ACOs and CMS's Proposed Repayment for 340B Drugs

On July 7, the Centers for Medicare and Medicaid Services (CMS) published a proposed rule that would repay $9 billion to more than 1,600 hospitals that participate in the 340B drug discount program. CMS proposed a one-time, lump sum payment to comply with a 2018 Supreme Court case that overturned CMS's reduction in 340B payments. The repayments would equal the difference between what each hospital was paid and the amount it would have been paid if done at the correct rate.

As required by law to maintain budget neutrality, CMS proposed to reduce future payments on non-drug items and services in the Outpatient Prospective Payment System (OPPS) conversion factor by 0.5 percent starting in 2025, which is expected to last 16 years. If finalized, this proposed policy would affect nearly all hospitals paid under the OPPS. CMS has released this fact sheet discussing the rule, which is found in the Federal Register. The comment period ends on September 5.

Background

The 340B drug discount program requires drugmakers to give discounts on outpatient drugs for providers serving low-income communities. The discounts, which can range from 25 percent to 50 percent of the cost of the drugs, can be a big financial aid to providers. In 2018, CMS lowered Medicare payments for 340B drugs by roughly 30 percent to better reflect the actual costs of those drugs. The lower payments remained in place until 2022, when the Supreme Court ruled that CMS didn't have authority to lower 340B payments. As a result, CMS is required to repay hospitals for the underpayments.

ACO Impact

Because CMS proposes not to reprocess 340B claims that were underpaid between 2018 and 2022, the lump sum repayment would not be associated with individual patients' beneficiary claims and, therefore, not included as ACO expenditures. The ACO participation agreements and regulations do not provide an avenue for CMS to treat these one-time payments as ACO expenses.

Additionally, some ACOs could see a benefit from the proposed policy because of the 0.5 percent reduction in the conversion factor to carry out the OPPS's budget neutrality requirement. This reduction would start in 2025 meaning that ACOs will have higher levels of historic spending in the baseline benchmark years of 2022 to 2024 compared to their performance years of 2025 and beyond. This would create a higher benchmark and make it easier for ACOs to achieve shared savings in 2025 and some years beyond, until the conversion factor cut would start to be included in the benchmark years.

However, the proposed rule does not address CMS basing benchmarks off drugs priced at average sales price (ASP) minus 22.5 percent from 2018-2022 with ACOs being paid for drugs at ASP plus 6 percent in subsequent performance years. This problem, which CMS is unlikely to address in the final version of this rule, will dissipate over time but may still be an issue for ACOs who have 2018-2022 in their historical benchmark.

Comment to CMS
If ACOs or health systems are submitting comments on the proposed rule by the September 5 deadline, NAACOS encourages ACOs to include the following in their letters.

CMS's policy to not address the disparity between paying for 340B drugs at the lower price of ASP minus 22.5 percent in ACO benchmarks (i.e. between 2018-2022) and the higher price of ASP plus 6 percent in performance years will continue to unfairly impact ACOs. Trend update factors won't help many ACOs since most don't have significant 340B spending in their regions. We urge CMS to correct this disparity by adjusting its calculation of ACOs' performance year expenditures to correct for this difference without ACOs having to early renew. This adjustment would help ACOs with 340B providers, who help under-served patients and address the health disparities CMS wants to eliminate through policymaking.