American Hospital Association

SPECIAL BULLETIN

Tuesday, July 17, 2007
This bulletin is three pages.

CMS RELEASES 2008 OUTPATIENT PPS PROPOSED RULE

ASC final rule also released

The Centers for Medicare & Medicaid Services (CMS) yesterday released the outpatient prospective payment system (PPS) proposed rule for calendar year 2008 and an ambulatory surgical center (ASC) payment system final rule. AHA staff are currently reviewing the 1,800 pages of regulation, but below are the rules' highlights.

Highlights of the outpatient PPS proposed rule:

- The rule includes a 3.3 percent market basket update for outpatient PPS services, with hospitals projected to receive $34.9 billion for outpatient services in 2008.
- CMS proposes that hospitals begin to report 10 hospital outpatient quality measures in 2008 in order to receive the full payment update in 2009. These measures, which were adopted by the Hospital Quality Alliance, include five emergency department acute myocardial infarction measures, two surgical care improvement measures, and one measure each for the treatment of heart failure, community-acquired pneumonia and diabetes. In 2009, hospitals that fail to report data for these measures would receive a 2 percent reduction in their payment update.
- CMS proposes to encourage efficiencies within the outpatient PPS by:
    - Increasing the size of the outpatient PPS payment bundles. CMS would package the costs of seven additional categories of items and services that the agency considers to be ancillary and supportive into the primary procedure, including guidance services, image processing services, intra-operative services, imaging supervision and interpretation services, diagnostic radiopharmaceuticals, contrast agents and observation services.
    - Creating "composite" ambulatory payment classifications (APCs) that would provide one bundled payment for several major services provided on the same date of service during a single encounter. CMS proposes composite APCs for two types of care – low-dose rate prostate brachytherapy and cardiac electrophysiologic evaluation and ablation. CMS considers these a prototype for creating additional composite APCs.
- The agency continues to phase out the hold-harmless outpatient payment for certain rural hospitals with 100 or fewer beds by reducing from 90 percent to 85 percent the additional payment made to these hospitals.

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- CMS proposes to pay for certain separately payable drugs and biologicals at the rate of average sales price (ASP) plus 5 percent – a one percent reduction from 2007.
- CMS proposes to raise the fixed-dollar threshold for outliers to $2,000 from $1,825.
- CMS proposes changes to several of the current hospital conditions of participation to require hospitals to complete and document patients' medical histories and physical examinations conducted after admission and prior to surgery or a procedure requiring anesthesia services. CMS further proposes to require post-anesthesia evaluations of patients before discharge or transfer from the post-anesthesia recovery area.

Highlights of ASC changes in the outpatient PPS proposed rule and ASC final rule:
As required by the *Medicare Modernization Act of 2003*, CMS revised the ASC payment system as of January 1, 2008. The final rule expands the number of allowed ASC procedures and links their payment to outpatient PPS.

- ASCs will be paid for any surgical procedure that does not pose a significant safety risk when performed in an ASC and that is not expected to require an overnight stay. As a result, 790 procedures are added to the ASC list for a total of 3,300 ASC-covered surgical procedures.
- The new ASC payment rates are based on the APC payment weights used in the outpatient PPS. CMS proposes in the outpatient proposed rule to pay ASC services at a rate that is 65 percent of the hospital outpatient department rate for corresponding services in order to make ASC payment changes budget neutral.
- Payments for ASC services that are "office-based" – procedures that have been performed predominantly in physicians' offices – would be capped at the rate they would be paid in physicians' offices.
- Certain ancillary services, which are integrally linked to the covered ASC surgical procedure, will be paid separately in ASCs, such as radiology, certain drugs and biologicals that are separately payable under the outpatient PPS, brachytherapy sources, corneal tissue and devices eligible for pass-through payments under the outpatient PPS.
- In order to allow physicians to refer these ancillary services to ASCs in which they have a financial interest, CMS proposes to revise the self-referral law definitions of "radiology and certain other imaging services" and "outpatient prescription drugs" to exclude these services that are covered ancillary services for which separate payment is made under the revised ASC payment system.
- New ASC payment rates will be transitioned in over four years with full implementation in 2011.

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- ASC payment weights and rates will be updated annually in conjunction with the outpatient PPS. Due to this linkage, final 2008 payment rates for ASCs will be published in the outpatient PPS final rule in November.
- The law requires a zero percent ASC payment update through 2009. However, beginning in 2010, the ASC payments will be updated by the Consumer Price Index for all urban consumers.

Next steps:

The proposed and final rules include numerous important policy changes that the AHA is reviewing... watch for *AHA Regulatory Advisories* with further details. Meanwhile, the outpatient proposed rule is available at: http://www.cms.hhs.gov/HospitalOutpatientPPS/downloads/cms1392p.pdf and the ASC final regulation is available at http://www.cms.hhs.gov/ASCPayment/Downloads/CMS-1517-Fdisplay.pdf.

The rules will be published in the August 2 *Federal Register*. Comments on the outpatient PPS proposed rule are due to CMS by September 14 with a final rule expected this fall. The final rule takes effect January 1, 2008.