

Medicare Outpatient Technology Access: Significant Problems Remain as Effective Date Approaches

In passing the Balanced Budget Refinement Act last November Congress took important steps to protect patient access to innovative medical technologies by addressing problems in Medicare's proposed outpatient prospective payment system (OPPS). As the July 1 OPPS implementation date approaches, however, Medicare's efforts to implement the BBRA's technology access provisions are seriously flawed and leave important technology access barriers in place.

Medicare can and must act now to address serious problems in its implementation of transitional payments for innovative technology before the OPPS rule takes effect.

Physicians and patients lose the ability to choose the most appropriate medical technologies under Medicare's outpatient PPS policy.

- A key provision of the Refinement Act requires special transitional payments as a way to ensure beneficiary access to innovative technologies. Transitional payments give Medicare a way to adequately reimburse hospitals for new technologies while additional data on them is gathered.
- In a March 10 notice posted on Medicare's web site, the agency listed only 11 devices eligible for pass through payment, and gave companies only 21 days (until April 1) to submit applications for transitional payment for devices not on the list. Medicare recently released an updated list that includes more devices, but significant problems remain. For example, Medicare has "deferred" transitional payment decisions for 110 devices for which it received applications by April 1.
- In taking the highly unusual step of identifying devices by brand name instead of device type in the transitional payment list, Medicare in its most recent list has created an artificial and arbitrary device "formulary" that limits physicians' and patients' ability to choose the most appropriate device.
- Different medical device models can have different features and capabilities that make them optimal for different patients. Medicare should preserve doctors' and patients' ability to choose the most appropriate device by making transitional payments based on generic product types and not on individual companies' brands. This problem must be addressed when the outpatient PPS system takes effect.

Urgent outpatient problems reveal the need for Medicare to focus on timely access to medical technology.

- The technology access barriers in Medicare's OPPS rule reflect a broader problem – Medicare coding and payment procedures frequently do not give beneficiaries timely access to needed treatments.
- The Medicare Patient Access to Technology Act (H.R. 4395) would improve Medicare's focus on technology access, requiring annual reports on technology access in the outpatient and inpatient settings and also on the

timeliness of Medicare's coverage decisions. In addition, one member of the Medicare Payment Advisory Committee would have to have expertise in medical technology.

- H.R. 4395 also would correct specific problems in Medicare's coverage, coding and payment procedures for new technologies. For example, Medicare would have to: issue temporary codes at the time of FDA review, update codes every quarter, make better use of internal and external data in adjusting its reimbursement policies, and update its payment systems annually to keep pace with medical innovation.

ROUTE OF THE WEEK

"I strongly believe the federal government should not pick winners and losers in a product category like this."

-Rep. Jim Ramstad (R-MN) in May19 letter to HCFA on outpatient PPS.

ACTION ITEM

Call HCFA Administrator Nancy-Ann Minn DeParle today at (202) 690-6726 and ask her to:

- Protect physician and patient choice by making transitional payments based on product type, not brand name.
- Take final action on all "deferred" applications for transitional payment by the effective date of the OPSS reg.

RELATED LINKS:

Legislative text of the [Medicare Patient Access to Technology Act of 2000](#)

[HIMA recommendations](#) for improving Medicare patient access to innovative technologies.

[Medicare's updated list of devices eligible for transitional payments](#)

HIMA [summary of the final outpatient PPS regulation](#)