

LEGAL UPDATES

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# CMS Releases OPPS and PFS Final Rules

There were no major surprises when the Medicare hospital outpatient prospective payment system (OPPS) and physician fee schedule (PFS) Final Rules were released on November 2, 2021, but there are still several financial and compliance areas that healthcare providers must prepare for as we head into 2022. Below is a brief summary of the key issues affecting the most providers across the country.

### OPPS Final Rule

**Increased penalty for failure to meet price transparency requirements effective January 1, 2022.** Although expected, this will have a significant impact on providers that are not yet able to meet the requirements. Previously set at \$300/day, the new penalty is a minimum of \$300/day and calculated at \$10/bed/day with a cap of \$5,500/day. With a maximum penalty of just over \$2M/year, noncompliant hospitals are significantly more incentivized to meet the new rules as soon as possible.

**340B reimbursement decrease remains in effect.** Although heavily lobbied against by 340B Covered Entities, the full Medicare reimbursement reduction will remain in effect for 2022. There are still numerous pending lawsuits related to various aspects of the Program's rules and enforcement thereof, but lower Medicare rates are here to stay for another year.

**Overall rate increase of 2.0%.** CMS increased the payment rate by the expected amount, within a similar range to prior years. Hospitals will still be

required to meet certain quality reporting requirements to attain the full amount and may be subject to penalties if not.

### PFS Final Rule

**Telehealth reimbursement expansion remains in effect.** CMS approved the expansion of reimbursable telehealth services established during the PHE through CY2022 and CY2023. This will significantly help providers that have invested resources into telehealth programs and incentivize development efforts.

**Vaccine reimbursement increased twofold.** Reimbursement for influenza, pneumonia and hepatitis B vaccines will increase from \$17 to \$30. The purpose is to incentivize providers to increase access.

**Primary care expansion continues.** Changes to the practice expense formula for certain practitioners will likely increase reimbursement for primary care providers.

### What this means to you

Although the OPPS and PFS rules were finalized as expected, there are still significant financial and compliance implications for providers. Namely, providers must carefully evaluate the penalties for failure to comply with the price transparency requirements beginning in January. In addition, 340B Covered Entities must continue to optimize their programs as Medicare and other payors continue to cut reimbursement. Providers should also look toward telehealth expansion opportunities to improve clinical efficiencies, enhance patient satisfaction, and remain competitive in the market.

### Contact us

If you have additional questions regarding this update, contact Daniel Avants, Amanda Bogle or your Husch Blackwell attorney.