Federal Policy & Regulatory Update

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Today's Agenda

- **FY 2010 IPPS final rule**
- **CY 2010 OPPS proposed rule**
- **HIT**
- **Other regulatory issues**

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IPPS Overview

- **Schedule**
  - Proposed rule issued May 1
  - Final rule issued July 31
  - Effective October 1
- **Key Issues**
  - Payment update
  - Documentation and Coding Offset
  - Market Basket
  - Quality reporting
  - DSH
  - Rural Provisions

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IPPS Payment Update

- **Mandated market basket update of 2.1% (if submit data on 43 quality measures)**
  - **Otherwise, MB-2.0 or 0.1% update**
- **After all changes, CMS projects an average *increase* for hospitals of 1.6%**
  - **Up from projected average *decrease* of 0.5% in proposed rule.**

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IPPS Documentation and Coding Offset

- **The final rule does NOT implement the 1.9 percent cut for changes in documentation and coding initially proposed by CMS.**

- **This represents an increase of $2.2 billion in payments to hospitals in FY 2010.**
  - **CMS also did not adopt its proposed coding cuts to SCHs, MDHs, and Puerto Rico hospital rates.**
  - **Rather, CMS will take a "more prudent approach" by DELAYING implementation of the documentation and coding cut to allow for a complete analysis of FY 2009 claims, which will be available in FY 2011.**

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IPPS Market Basket

- **CMS rebased/revised the IPPS market basket**
  - **New base period is FY 2006**
  - **Changes certain categories and price proxies**
  - **Updates labor-related share: reduced from 69.7% to 68.8%**
  - **Hospitals with wage indices of less than 1.0 keep a labor share of 62%**

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IPPS Quality Reporting

- **For 2010, report 43 measures of quality of care**
- **For 2011, CMS finalized 4 new measures and "harmonizing" 2 existing measures**
  - **But, only 2 of the 4 new measures have been endorsed by the NQF**
  - **None adopted by the HQA**
- **For 2011, must report 46 measures total**
- **No new hospital-acquired conditions**

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IPPS Disproportionate Share

- **CMS finalized three changes to counting days for Medicare DSH payments:**
  - **Ancillary labor and delivery days**
  - **Reporting Medicaid days**
  - **Observation days**
- **CMS says impact will be negligible.**

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IPPS - Rural Provisions

CAHs

- Three new policies for CAHs:
  - Implement section 148 of MIPPA on clinical lab payments – 7/1/09
  - Make clinical labs of CAHs provider-based – 10/1/10
  - Reimburse Method 2 at 100% for facilities – 10/1/09

MDH Rebasing

- Cumulative, retroactive application of budget neutrality adjustments from 1993-2002
- Applied to 2002-based hospital-specific rates, reduce by 1.7%
- Applied for discharges on or after Oct. 1, 2009
- Affects 50 MDHs, cuts $5 million in FY 2010

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Outpatien PPS Overview

- **Schedule**
  - Proposed rule issued July 1
  - Final rule issued by November 1
  - Effective January 1
- **Key Issues**
  - Market Basket
  - Quality reporting
  - Drugs
  - Direct Supervision

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Outpatien PPS

- **A market basket update of 2.1 percent for hospitals that reported data on outpatient care in 2009. Otherwise 0.1 percent.**
- **No new outpatient quality measures for 2011; hospitals would be required to continue reporting on the 11 measures for 2010.**
- **Proposed new methodology for separately payable drugs and biologicals, which results in a proposed payment rate of average sales price (ASP) plus 4 percent.**

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OPPS: Direct Supervision

- **In 2009 rule, CMS rewrites history: (73 *Fed. Reg.* 68,702.)**
  - **"Misunderstanding" about what, if any, level of physician supervision is required for incident to services furnished in a hospital or an on-campus PBD**
  - **"Restatement and clarification of the policy"**

  "it is our (CMS) expectation that hospital outpatient therapeutic services are provided under the direct supervision of physicians in the hospital and in all provider-based departments of the hospital, specifically both on-campus and off-campus departments of the hospital."

- **Subsequently, in Open Door Forum calls, CMS states:**
  - **Physician providing "direct supervision" must be *physically present in the department* during all times services are provided**
  - **Supervising physician must have *hospital privileges* to supervise**
  - **Clarifies that this applies to *both hospital and CAH* outpatient therapeutic services**

OPPS: Direct Supervision

- **Looking back: 2001-2009**
  - **CMS characterization as "restatement and clarification" of existing policy exposes hospitals to significant enforcement scrutiny**
    - **CMS, OIG, DOJ, RAC, etc.**
    - **Whistle-blower lawsuits**
- **Looking forward: 2009 and beyond**
  - **Burden on hospitals, requiring more physicians to be engaged for direct supervisory coverage without a clear clinical need.**
  - **Special concern for CAHs and for communities with severe physician shortages.**
  - **Will impact patient access to outpatient therapeutic services, especially in rural areas.**

