



Policy Brief

November 15, 2019



Because of the Thanksgiving holiday, the next Policy Brief will be sent on December 6th. We are grateful for the opportunity to serve you and wish you a happy Thanksgiving!



CMS Releases Final CY2020 OPPS Rule Without Price Transparency Policies

The Centers for Medicare and Medicaid Services (CMS) released the Outpatient Prospective Payment and Ambulatory Surgical Center (OPPS/ASC) [final rule](#), which will take effect on January 1, 2020. Absent from the rule was a price transparency policy, which the White House is expected to release in a separate final rule later today. Below are insights on key finalized policies. Click [here](#) for a detailed summary and attend our upcoming [AHPA webinar](#) for an even deeper dive.

Carries Forward Payment Cut for 340B Drugs

The rule maintains the 28.5% payment cut. Despite [two injunctions](#) against HHS Secretary Azar for unlawful reductions to the 340B drug reimbursement rate in 2018 and 2019, the Agency will continue to pay hospitals at the Average Sales Price minus 22.5% for 340B drugs. Following this year's comment period, CMS issued an [information collection request](#) asking hospitals for average acquisition cost data—a key piece of missing information that formed the basis of the injunctions. Even with an adverse ruling on the [pending appeal](#), CMS could still use this data in CY 2021 rulemaking to reimburse for 340B at a reduced rate.

Completes Site-Neutral Reduction Phase-In

CMS finalized phase two of a site-neutral payment policy reducing payments for clinic visits provided in off-campus Provider-Based Departments (PBDs). This increased the reduction by an additional 30 percent, totaling 60 percent over two years. In September, a federal court vacated the 2019 policy on the basis that it was not budget neutral. CMS is still considering whether it will appeal the ruling, even though the court has issued an enforcement order.

Continues Shift to Outpatient Setting

In an effort to reduce health care costs, CMS continues to shift more procedures from the inpatient to the outpatient setting. The Agency finalized the removal of 12 procedures, including total hip replacement, from the inpatient-only list. It also added 20 procedures, including total knee replacement, to the Ambulatory Surgical Center list. While many commenters raised concerns about patient safety and the impact of these changes in existing bundled payment models, CMS believes that the policy will only impact a very small number of patients.



Key Highlights from the CY 2020 Physician Fee Schedule

CMS released the [final rule](#) for the CY 2020 Physician Fee Schedule (PFS), which will take effect on January 1, 2020. One of the most significant changes are the coding changes for Evaluation and Management (E/M) codes that will be adopted in 2021. A general framework to streamline the MIPS program, called MIPS Value Pathways (MVPs), is also being adopted in 2021 despite no pathways being finalized. CMS is also expanding opioid use treatment services, including coverage for Medication-Assisted Treatment (MAT). Below are insights on key finalized policies. Click [here](#) for a detailed outline of the rule.

Evaluation and Management (E/M) codes

CMS is eliminating the CY 2019 policy to pay a blended payment rate for E/M visit levels 2 through 4. Starting in CY 2021, CMS will use Medical Decision Making (MDM) or time with the patient to determine the appropriate level of E/M visit. Due to the new requirements, this will eliminate Level 1 for new patients. Established patients will still have levels 1 through 5 available to bill.

MIPS Value Pathways

CMS finalized the adoption of MVPs, a general framework that will create “bundles” or “tracks” for specific specialties or treatments to streamline reporting MIPS requirements for clinicians. CMS defines MVPs as “a subset of measures and activities established through rulemaking,” although none were finalized in this rule. In [AHPA’s comments](#) to CMS, we advocated for making MVPs voluntary, as this policy could become burdensome for health systems. CMS has not decided on whether to mandate participation in MVPs.

Care Management and Opioid Use Treatment Services

Beginning in January 1, 2020, CMS will expand care management and opioid use treatment services. There will be a payment increase for transitional care services and new codes will be created for care management of serious chronic conditions. Additionally, CMS will pay Opioid Treatment Programs (OTPs) through bundled payments for Opioid Use Disorder (OUD) treatment. Under this new benefit, Medicare will cover [various services](#) provided at OTPs, such as medications for MAT.



Georgia Seeks Partial Medicaid Expansion

Over 50,000 low-income Georgians could be eligible for Medicaid under Governor Brian Kemp’s [newly-released waiver](#) request. The partial-expansion proposal is much more limited than [other states](#), covering only those who make up to 100% of the Federal Poverty Level (FPL), roughly \$12,500 annually. Styled as “conservative reform,” Kemp hopes that work requirements and monthly premiums will earn the approval of the Trump Administration. Critics fear that these additions, coupled with the waiver’s limited scope, will prevent Georgia from making meaningful coverage gains. As health care is an increasingly-important issue to voters, it’s likely that Medicaid expansion will continue to be hotly debated in state legislatures across the nation.

