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## Hospitals

### Hospitals Decry Medicare Outpatient Payment Proposal

Groups representing hospital interests oppose the Medicare agency's proposal to stop paying more for the same type of clinic visit in the hospital outpatient setting than in the physician office setting.

The rule (RIN:0938-AT30), proposed by the Centers for Medicare & Medicaid Services July 25, would encourage migration of services from hospitals to lower-cost ambulatory surgical centers by capping outpatient payments at the physician fee schedule-equivalent rate. This would result in an estimated savings of \$760 million in 2019 and would save beneficiaries an average of \$14 each visit in copayments.

Outpatient services can include surgical procedures, laboratory services, X-rays, and preventative screenings.

Site neutrality and price transparency are "enablers of a health-care market that drives toward value," CMS Administrator Seema Verma said July 25 in a call with reporters. The proposal would put "all providers on a level playing field."

Hospitals don't agree. "Congress clearly intended to provide current off-campus hospital clinics with the existing outpatient payment rate in recognition of the critical role they play in their communities," Tom Nickels, executive vice president of the American Hospital Association, said in a statement July 25. "CMS's proposal runs counter to this and will instead impede access to care for the most vulnerable patients."

The CMS proposal "will level the playing field between independent practices and huge health-care systems. While hospitals, undoubtedly, will oppose this new rule, they should welcome it as it could help them become more competitive in value-based payment contracts—which is the future of health care," Farzad Mostashari, founder and CEO of the Bethesda, Md.-based Aledade, said in a statement to Bloomberg Law July 26. Aledade is a health-care technology startup that is aiming to lower the cost of health care and improve patient care. Mostashari is also the former national coordinator for health information technology at the Department of Health and Human Services.

Some of the largest public companies by revenue that run outpatient facilities are Community Health Systems Inc., Quorum Health Corp., HCA Holdings Inc., Tenet Healthcare Corp., and Universal Health Services Inc.

**Potential Damage** This proposal "would seriously damage the ability of the nation's teaching hospitals to serve the most complex and vulnerable patients," Darrell G. Kirch, president and CEO of the Association of American Medical Colleges, said in a statement July 25.

The site-neutral proposal would "chip away at the type of support that our hospitals provide in their communities," Erin O'Malley, senior director of policy at the Washington-based America's Essential Hospitals, told Bloomberg Law July 26. America's Essential Hospitals is a trade group that represents more than 300 safety net hospitals.

America's Essential Hospitals has previously tried to make the case to the CMS that they are "providing care to patients where they need care" and they don't believe those facilities should be penalized for doing so, O'Malley said.

The site-neutral expansion is disappointing, particularly because it goes beyond the initial scope of Section 603 of the Bipartisan Budget Act of 2015, Aisha Pittman, senior director of payment and quality policy at Premier, told Bloomberg Law July 26. Premier is a health-care alliance that unites hospitals and other health-care providers across the U.S.

Section 603 reduced Medicare reimbursements for certain off-campus hospital departments. This proposed rule would expand site-neutral payments to more hospital outpatient departments that were exempt from the original provision.

**Altering Payments** The CMS and advocates for site-neutrality, including the Medicare Payment Advisory Commission and the HHS Office of Inspector General, see the growth of outpatient hospital services as "evidence of something nefarious," Lawrence Vernaglia, a Boston-based health-care attorney with Foley & Lardner LLP, told Bloomberg Law July 26, although he doesn't agree.

Freestanding outpatient facilities and physician offices serve different patients than hospitals, O'Malley said. Outpatient facilities tend to treat sicker patients with complex conditions and are in neighborhoods where patients are poorer.

A way that the CMS could manage the total costs of care without implementing site-neutrality would be alternative payment models, Pittman said. This could prevent providers from potentially gaming the system by providing a lower level of service at a higher cost center and would hold them accountable.

**Fighting Back** Hospitals will likely heavily lobby against this proposal, Brian Rye, a senior health-care analyst at Bloomberg Intelligence, told Bloomberg Law July 26. Rye said he “wouldn’t be so sure” that the CMS will back down from this proposal.

The site-neutral aspect of the proposed rule will also likely be challenged in the courts, Vernaglia said.

“CMS is going against the wishes of Congress,” Vernaglia said. Congress likely wouldn’t have written in an exemption for certain outpatient facilities if they

wanted the CMS to have the ability to change the policy. He said this provides the basis for a potential lawsuit.

Comments on the CMS proposal are due Sept. 24.

BY SHIRA STEIN

To contact the reporter on this story: Shira Stein in Washington at [sstein@bloomberglaw.com](mailto:sstein@bloomberglaw.com)

To contact the editor responsible for this story: Brian Broderick at [bbroderick@bloomberglaw.com](mailto:bbroderick@bloomberglaw.com)