

# Current Controversies: Site of Service Neutrality

*John McInnes, MD, JD*

*Arnold & Porter*

*Washington, DC*

*April 6, 2019*



# Current (and Old) Controversy: Site of Service Neutrality

- Question: Why does Medicare pay significantly different amounts depending on the site of service for the same services furnished for the same types of Medicare beneficiaries?



# What Sites of Service Are Medicare Primarily Concerned About?

- Not (that much) about Inpatient Hospital (IPPS) vs. Outpatient Hospital (OPPS).
- Most of the discussion and CMS focus has been on three sites of service: 1) hospital outpatient department (HOPD), 2) Ambulatory Surgery Center (ASC), and 3) physician office setting (sometimes called freestanding centers or office-based labs).
- Why? – Because an “outpatient” case is an outpatient case is an outpatient case.



# Standard Reasons for Site of Service Variation in Medicare Payment Rates

- Different Statutory Authorities:
  - HOPD = OPPTS, SSA § 1833(t)
  - ASC = SSA § 1832(a)(2)(F)(i)
  - Physician Fee Schedule (PFS) = SSA § 1848
- Different Cost Structures:
  - Hospitals take “all comers,” must maintain an ER, etc.
- Different type of patient, different level of acuity?
  - Is this true? Sometimes.



# Congress, CMS and MEDPAC Concerns

- About 8 years ago, MEDPAC followed by CMS started discussing some of the issues surrounding site of service payment differentials.
- Concerns:
  - Overpaying in some settings.
  - Insufficient rationale for large differentials.
  - No apparent (or measured) difference in quality despite differences in payment.
  - Payment differences driving site of service selection (instead of clinical reasons).





# Congress, CMS and MEDPAC Actions

- Both CMS and MEDPAC began exploring (and are currently developing and implementing) site-neutral payment policies, meaning:
  - The same payment for the same service provided to similar patients across sites of care.



# Congress, CMS and MEDPAC Actions, Cont.

- Some of these payment reforms seek to cap the HOPD or ASC payment at the PFS rate.
- Other policies work in the opposite direction – CAP PFS payments at HOPD or ASC rates.
- Key issue for CMS is determining which services and payments should be addressed by site neutral payment policies.
- Progress (like most developments in Medicare) has been incremental.



# Congress, CMS and MEDPAC Actions, Cont.

- Section 5102(b) of the Deficit Reduction Act of 2005 requires a payment cap (the OPPS payment rate) on the technical component of imaging services.
- In 2012, MEDPAC recommended that Congress limit payments for certain services performed in HOPDs.
- In 2014 CMS proposed a cap on PFS rates at the OPPS payment rate for about 200 CPT codes.
  - CMS backed off of this proposal due to political pressure and strong pushback from stakeholders.





# Congress, CMS and MEDPAC Actions, Cont.

- Section 603 of the Bipartisan Budget Act (BBA) of 2015
  - Response to hospitals buying physician practices and converting them to HOPDs.
  - Beneficiaries complained that they “used to get one bill when they went to the doctor and but now they get two bills.”
  - Made services furnished on or after January 1, 2017, in new off-campus provider-based departments (PBDs) not “covered hospital outpatient services”; instead, they are paid based on the PFS. Off-campus PBDs established prior to this date were grandfathered.



# Congress, CMS and MEDPAC Actions, Cont.

- CMS now exploring site neutrality under a previously dormant statutory provision: SSA § (t)(2)(F), which allows CMS to “develop a method for controlling unnecessary increases in the volume of covered OPD services.”
  - Not budget neutral
- CMS noticed an increase in the volume of clinic visits at off-campus PBDs that were grandfathered into OPPS payment under Section 603 of the BBA of 2015.
- For 2019, CMS finalized a policy of paying grandfathered off-campus PBDs the same lower PFS rates for office visits that they pay to non-grandfathered off-campus based PBDs.



# Site Neutrality Policies in the 2020 President's Budget

- ***Pay On-Campus Hospital Outpatient Departments at the Physician Office Rate for Certain Services*** Medicare generally pays on-campus hospital outpatient departments substantially more than physician offices for the same services. Effective CY 2020, this proposal makes site neutral payments between on-campus hospital outpatient departments and physician offices for certain services such as clinic visits, eliminating the disparity between what Medicare pays in these settings for the same services. [\$131.4 billion in savings over 10 years]



# Site Neutrality Policies in the 2020 President's Budget

- ***Pay Site Neutral Rates to All Hospital-Owned Physician Offices Located Off-Campus*** This proposal requires all off-campus hospital outpatient departments to be paid under the Physician Fee Schedule effective CY 2020. This would eliminate all grandfathered off-campus PBDs. This change will promote site neutrality by aligning payments to hospital outpatient departments with payments to physician offices, regardless of hospital ownership or facility type. [\$28.7 billion in savings over 10 years]



# Summary

- Site neutrality is very much alive in Medicare under the current administration.
- Most of the activity has been on lowering HOPD rates (to PFS levels) for certain services.
- CMS using broad SSA § (t)(2)(F) authority to achieve new site neutral payment policies.
- Expect more site neutral policies in the future.





Thank you

[john.mcinnes@arnoldporter.com](mailto:john.mcinnes@arnoldporter.com)

