CMS Issues Final Rule Revising Hospital Inpatient Prospective Payment System

On August 1, the Centers for Medicare & Medicaid Services (CMS) issued a final rule that makes significant changes to Medicare's hospital inpatient prospective payment system (IPPS). These changes not only will affect the reimbursement that hospitals will receive, but also will impose additional reporting and disclosure burdens on some hospitals.

Key Reimbursement Changes

- Restructures DRGs. The final rule discards the existing Diagnosis-Related Groups (DRGs) in favor of "Medical Severity DRGs" (MS-DRGs), which account more fully for relative levels of severity. By paying hospitals based on the relative health of their patients, the MS-DRGs will benefit hospitals that traditionally have cared for sicker patients, at the expense of hospitals whose patients generally are healthier. While it declined to include a "stop-loss" provision that would protect hospitals adversely affected by the transition, CMS will implement the change over two years.
- Eliminates Reimbursement for Some Conditions Acquired in a Hospital. Beginning in FY 2009, Medicare will no longer reimburse hospitals for costs related to certain preventable conditions that patients acquire while in the hospital. These conditions include objects left in surgery; air embolism; blood incompatability; catheter-associated urinary tract infections and vascular catheter-associated infections; pressure ulcers; certain surgical site infections; and injuries such as fractures and dislocations acquired in-hospital. CMS has indicated that it will add to this list in future years.
- Phases-out Capital IPPS Adjustment for Teaching Hospitals. In the final rule, CMS noted that teaching hospitals traditionally have higher capital margins than their non-teaching counterparts. CMS therefore has proposed to cut the capital adjustment for teaching hospitals by 50% in FY 2009 and eliminate it in FY 2010. This change will not become final for another year, and CMS is accepting comments on it.
- Reduces Outlier Threshold. Medicare makes outlier payments to hospitals if costs of care for a particular case exceed standard reimbursement by more than the "outlier threshold." By law, Medicare must make outlier payments that range in the aggregate from 5% to 6% of total DRG expenditures. As CMS anticipates that the MS-DRGs will result in more case-appropriate reimbursement, it expects less variation in hospitals' costs, and so, to stay within the 5% to 6% window, expects to make smaller outlier payments with more frequency. It therefore has reduced the threshold from $24,485 in FY 2009 to $22,650 in FY 2008.
- Reduces Reimbursement for Some Device Replacements. Recognizing that some manufacturers provide warranties or other rebates to pay for the replacement of recalled devices, Medicare will reduce its reimbursement for a hospital's replacement of devices if the hospital receives a credit equal to 50% or more of the device's acquisition cost.

Key Disclosure Changes

- Expands Quality Reporting Obligations. CMS is adding 30-day mortality data for Medicare patients with pneumonia to the list of quality data that hospitals must report, and plans to add additional measures in the future. As a penalty, CMS will reduce by 2.0 percentage points the market basket update of each hospital that fails to report these data.

- Requires Disclosure of Physician Ownership. The rule will require each physician-owned hospital to disclose to patients, in writing, that the hospital is physician-owned, and to make a list of the physician owners available upon request. There will be an exception for hospitals in which the physician investment takes the form of publicly traded securities.
- Requires Disclosure of Limited Physician Coverage. CMS also will require hospitals to notify patients at the beginning of each stay if the hospital does not have physicians present at all times, and to describe the procedures for emergency treatment during hours when a physician is not present.

These changes will have a significant effect on the reimbursement that many hospitals receive. As private payors often follow Medicare practices, the changes may reach beyond Medicare. Specialty and other hospitals that traditionally have treated patients with less severe conditions will be adversely affected by adoption of the MS-DRGs, and, if the capital IPPS adjustment for teaching hospitals is eliminated, these hospitals likewise will see reduced capital reimbursement. Beyond finances, the disclosure rules will require hospitals to expand their quality reporting, and, in some cases, to make specific disclosures to patients.

Contact Information

If you have any questions about the new IPPS rules, please do not hesitate to contact one of our attorneys below or your regular Ropes & Gray contact.

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