



## Policy Brief

May 22, 2020



### IPPS FY 2021 Proposed Rule: Things to Know

Last week, CMS released its Inpatient Prospective Payment System (IPPS) [proposed rule](#) for FY 2021. The rule focuses on collecting new information on price transparency, creating a new MS-DRG for CAR T-cell cancer therapy and potentially adopting a new methodology for setting inpatient payments. Because of the resources required from CMS during the pandemic, the Agency plans to make the rule effective within 30 days after being finalized instead of the usual 60 days. Below is a breakdown of the top policies in the rule. For a detailed outline, [click here](#).

#### **Price Transparency**

In January of 2021, previously finalized [price transparency requirements](#) are set to take effect.

**CMS is proposing to expand the current requirements by asking hospitals to report the hospital median payer-specific negotiated charges for Medicare Advantage (MA)**

**organizations and other third-party commercial payers.** The future of this policy is uncertain as a lawsuit challenging CMS' authority to require hospitals to post their negotiated charges is still pending. If finalized, negotiated charges would be reported in a hospital's cost report by MS-DRG for cost-reporting periods ending on or after January 1, 2021. The data would become publicly accessible in the Healthcare Cost Report Information System (HCRIS) dataset in a de-identified manner.

### **New Methodology for Setting Inpatient Payments**

**CMS seeks comments on using the median negotiated charges for MA organizations to adjust Medicare payment rates beginning in FY 2024.** This policy aligns with an [Executive Order](#) issued in October of 2019 that instructed HHS to modify Medicare Fee-For-Service payments to more closely reflect the prices of MA organizations and commercial insurance. If adopted, the use of payer-specific negotiated charges would replace the current use of gross charges in hospitals' chargemasters and cost information from cost reports. In the rule, CMS seeks comments on the best way to calculate a single standardized median payer-specific negotiated charge across hospitals.

### **New MS-DRG for CAR T-Cell Therapy**

**CMS proposes to create a new MS-DRG to reimburse providers for CAR T-cell therapy.** Any cases reporting the existing ICD-10-PCS procedure codes (XW033C3 or XW043C3) would be assigned to the new MS-DRG 018. CMS proposes reimbursing for CAR T-cell clinical trial cases, which do not incur drug costs, at a lower rate than non-clinical trial cases.

### **Promoting Interoperability Program**

**Although no major policies were proposed, CMS is proposing to increase the number of quarters of electronic Clinical Quality Measure (eCQM) data reported, from one self-selected quarter to four quarters.** CMS plans to expand the requirement to three quarters in 2022 and all four quarters in 2023. For the first time, CMS will also make eCQM data publicly available on Hospital Compare.



### **House Democrats Push for a Fourth \$3 Trillion COVID Relief Package**

Last week, House Democrats advanced the HEROES Act ([H.R. 6800](#)), the most divisive bill yet due to the many partisan provisions included and its high price tag of \$3 trillion. This bill still has many checkpoints to reach before it becomes law; we anticipate many changes between now and the final version. Key provisions for [health care providers](#) currently include additional funding and relaxed repayment terms in CMS' Accelerated and Advanced Payment Program. The bill also includes [more controversial items](#) such as: almost \$1 trillion for state, local and tribal

governments; direct payments of up to \$6,000 per family; and increased funding for nutrition programs, housing support and student loan forgiveness. House Speaker Nancy Pelosi (D-CA) has indicated that the intent of this bill was to [set the stage for negotiations](#) on a bipartisan final version; Sen. McConnell (R-KY) has said that he will not consider the HEROES Act.

**As it stands, key health care provisions in the HEROES Act** include additional funding for many areas:

- \$100 billion in grants for providers
- \$75 billion for testing and contact tracing
- A 7.8% increase in the Federal Medicaid Assistance Percentage (FMAP) on top of the recently added 6.8%
- \$10.6 billion for HRSA and SAMHSA to provide support for health care services for underserved populations and behavioral health
- A \$13-an-hour minimum wage for essential workers during the pandemic and \$200 billion for employers (including health care) to provide this Pandemic Premium Pay

**Revisions to CMS' Accelerated and Advanced Payment Program** are another impactful inclusion in the bill. Many providers relied on [this temporary loan program](#) to provide the cash flow needed to keep their operations open during the pandemic. The bill proposes to continue the program by funding it through the Treasury's General Fund instead of the Medicare Trust Fund. It also proposes to relax repayment conditions surrounding the program, including:

- Requesting up to one year before claims are offset to recoup the accelerated payments and limiting recoupment to not exceed 25% of the claim
- Allowing up to two years before requiring paying the balance in full
- Reducing the interest rate of the payments from 10.25% to 1%



### Surprise Billing During the Pandemic

Surprise medical bills, an ongoing issue impacting [nearly half](#) of all Americans, can be especially problematic during an infectious disease pandemic. Decreased access to medical care and increased financial strain are especially dangerous during this time, when public health depends on each individual's personal ability to become and stay well. The possibility of receiving a

surprise medical bill, which can be [financially ruinous](#), often deters people from seeking necessary care.

