

## 2023 Hospital Outpatient & ASC +3.8%

### Rural Emergency Hospital +5% Bump, 340B Pay Restored

On November 1, 2022 CMS released the final 2023 hospital outpatient payment & ASC rule. The final rule can be found [here](#). The policies will affect ~3,000 hospitals and ~6,000 ASCs. The proposed rule from July is [here](#), for reference.

#### HOPDs 2023

- **Hospital outpatient departments will see an update of +3.8% (+2.9% proposed) in CY 2023, a positive development in our view** (given the somewhat negative IPPS update and a lower proposed bump, back in April). Urban hospital outpatient departments would see a +4.9% (+2.9% proposed) and rural hospital departments would see a +2.9% (+3.2% proposed).
- **Proprietary hospitals would see a +1.3% update in 2023 (UHS, THC, HCA, Others), the lowest update of all hospital types (+3.5% proposed)**. Voluntary hospitals would see a +4.9% (+2.9% proposed), and government hospitals would see a healthy +5.9% (+2.8% proposed) in 2023.
- **Telebehavioral telehealth will be covered as a service in 2023**. CMS finalizes that behavioral health services furnished remotely by clinical staff of hospital outpatient departments, including staff of critical access hospitals (CAHs), using telecommunications technology to beneficiaries in their homes, will be considered as covered outpatient services for which payment is made under the OPSS.

#### AMBULATORY SURGERY CENTERS

- **Surgery centers (ASC) would see a proposed update of +3.8% (+3% proposed) in 2023**. The range of pay updates is +1%-6%. The impact of applying the hospital market basket update to ASC payment rates will increase payments by \$230 M under the ASC payment system in CY 2023. CMS adds one procedure, a lymph node biopsy or excision (CPT 38531), to the ASC covered procedures list.
- **Musculoskeletal +7% with healthy updates for all surgical specialties**. Eye procedures would see a +3% update, nervous system would see a +4% update, GI 5%, Cardiovascular 2% and genitourinary 4%.

#### RURAL EMERGENCY HOSPITALS +5%

- **New Medicare provider type is created, called Rural Emergency Hospitals (REHs), receive a +5% update**. Effective starting January 1, 2023. Addresses the closures of rural hospitals and critical access hospitals. Covered outpatient department services provided by REHs will receive an additional 5% payment for each service (beneficiaries not charged coinsurance on the additional 5% payment).
- **REHs are facilities that convert from either a critical access hospital (CAH) or a rural hospital with < than 50 beds**, and that do not provide acute care inpatient services with the exception of skilled nursing facility services furnished in a distinct part unit. Conversion to an REH allows for the

provision of emergency services, observation care, and additional medical and health outpatient services if elected by the REH.

- **REHs would receive a monthly facility payment of \$272,866.** After initial payment establishment in CY 2023, monthly facility payment amount will increase in subsequent years by the hospital market basket % increase.
- **CMS removes eleven (11) services from the Inpatient Only (IPO) list.** Medicare will only cover these services in an inpatient setting. CMS adds nine (9) services to the list as well. Proposed to remove 10 and add 8. See Background for full list of procedures.

## 340B PAYMENT UPDATE ~ SCOTUS DECISION

- **CMS updates 340B pay following the SCOTUS decision favoring hospitals in *American Hospital Association v Becerra*.** SCOTUS found that because CMS did not conduct a survey of hospitals' acquisition costs in 2018 and 2019, its decision to vary reimbursement rates 340B hospitals in those years was unlawful. CMS finalizes a general payment rate of ASP plus 6% for drugs and biologicals acquired through 340B Program (consistent with policy for non-340 B drugs).
- **CMS finalized a -3.09% reduction to the payment rates for non-drug services to achieve budget neutrality for the 2023 340B drug payment rate change.**
- **CMS will address the remedy for 340B drug payments from 2018-2022 in future rulemaking prior to the CY 2024 OPPS/ASC proposed rule.** We note that claims for 340B-acquired drugs paid after the district court's September 28, 2022 ruling are paid at the default rate (generally ASP plus 6%).