Kemp Hopes to Succeed Where Others’ Waivers Failed

The partial-expansion, called “Georgia Pathways,” aims to extend coverage only to those making up to \$12,500 annually. The waiver contains no work-requirement exceptions for caregivers, the homeless or those with mental illness. Each month, enrollees must document at least 80 work hours to maintain

eligibility, a policy [not viewed favorably](#) by federal courts when attempted in other states. Unlike other states' [partial-expansion requests](#), which were denied, Kemp's plan only requests a 67% federal match rate (instead of the 90% promised to states implementing full expansion). Georgia Pathways would join [another waiver request](#) from Gov. Kemp, which seeks to create a state-based insurance market with its own subsidy structure. Both waiver requests still need to be approved by CMS before they can be implemented.

Other Republican-Led States Are Considering Expansion

During its last legislative session, Floridians gathered [more than 80,000 signatures](#) in favor of adding Medicaid expansion to the ballot. Advocates were unable to meet the signature deadline for 2020, teeing the proposal up for review in 2022. In Kansas, a version of Medicaid expansion was [introduced in October](#) and will be further explored in the 2020 legislative session. Recent gubernatorial races in [Kentucky](#), [Missouri](#) and [Mississippi](#) all featured Medicaid expansion as a key point of differentiation between candidates.

Federal Judge Blocks “Final Conscience” Rule

On November 6th, a federal judge blocked the Trump Administration's "[Conscience Rule](#)," which would have allowed health care employees to refuse to perform or assist with medical procedures due to religious concerns. The rule was [challenged in multiple courts](#) by patient advocacy groups concerned about the rule's potential to reduce access to care for women and LGBTQ patients. The judge ruled that HHS [overstepped its authority](#) and made “factually untrue” statements regarding the prevalence of conscience-related complaints. The judge urged HHS to continue its work protecting “undeniably important rights,” but to do so within the confines of the Constitution.



A Look at the Federal Register

Outpatient Prospective Payment and Ambulatory Surgical Center CY2020 Final Rule

CMS released the final OP/ASC rule ([84 FR 61142](#)), outlining general payment system updates. The rule also makes changes to the inpatient-only and ambulatory surgical center procedures list, requires

prior authorization for five procedures, completes the phase in of site-neutral payments for excepted off-campus PBDs and maintains a reduced 340B reimbursement rate. Final rules on price transparency will be released in a separate forthcoming rule.

Physician Fee Schedule FY2020 Final Rule

CMS released the FY2020 Physician Fee Schedule [final rule](#), which includes updates to physician payments, as well as changes to the MIPS program, the Stark Advisory Opinion process and policies furthering the Promoting Interoperability program. The rule also introduces a new opioid treatment bundled payment.

Medicaid Fiscal Accountability Regulation

CMS issued a [notice of proposed rulemaking](#) that seeks to establish new reporting requirements on supplemental payments at the provider level, implement new requirements to align state plan amendments with quality of care and oversight of financing Medicaid payments through methods other than the federal share.

Home Health Prospective Payment System Final Rule

CMS released the Home Health Prospective Payment system final rule ([84 FR 60478](#)), which implements the Patient-Driven Groupings Model (PDGM) and updates quality reporting and home infusion therapy requirements.

End-Stage Renal Disease (ESRD) Prospective Payment System Final Rule

This final rule ([84 FR 60648](#)) updates and makes revisions to the payment rate for renal dialysis services furnished by an ESRD facility to individuals with acute kidney injury and updates requirements for the ESRD Quality Incentive Program (QIP).

IN OTHER NEWS

[1 in 2 Seriously Ill Medicare Enrollees Struggles with Bills](#) – AP

[FDA Keeps Brand-Name Drugs on a Fast Path to Market Despite Manufacturing Concerns](#) – KHN

[CDC: Childhood Trauma is a Public Health Issue](#) – NPR

[Patients Feel the Pain of Hospital-Physician Consolidation](#) – Modern Healthcare

[Google's 'Project Nightingale' Gathers Personal Health Data on Millions of Americans](#) – WSJ

[Leapfrog Releases New Safety Grades Amid Legal Challenges](#) – Fierce Healthcare