

## **CY 2019 Medicare Hospital Outpatient Prospective Payment System and Ambulatory Surgical Center Payment System Proposed Rule**

### **Frequently Asked Questions**

#### **What is a Medicare proposed rule and how does it work?**

- Every year, the Centers for Medicare and Medicaid Services (CMS) releases a proposal about how the Medicare program will make payments for health care services and therapies in the following calendar year.
- They have different payment rules for inpatient care, outpatient care, and home health care.
- There is a 60-day period where the public can make comments on the rule.
- The agency then considers the comments and issues a “final” rule.
- In general, the final rule is released 2 months after the comment period ends, approximately mid-November.

#### **What does the proposed Hospital Outpatient Rule cover?**

- The hospital outpatient rule covers two settings:
  - Hospital outpatient departments, which are outpatient clinics that are affiliated with, or on the campus of, an inpatient hospital. Patients receiving care do not require a bed or to be admitted for overnight care.
  - Ambulatory surgery centers (ASCs), which are freestanding facilities for the purpose of delivering outpatient surgical care. Most ASCs are entirely or partially owned by physicians.

#### **What did the rule propose related to opioids?**

- Right now, Medicare pays for non-opioids as part of one lump sum payment, or a bundled payment, for the surgery performed, in both hospital outpatient departments and ASCs.
- CMS is proposing to change the way they pay for non-opioid therapies in ASCs.
- CMS concluded that paying for non-opioids separately could help facilitate the appropriate use of non-opioid pain management in ASCs.
- The agency did not propose to make a change in how they pay for non-opioids in hospital outpatient departments.
- However, the agency is seeking stakeholder comments on this topic.

#### **Why did they decide not to pay separately for non-opioids in Hospital Outpatient Departments?**

- CMS found that the use of EXPAREL, a non-opioid pain management drug, increased 183% between 2013 and 2015, when Medicare paid for it separately.
- After the packaging policy went into effect in 2015, over the next two years, use of EXPAREL continued to increase, by 18%.
- In other words, when it was not paid separately the growth rate of EXPAREL utilization fell to a tenth of what it was under pass through status.
- However, CMS did not propose changes to the OPPS packaging policy at this time.
- CMS is seeking public comments on whether separate payment would further incentivize appropriate use of non-opioid pain management drugs in the hospital outpatient setting, and specifically seeks peer-reviewed evidence that such increased utilization would lead to a decrease in opioid use and addiction among Medicare beneficiaries.

### **Why did they decide to pay separately for non-opioids in Ambulatory Surgery Centers?**

- CMS concluded that the use of non-opioid pain management drugs in the ASC setting have been impacted by the packaging policy.
- CMS found that the use of EXPAREL in the ASC setting decreased by 70% from 2015-17, after pass-through expired.
- CMS is proposing to pay separately for the cost of non-opioid pain management drugs in the ASC setting for CY 2019, “to address the decreased utilization of these drugs and to encourage use of these types of drugs rather than prescription opioids.”
- CMS is requesting further feedback that “non-opioid alternatives, such as EXPAREL, in the outpatient setting actually do lead to a decrease in prescription opioid use and addiction and are seeking public comments containing evidence that demonstrate whether and how such non-opioid alternatives affect prescription opioid use during or after an outpatient visit or procedure... the reduction or avoidance of prescription opioids would be the criteria we would seek to determine whether separate payment is warranted for CY 2019.”

### **What is the value of commenting on a proposed rule?**

- By law, the government must consider public comments on proposed rules.
- They specifically requested information on whether non-opioids reduce the use of opioids.
- They also requested information on whether reducing opioids reduces addiction.
- Therefore, hearing from stakeholders with experience in these areas is hugely valuable, and will influence the final decisions in the final rule.

### How can I comment?

- Email [icarreno@vennstrategies.com](mailto:icarreno@vennstrategies.com) for help to develop your own comment.
- Sign your name to an online petition calling for increasing access to non-opioid therapies. Click [here](#) to sign your name.