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OPPS: Direct Supervision

- **Proposed rule contains good and bad news.**
- **Bad news first….**
  - **Does not resolve vulnerability for 2001 through 2009. CMS continues to explicitly assert that:**
    - **The 2009 "restatement and clarification" made no change to long-standing supervision policies.**
    - **These policies continue to be in effect for 2009.**
    - **CMS has not instructed contractors to delay or discontinue enforcement actions.**
  - **The AHA will continue to urge that CMS**
    - **rescind the 2009 policy change**
    - **instruct its contractors not to pursue enforcement actions.**

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OPPS—Direct Supervision

Good (?) news

CY 2010 and beyond… CMS proposes:

- **Non-physician practitioners (NPPs) may provide direct supervision of hospital and CAH outpatient therapeutic services**
  - **PAs, NPs, CNSs, CNM may directly supervise if**
    - **services are within State's scope of practice and hospital-granted privileges**
  - **NPPs may supervise hospital and CAH services both ON-CAMPUS and OFF-CAMPUS**
- **Caveat: This proposed policy WOULD NOT apply to cardiac or pulmonary rehab due to statutory issues.**
- **Caveat: This proposed policy WOULD NOT apply to outpatient diagnostic services**

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OPPS—Direct Supervision

Loosening of physical presence standard for "direct supervision" when outpatient services provided on-campus

- **For outpatient services furnished in a hospital or CAH, or in an on-campus PBDs of a hospital or CAH, revises "direct supervision" definition**
  - **Supervisory physician or NPP *must be present* on the same campus, in the hospital or CAH or in on-campus PBDs of the hospital or CAH, *and immediately available* to furnish assistance and direction throughout the performance of procedure.**

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Medicare HIT Incentives

- ***$17 Billion*** **for "meaningful use" through:**
  - **Medicare**
    - **PPS Hospitals**
    - **CAHs**
    - **Physicians**
  - **Medicaid**
    - **Physicians with 30 percent Medicaid volume**
    - **Children's hospitals**
    - **Other acute care hospitals with 10 percent Medicaid volume**
- **Otherwise, penalties start 2015 for any hospital not considered a "meaningful user"**

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Medicare HIT Incentives

ARRA says "meaningful use" is:

- **Demonstrating to the Secretary that certified technology is being used "in a meaningful manner;"**
- **Demonstrating that the technology is connected in a manner that provides for the exchange of health information; and**
- **Using the EHR to submit clinical quality measures selected by the Secretary**

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Medicare HIT Incentives

- **Definition was offered by the HIT Policy Committee's Meaningful Use Workgroup in July**
  - **Fully functioning EHR**
  - **Transitioned (2011, 2013, 2015)**
  - **"Adoption year" concept**

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Medicare HIT Incentives

"Adoption Year" Concept

	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
"Adoption year" 2011	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th
"Adoption year" 2012		1st	2nd	3rd	4th	5th	6th	7th	8th	9th
"Adoption year" 2013			1st	2nd	3rd	4th	5th	6th	7th	8th
"Adoption year" 2014				1st	2nd	3rd	4th	5th	6th	7th
"Adoption year" 2015				???	1st	2nd	3rd	4th	5th	6th
"Adoption year" 2016				???		1st	2nd	3rd	4th	5th
"Adoption year" 2017				???			1st	2nd	3rd	4th

Medicare HIT Incentives

ONC's Definition of Meaningful Use for 2011

System Functions

CPOE – 10% of all orders
Patient demographics
Physician notes
Nursing assessments
Problem lists
Medication lists
Lab reports
Clinical guidelines
Clinical reminders
Drug allergy alerts
Drug-drug interaction alerts
Drug-lab interaction alerts
Drug dosing support
Patient lists by specific conditions
Report hospital quality measures
Check insurance eligibility
Submit claims electronically

Other Functions

Provide patients electronic health info
Provide electronic discharge instructions
Provide patient education
Capability to exchange info among providers
Perform medication reconcilliation
Submit to immunization registries
Report lab results to public health
Provide syndromic surveillance for public health
Compliance with HIPAA

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Other Reg Issues: RAC Rollouts

- ✓ **Education and outreach complete in phase 1 states**
- ✓ **RACs must complete admin tasks before audits can begin**
  - **Complete JOA's with MACs (FI/Carriers)**
  - **Secure claims from CMS**
  - **Prepare issues for "new issue review" and approval by CMS – 16 in review process now**
- ✓ **Hospital outpatient, physician & DME audits began in August**
  - **<u>Region C / Connolly</u>: FL and SC**
  - **<u>Region D / HDI</u>: AZ, CA, HI, MT. ND, NV, OR, SD, UT, WA, WY**
- **No complex reviews until fall**
- **No medical necessity reviews until 2010**

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Other Regulatory Issues: TRICARE

TRICARE Reimbursement of CAHs

- **Currently CAHs are subject to the TRICARE DRG-based payment system for inpatient care.**
- **CAHs are reimbursed based on billed charges for facility charges for outpatient care.**
- **Effective Dec. 1, TRICARE will adopt a reimbursement methodology for CAHs that will pay them 101 percent of cost.**

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Other Regulatory Issues

- CRNA
- Cost Report

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