

PUBLICATION

CMS Announces Timetable to Claw Back CY 2019 Payments for Hospital Outpatient Clinic Visits

September 2021

The Centers for Medicare & Medicaid Services (CMS) recently announced it will begin reprocessing claims for certain hospital outpatient clinic visit services provided at excepted off-campus provider-based department (PBDs) to make payment at the same rate as non-excepted off-campus PBDs are paid under the Medicare Physician Fee Schedule (PFS).

Background

As part of the Bipartisan Budget Reconciliation Act of 2015, Congress implemented payment limits on the amounts that most newly established, off-campus PBDs would be paid under Medicare's Hospital Outpatient Prospective Payment System (OPPS). CMS implemented those provisions in regulations published in 2016, effective for calendar year 2017 payment rates. See [81 Fed. Reg. 79,562, 79,726](#) (Nov. 14, 2016).

Two years later, in 2018, CMS published additional payment restrictions, applying the lower physician fee schedule amounts to hospital-billed evaluation and management (E&M) services furnished in off-campus PBDs excepted from the site neutral payment policy first implemented in 2017 (excepted off-campus PBDs). [83 Fed. Reg. 58,818, 59,004-15](#) (Nov. 21, 2018). The impact of these restrictions was that payment for E&M services provided in excepted off-campus PBDs, non-excepted off-campus PBDs, and physician offices would be the same. The rule was to be phased in over two years, beginning January 1, 2019.

A group of hospital organizations and related trade groups challenged the 2018 rule, arguing the agency's actions were beyond the authority granted by the statute. Although the United States District Court for the District of Columbia agreed with the plaintiffs, the United States Court of Appeals for the District of Columbia Circuit disagreed and upheld the agency's 2018 rule. *Am. Hosp. Ass'n, et al. v. Azar*, No. 18-2841 (Sept. 17, 2019).

CMS Claims Processing

In 2019, CMS reduced payment for E&M services furnished in off-campus PBDs to 70% of the full OPPS rate and further reduced payment in 2020 to 40%. As a result of the district court decision discussed above, CMS reprocessed these CY 2019 claims during the first half of calendar year 2019. It ceased the reprocessing in July of 2019, when the appeals court decision supporting the agency's actions was published.

CMS is now announcing that by November 1, 2021, it will begin reprocessing claims for outpatient clinic visit services provided at excepted off-campus PBDs, so that they are paid at the same rate as non-excepted off-campus PBDs under the PFS, consistent with the 2018 rule upheld by the appeals court. This will affect claims with dates of services from January 1 through December 31, 2019. CMS has advised that providers do not need to take any action to effectuate the reprocessing of payment by the Medicare program. However, the agency expects providers to refund the coinsurance differences based on the new remittance advice information to patients (or payers) who paid the higher coinsurance rates.

For more information or any questions regarding these issues, please contact any member of [Baker Donelson's Reimbursement team](#).

