list of all transplant centers covered by the regulation and a listing of the minimum information that must be included in all requests to CMS for approval, please visit www.cms.hhs.gov/CertificationandCompliance/20_Transplant.asp. Transplant centers desiring first time Medicare certification must send a request to CMS with the same information. This can be done any time the center is ready for initial Medicare certification.

Questions concerning the approval requests, timelines for the regulation, the information that must be submitted with the approval request, or the survey and certification process, should be directed to Sherry Clark in the Survey and Certification Group at CMS at (410) 786-8476.

Legal Note: Transmitting PHI Electronically

Because the use of email communications in the healthcare industry is increasing, privacy and security issues related to these types of electronic transmissions are important concerns. HIPAA does not prohibit the transmission of PHI by email, but the HIPAA Privacy Regulations and HIPAA Security Regulations will apply to email when protected health information is included in the communications. Accordingly, hospitals must take steps to ensure that email transmission and storage comply with HIPAA.

Hospitals should have policies and procedures in place governing email communications containing PHI. These policies and procedures should comply with all HIPAA requirements. For example, the HIPAA Security Rule (45 C.F.R. §164.302 - §164.318) covers administrative, physical and technical safeguards for electronic protected health information (ePHI) security both while it is being stored and transmitted. The transmission security standard is one of the technical safeguards found in the rule. This standard requires covered entities to implement technical security measures to guard against unauthorized access to ePHI that is being transmitted over an electronic communications network.

There are two implementation specifications under the transmission security standard. The first specification is integrity controls, which requires the covered entity to have some method of confirming that the data transmitted by email is being received complete and unaltered. The second specification is encryption. Both of these implementation specifications are “addressable” under HIPAA, which means that the covered entity must assess the specification and decide if it is “reasonable and appropriate” for the situation. Then, once the specification has been assessed, the entity must either (1) implement the specification or (2) document why it is not “reasonable and appropriate” and implement an equivalent alternative. The HIPAA Privacy Rule also requires covered entities to implement reasonable safeguards when communicating PHI in any format, including by email.

In addition to including HIPAA requirements in their email policies, hospitals may want to include other safeguards such as: (1) requiring a confidentiality statement in each email; (2) regularly...
checking email addresses of recipients before transmission; (3) contacting the recipient of a misdirected email as soon as possible to ask that the message be destroyed; (4) using a delivery notification mechanism to ensure that the email was received by the intended recipient; (5) obtaining a patient’s informed consent and agreement prior to using email to correspond with him or her; and (6) including all clinically relevant email messages as part of the patient’s medical record.

Suggested topics for the Legal Note may be submitted to elisawhite@arkhospitals.org. The Legal Note is provided solely for informational purpose and does not constitute legal advice. Readers are encouraged to consult with their own attorneys about any legal issues, including those discussed in this article.

Newsnotes About Arkansas Folks

Terry L. Amstutz, FACHE, CEO of Magnolia Hospital, was named “Administrator of the Year for Hospitals under 100 beds” by the Arkansas Hospital Auxiliary Association (AHAA) during its annual meeting October 11 in Little Rock. Robert P. Atkinson, FACHE, president and CEO of Jefferson Regional Medical Center in Pine Bluff, was named “Administrator of the Year for Hospitals over 100 Beds.” Both awards were presented by Peg Kuhnly, president of the AHAA.

John Robbins, FACHE, Arkansas’s ACHE Regent, awarded Phillip K. Gilmore, FACHE, president and CEO of HSC Medical Center in Malvern, the 2007 ACHE Regent’s Award, Senior Level Healthcare Executive. Gilmore is a former Arkansas ACHE Regent and is the current president of the Arkansas Health Executives Forum, the ACHE chapter affiliate.

Pat Keller, executive director of the Arkansas Health Care Access Foundation, presented the organization’s Spirit of Service Award to the University of Arkansas for Medical Sciences and its Area Health Education Center clinics to recognize the care which those groups donate to low-income individuals. Richard A. Pierson, executive director of UAMS Medical Center, accepted the award.

The AHA Calendar

November 2007
14 Arkansas Association of Hospital Trustees (AAHT) “Trustee College,” Crowne Plaza (formerly Holiday Inn Select), Little Rock
14-16 Healthcare Financial Management Association (HFMA), Fall Quarterly Meeting, Wyndham Riverfront, North Little Rock
15-16 Society for Arkansas Healthcare Purchasing and Materials Management (SAHPMM), Fall Meeting, Baptist Health Medical Center in Malvern
16 Getting Results: Be an Inspirational Facilitator, Trainer & Coach (Mid-Management Certificate Series), Crowne Plaza (formerly Holiday Inn Select), Little Rock
29 CMS’ Conditions of Participation for Critical Access Hospitals (Three-Part Audioconference Series) - Part 3

December 2007
5 2008 CPT Coding Update, Crowne Plaza (formerly Holiday Inn Select), Little Rock
6 2008 CPT Coding Update, Cosmopolitan Hotel, (formerly Fayetteville Radisson), Fayetteville
13 2008 CPT Coding Update, Holiday Inn, Jonesboro
18 Tough Leadership For Tough Times: Governing Through the Storms of Change (Online Governance Education Program)