

RADIATION ONCOLOGISTS & HOSPITALS OPPOSE PAY CUTS IN OUTPATIENT PAYMENT RULE

Hospitals are cheering CMS' reinstatement of the inpatient only list and ambulatory surgical center restrictions in the final hospital outpatient payment rule, but they are disappointed the administration continued 340B drug reimbursement cuts and finalized higher price transparency penalties. Meanwhile, radiation oncologists are vowing congressional intervention by the end of the year to avoid mandatory radiation oncology model discount factors that they say threaten patient safety.

The Biden administration released its 2022 Medicare Hospital Outpatient Prospective Payment System and Ambulatory Surgical Center Payment System final rule on November 2nd.

It also released the Medicare Physician Fee Schedule. Radiation oncologists say this payment rule, coupled with the mandatory Radiation Oncology Model's 3.5% professional and 4.5% technical component discount factors undermines CMS' goals to end cancer.

"While we appreciate some new flexibilities to account for the public health emergency, payment cuts are the last thing practices need as they continue to weather the pandemic and care for growing numbers of patients with advanced-stage cancers due to pandemic-related cancer screening delays," Laura Dawson, chair of the ASTRO Board of Directors, said in a statement.

"ASTRO appreciates the more-than 100 members of Congress who wrote CMS opposing these cuts, and we intend to work with these radiation oncology Congressional champions on a legislative solution to address the Medicare cuts before the year ends," Dawson added.

The Biden administration has made few changes to the Trump-era radiation oncology demonstration. Under the final 2022 hospital outpatient rule, the model will provide bundled payments for a 90-day episode of care to certain radiotherapy providers and suppliers furnishing radiotherapy for: anal cancer, bladder cancer, bone metastases, brain metastases, breast cancer, cervical cancer, CNS tumors, colorectal cancer, head and neck cancer, lung cancer, lymphoma, pancreatic cancer, prostate cancer, upper gastrointestinal cancer and uterine cancer.

CMS finalized its proposal to revise the cancer inclusion criteria, removing liver cancer from the model and keeping brachytherapy in fee for service. It also made some technical tweaks in the timeline in response to Congress' start date of January 1, 2022.

Ambulatory Surgery Centers & Inpatient Only List. Hospitals praised the Biden administration's decision to roll back the Trump-era policy that would have phased out the entire IPO list over three years. CMS has added all but three services back to the IPO list:

lumbar spine fusion, shoulder joint reconstruction and ankle joint reconstruction as well as their corresponding anesthesia codes.

"Along with physician judgment, the IPO list provides important direction on services appropriate for the outpatient setting," Beth Feldpush, AES senior vice president of policy and advocacy, said in a statement. "We welcome the agency's decision to halt the elimination of the IPO list and to take a more transparent and thoughtful approach that ensures patient safety is maintained and avoids added complexity for providers."

Stakeholders are also cheering the administration's reinstatement of the ASC safety criteria. This process is used to add covered surgical procedures to the covered procedures list. The final rule will also create a nomination process where an external party can nominate a surgical procedure to add to the list.

Price Transparency. The administration also finalized its proposal to increase fines for hospitals that don't meet price transparency requirements, over the American Hospital Association's objections. Fines will be based on a hospital's bed count.

"[W]e are very concerned about the significant increase in penalties for non-compliance with the hospital price transparency rule, particularly in light of the many demands placed on hospitals over the past 18 months, including both responding to COVID-19, as well as preparing to implement additional, overlapping price transparency policies," AHA Executive Vice President Stacey Hughes said in a statement Tuesday.

Small hospitals with 30 or fewer beds that do not adhere to the price transparency requirements will be penalized up to \$300 a day, while CMS will fine large hospitals \$10 per bed, per day. Hospitals with more than 550 beds have a maximum daily penalty cap at \$5,500. A full calendar year of noncompliance would result in a minimum of \$109,500 in fines and a maximum of \$2,007,500 a year.

"This approach to scaling the CMP amount retains the current penalty amount for small hospitals, increases the penalty amount for larger hospitals, and affirms the Administration's commitment to enforcement and public access to pricing information," CMS' fact sheet says.

CMS granted state forensic hospitals an exemption as long as they exclusively treat patients who are in penal authorities' custody and do not offer services to the general public.

The final rule also loosens the restrictions on machine-readable files to make them searchable and enable direct downloads.