Small Entity Compliance Guide

Medicare and Medicaid Programs: Hospital Outpatient Prospective Payment; Ambulatory Surgical Center Payment; Hospital Value-Based Purchasing Program; Physician Self-Referral; and Provider Agreement Regulations on Patient Notification Requirements.

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42 CFR Parts 410, 411, 416, 419, 489 and 495

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The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA, P.L. 104-121, as amended by P.L. 110-28, May 25, 2007) contains requirements for issuance of "small entity compliance guides." Guides are to explain what actions affected entities must take to comply with agency rules. Such guides must be prepared when agencies issue final rules for which agencies were required to prepare a Final Regulatory Flexibility Analysis under the Regulatory Flexibility Act.

The complete text of this final rule with comment period can be found on the CMS Web site at: http://www.cms. gov/HospitalOutpatientPPS/

This final rule would revise the Medicare hospital outpatient prospective payment system (OPPS) to implement applicable statutory requirements and changes arising from our continuing experience with this system, and to implement certain provisions of the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010 (Affordable Care Act). These provisions include OPPS provisions, such as changes to the wage index, market basket update, and removal of some cost-sharing for preventive services. These provisions also include changes to the physician self-referral rules and provider agreement regulations, changes to quality reporting requirements for hospitals, implementation of quality reporting requirements for ASCs, changes to the electronic health record program and changes to the inpatient value based purchasing program.

Additionally, in this final rule, we describe the finalized changes to the amounts and factors used to determine the payment rates for Medicare hospital outpatient services paid under the prospective payment system for CY 2011, including payments to community mental health centers (CMHCs) and hospitals for partial hospitalization services and to policies addressing the basis for receiving payment. Furthermore, this rule implements further revisions to refine our policy for physician supervision of hospital outpatient therapeutic services, offering some flexibility that is consistent with ensuring safe, high quality care for Medicare beneficiaries. This final rule also describes the process that CMS will use to make service specific determinations of the level of physician

supervision to be required as a condition of Medicare payment for outpatient hospital services.

In addition, this rule updates the revised Medicare ambulatory surgical center (ASC) payment system to implement applicable statutory requirements and changes arising from our continuing experience with this system. In this rule we set forth the applicable relative payment weights and amounts for services furnished in ASCs, specific Healthcare Common Procedure Coding System (HCPCS) codes to which these changes apply, and other pertinent ratesetting information for the CY 2011 ASC payment system.

We estimate that most hospitals, CMHCs and ASCs that participate in Medicare are small entities, either because their revenues fall below the Small Business Administration's size standards for small businesses, or because they are nonprofit, or both.

The effects of this final rule with comment period vary considerably by type of hospital, location, bed size, and other variables, as well as by type of ambulatory surgical center, location, patient population, and types of surgical procedures provided, among other factors.

With respect to payment for hospital outpatient services, overall we estimate that payments to hospitals under the OPPS will increase by about 1.9 percent on average in CY 2011, taking into consideration the hospital market basket update factor of 3.0 percent less the required productively adjustment of 1.0 percentage points and less the 0.1 percentage point reduction required under the Affordable Care Act. Also, as required by the statute, we will further reduce the update by 2.0 percentage points for hospitals that are required to report hospital quality data for outpatient services but that did not report quality data for outpatient services or that did not report the quality data successfully in CY 2011 for the full CY 2012 update, resulting in a negative 0.1 percent update for those hospitals. Because effects will vary from hospital to hospital, this rule may have a significant impact on a substantial number of small entities.

Effects on ASCs will be more complex and will depend in large part on the mix of services ASCs provide. We are providing ASCs with a 1.6 percent update for CY 2011, based on the 2.7 percent estimated Consumer Price Index for All Urban Consumers applicable to the ASC payment system less a multifactor productivity adjustment of 1.1 percent required under the Affordable Care Act. The overall effects of this final rule with comment period on CY 2012 Medicare ASC payment system and OPPS payment are intended to be budget neutral.

In order to assist hospitals in understanding and adapting to changes in Medicare billing and payment for procedures, we have developed a Web page for hospital outpatient services that includes substantial downloadable explanatory materials at: http://www.cms. gov/HospitalOutpatientPPS/.

We have a similar Web page focusing on ASCs at:
http://www.cms. gov/ASCPayment