## MEDICAL DEVICES

- **CMS received eight (8) applications for device pass-through payments.** One of these applications (aprevo Intervertebral Fusion Device) received preliminary approval for pass-through payment status through quarterly review process. CMS determined that four of the eight devices qualified (or continued to qualify) for transitional device pass-through status effective beginning January 1, 2023. The remaining four devices did not meet one or more of the eligibility criteria and do not qualify for device pass-through payments. CY 2023 will return to usual process of using claims data from 2 years prior to the year to set rates for the CY (CY 2021 claims data for CY 2023 OPPS rate setting).
- **Met eligibility + qualified:**
  - Uretero1 Ureterscope System (**Steris**)
  - Evoke Spinal Cord Stimulation (SCS) System (**Saluda Medical**)
  - Vivistim Paired Vagus Nerve Stimulation (VNS) System (**MicroTransponder**)
  - Aprevo Transforaminal IBF (**CarlsMed**)
- **Did not qualify:**
  - NavSlim and NavPencil (**Elucent Medical**)
  - SmartClip (**Elucent Medical**)
  - The BrainScope TBI (**Brainscope**)
  - Pathfinder Endoscope Overtube (**Neptune Medical**)

## ORGAN PROCUREMENT

- **Final Rule supports organ procurement and research.** Finalizes proposal (1) for a method of accounting for research organs that will improve payment accuracy and provide research community with organs and (2) to address potential financial barriers to organ donation after cardiac death (to increase organ procurement + promote equity within the transplant ecosystem). In proposed rule, CMS requested information on possible methodologies for counting organs to calculate Medicare's share of organ acquisition costs for transplant hospitals and OPOs. Not responding to these at this time. Will take comments into account for future rulemaking.

## HOSPITAL MERGER DATA RELEASED IN PROPOSED RULE

- **No updates in the final rule, despite CMS calling for more transparency on mergers, acquisitions, consolidation, and changes in ownership.** This proposed rule included a request for information (RFI) on transparency and competition in the healthcare systems, asking what further data should be released. Biden's Executive Order on Promoting Competition in the America Economy follows the trend that consolidation has left many communities without affordable healthcare options. CMS released data — for the first time — on hospital and skilled nursing facility (SNF) mergers, acquisitions, consolidations, and changes in ownership going back to 2016, and will update the data quarterly going forward.
- **NEXT STEPS:** New payments and policies start Jan 1, 2023. Next year, we should see more information on 340B drug payments from 2018-2022, ahead of CY 2024 OPPTS/ASC proposed rule. On another front, we also note that the PHE was extended on to approx. Jan 11, 2023 and we anticipate that the PHE may be extended at least one more time to mid-March, 2023. Rate bumps are positive news for an industry experiencing high labor and supply costs, and who may once again be confronted by a spike in COVID cases this winter.

## BACKGROUND

Eleven (11) services removed from IPO (“inpatient only”) list for HOPDs in 2023 are as follows:

- CPT 22632: Arthrodesis
- CPT 47550: (Biliary endoscopy, intraoperative (choledochoscopy)
- CPT 21141: Reconstruction midface, LeFort I; single piece, segment movement in any direction without bone graft
- CPT 21142: Reconstruction midface, LeFort I; 2 pieces, segment movement in any direction without bone graft
- CPT 21143: Reconstruction midface, LeFort I; 3 or more pieces, segment movement in any direction without bone graft
- CPT 21194: Reconstruction of mandibular rami, horizontal, vertical, c, or 1 osteotomy; with bone graft
- CPT 21196: Reconstruction of mandibular rami and/or body, sagittal split; with internal rigid fixation
- CPT 21255: Reconstruction of zygomatic arch and glenoid fossa with bone and cartilage (includes obtaining autografts)
- CPT 21347: Open treatment of nasomaxillary complex fracture; requiring multiple open approaches
- CPT 21366: Open treatment of complicated fractures of malar area with bone grafting
- CPT 21422: Open treatment of palatal of maxillary fracture.

Nine (9) services added to IPO list for Jan 1, 2023:

- CPT 15778: Implantation of absorbable mesh or other prosthesis for delayed closure of defect(s)
- CPT 22860: total disc arthroplasty, anterior approach
- CPT 49596: Repair of anterior abdominal hernia(s) (ie, epigastric, incisional, ventral, umbilical, spigelian), any approach (ie, open, laparoscopic, robotic), initial, including placement of mesh or other prosthesis when performed, total length of defect(s); greater than 10 cm, incarcerated or strangulated
- CPT 49616: Repair of anterior abdominal hernia(s) any approach, recurrent, including placement of mesh or other prosthesis when performed, total length of defect(s); 3 cm to 10 cm, incarcerated or strangulated
- CPT 49617: Repair of anterior abdominal hernia(s), any approach, recurrent, including placement of mesh or other prosthesis when performed, total length of defect(s); greater than 10 cm, reducible
- CPT 49618: Repair of anterior abdominal hernia(s), any approach, recurrent, including placement of mesh or other prosthesis when performed, total length of defect(s); greater than 10 cm, incarcerated or strangulated
- CPT 49621: Repair of parastomal hernia, any approach, initial or recurrent, including placement of mesh or other prosthesis, when performed; reducible
- CPT 49622: Repair of parastomal hernia, any approach, initial or recurrent, including placement of mesh or other prosthesis, when performed; incarcerated or strangulated