

CMS ISSUES 2022 HOSPITAL OUTPATIENT & AMBULATORY SURGICAL CENTER PROPOSED RULE

On July 19, 2021, the Centers for Medicare & Medicaid Services (CMS) proposed Medicare payment rates for hospital outpatient and ambulatory surgical center (ASC) services. The Calendar Year (CY) 2022 Hospital Outpatient Prospective Payment System (HOPPS) and ASC Payment System proposed rule is published annually and will have a 60-day comment period, which will end on September 17, 2021. The final rule will be issued in early November and effective on January 1, 2022.

Updates to HOPPS and ASC payment rates

In accordance with Medicare law, CMS is proposing to update HOPPS payment rates for hospitals that meet applicable quality reporting requirements by 2.3 percent. This update is based on the projected hospital market basket increase of 2.5 percent reduced by 0.2 percentage point for the productivity adjustment.

In the 2019 HOPPS/ASC final rule with comment period, CMS finalized their proposal to apply the hospital market basket update to ASC payment system rates for an interim period of 5 years (2019 through 2023). Using the proposed hospital market basket, CMS is updating the ASC rates for 2022 by 2.3 percent. The proposed update applies to ASCs meeting relevant quality reporting requirements. This change is based on the projected hospital market basket increase of 2.5 percent with a 0.2 percentage point productivity adjustment.

Use of CY 2019 Claims Data for CY 2022 HOPPS and ASC Payment System Ratesetting Due to the PHE

For the HOPPS and ASC ratesetting process, the best available data for ratesetting is used so that the payment rates can accurately reflect estimates of the costs associated with furnishing outpatient services, and thus set appropriate payment rates. Ordinarily, the best available claims data is the most recent set of data which would be from two years prior to the calendar year that is the subject of rulemaking. However, due to a number of COVID-19 public health emergency (PHE) related factors, CMS believes that the 2020 data are not the best overall approximation of expected outpatient hospital services in 2022. Instead, CMS believes the CY 2019 data, as the most recent complete calendar year of data prior to the COVID-19 PHE, are a better approximation of expected costs for 2022 hospital outpatient services for ratesetting purposes. As a result, CMS is proposing to use the 2019 data to set 2022 HOPPS and ASC payment system rates.

Changes to the Inpatient Only List

Since the beginning of the HOPPS, the Inpatient Only (IPO) list has defined the list of services that, due to their medical complexity, Medicare will only pay for when performed in the inpatient setting. In the 2021 HOPPS/ASC final rule, CMS finalized a policy to eliminate the IPO list over a three-year period, removing 298 services from the IPO list in the first phase of the elimination. However, CMS received a large number of stakeholder comments throughout

the 2021 rulemaking cycle and following issuance of the final rule with comment period that opposed the elimination of the IPO list primarily due to patient safety concerns, stating that the IPO list serves as an important programmatic safeguard.

For 2022, CMS is proposing to halt the elimination of the IPO list and, after clinical review of the services removed from the IPO list in CY 2021, CMS proposes to add the 298 services removed from the IPO list in 2021 back to the IPO list beginning in 2022. This change in policy would ensure that any service removed from the IPO list has been reviewed against Medicare's longstanding IPO list criteria to determine if it is appropriate for Medicare to pay for the provision of the service in the outpatient setting. Furthermore, CMS is proposing to codify the longstanding criteria for removal of procedures from the IPO list to make clear in regulatory text how they will evaluate future procedures for removal.

Changes to the ASC Covered Procedures List

In the 2021 HOPPS/ASC final rule, CMS revised the long-standing safety criteria that were historically used to add covered surgical procedures to the ASC Covered Procedures List (ASC CPL), and adopted a notification process for surgical procedures the public believes can be added to the ASC CPL under the criteria they retained. Using these revised criteria, CMS added 267 surgical procedures to the ASC CPL beginning in CY 2021.

For 2022, CMS is proposing to reinstate the criteria (which related to patient safety) for adding a procedure to the ASC CPL that were in place in 2020 and prior. CMS is also proposing to remove from the ASC CPL 258 of the 267 procedures that were added in 2021.

CMS is requesting comment on whether any of the 258 procedures proposed for removal from the ASC CPL meet the proposed reinstated criteria.

CMS is also proposing to adopt a nomination process, under which, on or after January 1, 2023, an external party could nominate a surgical procedure to be added to the ASC CPL. If CMS determines that a surgical procedure meets the requirements to be added to the ASC CPL, including a surgical procedure nominated by an external party, it would propose to add the surgical procedure to the ASC CPL in the next applicable rulemaking.