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CMS Final Rule Reduces Part B Drug Payments, Displeases 340B Hospitals

Earlier this month the Centers for Medicare & Medicaid Services (CMS) released a rule finalizing an aspect of Medicare payments. The final rule, part of the Medicare Hospital Outpatient Prospective Payment System (OPPS), will go into effect on January 1st and will reduce Medicare payments for drugs used in hospital outpatient departments from Average Sales Price (ASP) plus 6% to ASP minus 22.5% (which is a reduction of almost 30%).

Managed by the federal Health Resources and Services Administration (HRSA), Medicare's 340B program began in 1992, through the Public Health Service Act of the Veterans Health Care Act. The draft of the proposed rule was released last July.

Part of CMS's rationale driving the rule is to slow the growth of 340B drug implementation by hospitals and also to reduce the high costs of some separately payable Part B prescription drugs. The policy will result in CMS in many instances paying less for drugs prescribed in outpatient hospital settings in 340B facilities. This does not apply to prescriptions dispensed at non-outpatient pharmacies, nor does it apply to vaccines.

Furthermore, not every hospital will be impacted by the final rule. Children's hospitals, cancer hospitals, critical access hospitals, and rural sole community hospitals will be exempted from the 340B drug payment reduction rule.

Accompanying the final rule are new provider requirements for tracking and participation. CMS will put a claims modifier program to work in order to determine whether a facility falls under the OPPS rule and whether the medication falls into the 340B category. Many providers have said that these new reporting requirements will place undue administrative burdens on them, particularly in the case of hospitals that will be exempt anyway, and in the case of overwhelmed, understaffed, and lower-tech facilities.

Hospital groups prepare to oppose the rule

Although the rule is not yet in effect and is not yet published, some hospital groups have already said they will fight it in court (for example, America's Essential Hospitals, the American Hospital Association, and the Association of American Medical Colleges). Because safety net hospitals stand to be disproportionately impacted, legal action against CMS will probably point to a conflict between the rule and Medicare laws, as well as the allegation that CMS does not have the right to lower prescription payments to a subcategory of hospitals.

Also, those in opposition to the payment cuts have submitted comments during the period set aside for those, saying the rule will prove a considerable hardship to 340B facilities and the low-income patients they care for.

CMS estimates that implementation of the final rule will save the government around $1.6 billion. The agency has said that it plans to employ a "budget neutral" approach to enacting the policy. In other words, the savings the CMS experiences from the reduction in drug payments can be allocated to an increase in payments for other eligible services reimbursed under OPPS. Also, the agency said that redistributed savings would benefit all hospitals, even for-profit hospitals (that cannot participate in the 340B program).

The finalized rule is scheduled to be published in the federal register on November 13th.

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