### **How is HHS tackling the issue during the pandemic?**

In April, HHS began offering emergency funding to support the pandemic response. The Provider Relief Fund contains \$175 billion for hospitals, health systems, clinics and individual practices. To keep these funds, providers must agree to [terms and conditions](#) that prohibit balance billing for COVID-19-related treatment. The Administration has also asked private insurers to waive cost-sharing and not charge for telehealth visits, although [some insurers](#) appear slow to comply.

### **Are all patients protected from surprise billing under the new regulations?**

Not really. In the Provider Relief Fund’s terms and conditions, providers must agree to not balance bill “for all care for a possible or actual case of COVID-19.” HHS went on to say that it “broadly views every patient as a possible case of COVID-19.” Initially, a [broad interpretation](#) of this language led analysts to believe it could be applicable to every patient during the pandemic. HHS has since [clarified](#) that the surprise billing ban applies more narrowly to only presumptive or actual COVID-19 cases—not every patient seen during the pandemic.

### **What is Congress doing to help?**

Congress has long been interested in the surprise billing issue; the COVID-19 pandemic has revived these discussions. As Congress weighs the best composition of the next coronavirus relief package, it is [considering including](#) surprise billing provisions. Sen. Lamar Alexander (R-TN), Chairman of the Senate’s HELP committee, is retiring at the end of the year and cites surprise billing legislation as one of his final goals.



### **Updates on COVID-19 Regulations**

AHPA continues to follow new COVID-19 regulations, guidance and other government actions. The updates below are the latest guidance and other developments since May 9<sup>th</sup> to help mitigate the impacts of COVID-19. For earlier COVID-19 regulations and guidance, visit the last [Policy Brief](#).

### **Reopening and Contact Tracing Guidance from the CDC**

- The CDC has released new guidance on [contact tracing](#) and [reopening](#) for states and local health officials.

### **Paycheck Protection Program Guidance**

- The Small Business Association has published [additional guidance](#) on non-discrimination and student worker eligibility under the Paycheck Protection Program.

### **New IRS Guidance Eases Health Insurance and Flexible Spending Restrictions**

- The IRS has released [new guidance](#) that gives employers more flexibility to amend employees' health insurance plans and flexible spending accounts outside of the traditional enrollment period. Employers must opt-in to exercise these additional flexibilities.

### **HRSA's Provider Relief Fund FAQ**

- HRSA has updated its [FAQ guidance](#) to provide additional clarity on the Provider Relief Fund and health center billing during the COVID-19 pandemic.

### **COVID-19 Telehealth FAQ for Medicare**

- CMS has uploaded a [video](#) to answer common questions about expanded telehealth benefits in Medicare.

### **Updated Warnings on COVID-19-Related Cyber Threats**

- The FBI and CISA continue to warn of significant cybersecurity threats during the pandemic. Click [here](#) for the announcement or [here](#) for the technical attack detail reports.

### **Temporary Medicare Enrollment Guidelines for Pharmacies**

- CMS has published [guidance](#) for pharmacies and other suppliers wishing to temporarily enroll in Medicare as independent clinical diagnostic laboratories to increase COVID-19 testing.

### **White House Executive Order Explores Making COVID-19 Flexibilities Permanent**

President Trump has issued an [Executive Order](#) requiring that all heads of federal agencies report on COVID-19-related regulatory flexibilities that could be made permanent. Leaders must identify regulatory standards that, if adopted permanently, could have a positive impact on job creation and overall economic growth. They are also to list any regulatory standards that may inhibit the country's recovery. "Agencies should address this economic emergency by rescinding, modifying, waiving or providing exemptions from regulations and other requirements that may inhibit economic recovery."



## Election Watch 2020: News from the Campaign Trail

The journey to the 2020 presidential election continues. Below are the latest highlights from the campaign trail:

- While voters call to [vote by mail](#) due to COVID-19 concerns, proposals on the issue appear to have stalled in Congress. A proposal to provide emergency mail-in ballots is included in *The HEROES Act*, however, analysts [do not believe](#) it is likely to pass.
- [Justin Amash](#) has announced that he will not pursue the Libertarian Party's nomination. He will no longer consider challenging President Trump or Former Vice-President Biden in November.



### A Look at the Federal Register

#### **Patient Protection and Affordable Care Act: HHS Notice of Benefit and Payment Parameters**

HHS has released the FY2021 [final rule](#) setting payment parameters and provisions related to the Federally-facilitated Health Insurance Exchanges and State-based exchanges. **The rule is effective on July 13, 2020.**

#### **Hospital Inpatient Prospective Payment Systems FY 2021 Proposed Rule**

CMS has released the annual Hospital Inpatient Prospective Payment System (IPPS) [proposed rule](#). **Comments on the rule are due July 10, 2020.**

## **IN OTHER NEWS**

[UnitedHealth Group Plans Return to Obamacare Markets in 2021](#) – Bloomberg

[Trump Says Funding Cuts Will Be Permanent if WHO Doesn't Commit to 'Major' Changes](#) – NPR

[Hospitals Ask Federal Court to Toss Rule on Negotiated Rates](#) – Modern Healthcare

[Amazon, Berkshire, JPMorgan Healthcare Venture Looking for New CEO](#) – WSJ

[Health Professionals Warn of 'Explosion' of COVID-19 Cases in Minority Communities](#) – Politico