

## Small Entity Compliance Guide

### **Medicare Program: Changes to the Hospital Outpatient Prospective Payment System and CY 2008 Payment Rates, the Ambulatory Surgical Center Payment System and CY 2008 Payment Rates, the Hospital Inpatient Prospective Payment System and FY 2008 Payment Rates; and Payments for Graduate Medical Education for Affiliated Teaching Hospitals in Certain Emergency Situations Medicare and Medicaid Programs: Hospital Conditions of Participation; Necessary Provider Designations of Critical Access Hospitals**

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42 CFR Parts 410, 411, 412, 413, 414, 416, 419, 482, and 485

[CMS-1392-FC], [CMS-1533-F2], and [CMS-1531-IFC2]

RIN 0938-AO71, RIN 0938-AO70, and RIN 0938-AO35

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 interim and final rule with comment period can be found on the CMS Web site at: <http://www.cms.hhs.gov/QuarterlyProviderUpdates/downloads/Regs-4Q07QPU.pdf>

This rule revises the Medicare hospital outpatient prospective payment system to implement applicable statutory requirements and changes arising from our continuing experience with this system. We describe the changes to the amounts and factors used to determine the payment rates for Medicare hospital outpatient services paid under the prospective payment system. These changes are applicable to services furnished on or after January 1, 2008.

In addition, the rule sets forth the applicable relative payment weights and amounts for services furnished in ambulatory surgical centers (ASCs), specific HCPCS codes to which the final policies of the ASC payment system apply, and other pertinent rate setting information for the CY 2008 ASC payment system.

Furthermore, this rule clarifies the off-campus and co-location requirements for critical access hospitals, as well as makes clarifying revisions to several of the current hospital conditions of participation requirements. This rule also incorporates the changes to the FY 2008 hospital inpatient prospective payment system (IPPS) made as a result of the enactment of the TMA, Abstinence Education, and QI Programs Extension Act of 2007, Public Law 110-90. In addition, this rule establishes a new policy of not applying the

documentation and coding adjustment applicable to the FY 2008 national standardized amount to the FY 2008 hospital-specific rates for Medicare-dependent, small rural hospitals and sole community hospitals. Finally, this rule modifies the regulations relating to graduate medical education payments made to certain teaching hospitals. There is no compliance burden associated with these changes.

Approximately 40 percent of the hospitals and 75 percent of the 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 vary considerably by type of hospital, location, bed size, and other variables. The effect on hospitals of the IPPS provisions in this rule is not significant. With respect to payment for hospital outpatient services, overall we estimate that payments to hospitals under the OPSS will increase by about 3.6 percent on average in CY 2008. However, because effects vary from hospital to hospital, this rule may have a significant and positive impact on a substantial number of small entities. Effects on ASCs are more complex, and depend in large part on the mix of services they provide. However, the overall effect in CY 2008 is intended to be budget neutral, with no net costs or savings. Over time, the expanded list of procedures for which ASCs will be paid under the ASC payment system should lead to an aggregate increase in Medicare ASC expenditures.

This rule imposes no direct Federal compliance requirements on hospitals or ASCs. In order to assist hospitals in understanding and adapting to changes in Medicare billing and payment procedures, we have developed a Web page for hospital outpatient services that includes substantial downloadable explanatory materials at <http://www.cms.hhs.gov/HospitalOutpatientPPS/HORD/itemdetail.asp?itemID=CMS1204971>. We have similar a Web page focusing on ASCs at [http://www.cms.hhs.gov/ASCPayment/04F\\_CMS-1392-FC\(ASC\).asp](http://www.cms.hhs.gov/ASCPayment/04F_CMS-1392-FC(ASC).asp).