

Hospital Outpatient & ASC +3% in 2023

Rural Emergency Hospital +5% Bump Positive & M&A Transparency Request

On July 15, 2022 CMS released the proposed 2023 hospital outpatient payment & ASC rule. The regulation can be found [here](#). The proposed policies will affect 3,411 hospitals and ~5,500 ASCs.

HOPDs 2023

- **Hospital outpatient departments will see an update of +2.9% in 2023, a positive development in our view (given somewhat neg IPPS update, back in April).** Urban hospital outpatient departments would see a +2.9% and rural hospital departments would see a +3.2%. Final rates will be posted by Nov 1.
- **Proprietary hospitals would see a healthy +3.5% update in 2023 (UHS, THC, HCA, Others).** Voluntary hospitals would see a +2.9%, and government hospitals would see a +2.8% in 2023.
- **In a mental health friendly policy environment, behavioral telehealth will be covered as a service in 2023.** CMS is proposing behavioral health services furnished remotely by clinical staff of hospital outpatient departments, including staff of critical access hospitals (CAHs), through the use of telecommunications technology to beneficiaries in their homes, to be considered as covered outpatient services for which payment is made under the OPDS.

AMBULATORY SURGERY CENTERS

- **Surgery centers (ASC) would see a proposed update of +3% in 2023.** The range of pay updates is +1%-6%. On the higher range (+6%) are Musculoskeletal procedures. Eye and Cardiovascular surgeries would be +1%. CMS is proposing to add one procedure, a lymph node biopsy or excision, to the ASC covered procedures list..

HOSPITAL MERGER DATA RELEASED

- **CMS calls for more transparency on mergers, acquisitions, consolidation, and changes in ownership.** This proposed rule includes a request for information (RFI) on transparency and competition in the health care systems – what further data should be released, the agency asks? Biden's Executive Order on promoting Competition in the America Economy follows the trend that consolidation has left many communities without affordable health care options.
- **CMS released data from 2016-2022 on hospital SNF mergers & consolidation to show the impact on affordability.** 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. Consolidation leads to higher prices.

RURAL EMERGENCY HOSPITALS +5%

- **A new Medicare provider type is created, called Rural Emergency Hospitals (REHs), and would receive a +5% update.** This will go into effect January 1, 2023 to address 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, that do not exceed an annual per patient average of 24 hours.
- **CMS is proposing to remove ten services from the Inpatient Only (IPO) list.** Medicare will only cover these services in an inpatient setting. CMS adds 8 services to the list as well. See text of this note for full list of procedures.

340B PAYMENT UPDATE FOR SCOTUS DECISION

- **CMS provides no update to 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.
- **That means that there is still an ASP -22.5% cut for drugs & biologics in 340B hospitals but anticipated ASP+6% to drugs and biologics for final rule CY 2023.** There is no information on how to adjust for prior years in which the -22.5% was in place. The proposed rule states that the timing of this court decision was too close to the writing of the HOPD proposal. CMS was unable to adjust the proposed payment rates and budget neutrality calculations.

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 our quarterly review process. CMS is soliciting public comment on all eight of these devices. They are:
 - Aprevo Intervertebral Fusion Device (Carlsmed)
 - MViviStim Paired Vagus Nerve Stimulation (VNS) System (MicroTransponder)
 - The BrainScope TBI (Brainscope)
 - NavSlim and NavPencil (Elucent Medical)
 - SmartClip(Elucent Medical)
 - Evoke Spinal Cord Stimulation (SCS) System (Saluda Medical)
 - Pathfinder Endoscope Overtube (Neptune Medical)
 - The Uretero1 (STE)

ORGAN PROCUREMENT

- **New organ procurement accounting method.** CMS is supporting organ procurement and research by proposing a method of accounting for research organs that will improve payment accuracy and lower the costs to procure and provide research organs to the research community. CMS is also proposing to address potential financial barriers to organ donation after cardiac death, which may increase organ procurement and promote equity within the transplant ecosystem. In addition, CMS is requesting information on possible methodologies for counting organs to calculate Medicare's share of organ acquisition costs for transplant hospitals and OPOs.

- **NEXT STEPS:** Comments due by Sept. 13, 2022 and final rule is due on or around Nov 1, with new payments and policies that start Jan 1, 2023. We note that the PHE was extended on Fri July 15 to approx. Oct. 15, 2022 (in tandem with rule release) and we anticipate that the emergency will be extended at least one more time to 1Q 2023.

BACKGROUND

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

- CPT 16036: Additional incisions for Escharotomys
- CPT 22632: Arthrodesis
- 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 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.

Services added to IPO list for Jan 1, 2023:

- CPT 157X1: implantation of absorbable mesh or other prosthesis for delayed closure of defects
- CPT 228XX: total disc arthroplasty, anterior approach
- CPT 49X06: repair for initial anterior abdominal hernia (any approach). Total length of defects: greater than 10 cm, incarcerated or strangulated.
- CPT 49X10: repair for recurrent anterior abdominal hernia (any approach). Total length of defects: 3 cm to 10 cm, incarcerated or strangulated.
- CPT 49X11: repair of recurrent anterior abdominal hernia. Total length of defects: greater than 10 cm, reducible.
- CPT 49X12: repair of recurrent anterior abdominal hernia. Total length of defects: greater than 10 cm, Cincarcerated or strangulated.
- CPT 49X13: repair of initial or recurrent parastomal hernia (any approach). Reducible.
- CPT 49X14: repair of initial or recurrent parastomal hernia (any approach). Incarcerated or strangulated.