

September 15, 2021

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Centers for Medicare and Medicaid Services
Department of Health and Human Services
Attn: CMS-1753-P
P.O. Box 8016
Baltimore, MD 21244-8016

Dear Administrator Brooks-LaSure,

The Society of Hospital Medicine, representing the nation's hospitalists, is pleased to offer our comments on the proposed rule entitled: *Medicare Program: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; Price Transparency of Hospital Standard Charges; Radiation Oncology Model; Request for Information on Rural Emergency Hospitals (CMS-1753-P)*.

Hospitalists are front-line physicians in America's hospitals whose professional focus is the general medical care of hospitalized patients, many of whom are Medicare and Medicaid beneficiaries. They manage the inpatient clinical care of their patients while working to enhance the performance of their hospitals and health systems. Due to their focus on the hospital setting, hospitalists have been the backbone of the nation's COVID-19 response, caring for hospitalized COVID patients throughout the country.

It is from this perspective that we issue our comments.

Proposed Services That Will Be Paid Only as Inpatient Services

In the CY 2021 OPPS/ASC final rule, CMS moved to enact a three-year phase out the Inpatient Only (IPO) list, a significant deviation from prior efforts to methodically evaluate and remove services from the IPO list. CMS proposes to halt the elimination of the IPO list and add the 298 services removed in CY 2021 back to the IPO list. CMS also proposes to codify the previously used criteria to evaluate whether a service or procedure should be removed from the IPO list.

SHM raised concerns about the CY 2021 proposal to eliminate the IPO list and believed CMS' expected outcomes for reducing burden, improving care quality, and increasing beneficiary choice were not adequately demonstrated. **We support CMS' proposal to reverse the elimination of the IPO list and return to a systematic approach of removing services from the IPO list when warranted.** We believe this approach will ensure that patients continue to receive the safest and highest quality of care, while also reflecting the advances in medicine and

technology. We also continue to urge CMS to prioritize data transparency as it adjusts the IPO list — both on the impact to the Medicare Trust Fund as well as beneficiary out-of-pocket costs—to ensure evidence-driven decision making.

We caution CMS against setting itself the goal of eliminating the IPO list. Setting this goal may encourage premature removal of services or eventual elimination of the IPO list without sufficient evidence or consideration of its continuing relevance. We encourage CMS to continue moving services off the IPO list when appropriate, and only when it can ensure that Medicare beneficiaries are able to receive care at the safest, lowest level of care. Some services may continue to require inpatient-level care for the foreseeable future and CMS should not set itself an arbitrary goal that creates new administrative burden, barriers to care delivery, and potential harm to patients.

We continue to be concerned about cost-shifting to Medicare beneficiaries. We implore CMS to consider how IPO list service removal could increase patient financial liability. Services newly available for reimbursement in outpatient settings should not lead to increased financial burden or cost-sharing for Medicare beneficiaries.

Proposed Medical Review of Certain Inpatient Hospital Admissions Under Medicare Part A for CY 2022 and Subsequent Years

CMS proposes to alter the exemption from medical review activities related to the 2-Midnight rule for services removed from the IPO list, given their proposal to halt the elimination of the IPO list. For services removed from the IPO list after January 1, 2021, CMS previously finalized an indefinite exemption from site-of-service claim denials under Medicare part A, eligibility for BFCC-QIO referrals to RACs for 2-Midnight rule non-compliance, and RAC review for “patient status”. This was in response to the large volume of changes to the IPO as it phased out and a recognition that providers would need more time to implement and receive education on the new billing policies. CMS proposes to restrict the exemption from indefinite to two years after a service’s removal from the IPO list. **SHM fully supports a two-year exemption, at a minimum, to help facilitate the transition of services off the IPO list.**

Conclusion

SHM appreciates the opportunity to provide comments on the 2020 Outpatient Prospective Payment System proposed rule. If you have any questions or need more information, please contact Josh Boswell, Director of Government Relations, at jboswell@hospitalmedicine.org or 267-702-2632.

Sincerely,



Jerome Siy, MD, MHA, SFHM
President, Society of Hospital Medicine