

Medicare site neutrality: shifting economics of physician employment



Rick L. Hindmand | Wednesday, May 8, 2019

Medicare site neutral payment changes are making hospital employment of physicians in some off campus settings less financially attractive for health systems and physicians.

Physician Employment Trends

Hospital employment of physicians has become increasingly common as health systems continue acquiring physician practices. A recent study by Avalere Health determined that from July, 2012 through January, 2018, the number of hospital-employed physicians increased by 78 percent (from 94,700 to 168,800) and that the number of hospital-owned practices more than doubled. The study also found that during this 5 ½ year period the percentage of physicians employed by hospitals increased from 26 percent to 44 percent, and that the percentage of physician practices owned by hospitals increased from 14 percent to 31 percent. American Medical Association (AMA) surveys also reveal increased physician employment by hospitals, though the percentages were somewhat lower, with AMA data showing that the percentages of physicians employed by hospitals or by practices owned (at least in part) by hospitals increased from 16 percent in 2007-8 to 29 percent in 2012 and nearly 35 percent in 2018. The most recent AMA Physician Practice Benchmark Survey found for the first time that more physicians were employees than owners.

These trends result from various factors, including Medicare site of service payment differentials that provide a financial incentive for hospitals to acquire physician practices, employ the physicians through a hospital outpatient department (HOPD), and obtain reimbursement under the Outpatient Prospective Payment System (OPPS).

Site of Service Differential (Higher HOPD Reimbursement)

Medicare generally pays more for physician office visits and related procedures in HOPDs than when the services are performed in a freestanding physician office and paid under the Medicare Physician Fee Schedule (the MPFS). This payment differential applies even if the same physician provides the same services to the same patient at the same office.

The Centers for Medicare & Medicaid Services (CMS), the Medicare Payment Advisory Commission (MedPAC), AMA and others have criticized this site of service differential for increasing Medicare costs and patient out-of-pocket costs and for incentivizing hospitals to acquire physician practices and shift to HOPD status in order to obtain payment under the higher OPPS rates. In the 2019 OPPS Final Rule, CMS observed that the differential for common (Level 3) office visits was approximately \$75 for a new patient (\$184.44 HOPD rate compared to \$109.46 in a physician office) and \$84 more for an established patient (\$158.24 HOPD compared to \$73.93 in a physician office).

Site Neutral Payment Adjustments

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In order to address these concerns about the shift of services from lower cost (physician office) to higher cost (HOPD) settings, MedPAC and CMS have advocated adjusting OPSS payment rates so that payment for office visits would be the same for physician practices and HOPDs when the services can be safely performed in either setting. Paying the same amount regardless of the site of service is sometimes referred to as “site neutral” payment or “site neutrality.”

The Bipartisan Budget Act of 2015 (BBA) included Medicare site neutral payment provisions for services provided in new off-campus locations. This change as implemented by CMS was a step toward site neutrality, but continued to allow the higher OPSS payment amount to HOPDs that were either grandfathered or on-campus and therefore were excepted from the BBA site neutral adjustment ([click here to read more](#)). CMS observed in 2018 that the majority of hospital off-campus HOPDs continued to receive the full OPSS payment.

In the 2019 OPSS Final Rule, CMS announced site neutral 60 percent off-campus HOPD payment reductions in two stages (2019 and 2020) so that in 2020 the HOPD amount will be equivalent to the MPFS amount, with payments reduced to 70 percent of the OPSS rate in 2019 and 40 percent of the OPSS amount in 2020. These site neutral reductions apply to clinic visits (HCPCS code G0463) in off-campus HOPDs that are not already subject to the BBA site neutral adjustments. CMS expects this adjustment to save \$380 million in 2019.

The American Hospital Association and a number of hospitals have filed court challenges to the payment revisions.

Implications

The site neutral payment adjustments, unless reversed or significantly softened, figure to impact existing and contemplated employment relationships between physicians and hospitals as well as acquisitions of medical practices. Some of the likely implications include the following:

- Hospitals may face expanding red ink and concerns about the financial viability of physician employment in some off-campus settings.
- The fair market value and commercial reasonableness of compensation and practice acquisitions will need to be revisited for some transactions, keeping in mind that it will likely take time for compensation surveys to reflect the site neutral adjustments.
- Hospital-employed physicians who need to renegotiate compensation may be at a disadvantage compared to physicians in private practice because of restrictions on their ability to share in hospital ancillary revenues.
- Some hospital-physician relationships will likely need to be renegotiated or even terminated.
- The pace of unwinding prior practice acquisitions may pickup so that physicians can transition back to private practice, raising a host of issues to sort through and negotiate.
- Hospitals may consider structuring office locations to avoid off-campus site neutrality.
- Independent physician practices, as well as private equity transactions and affiliations, may become more attractive as alternatives to physician employment by hospitals.

Health systems that employ physicians in off-campus HOPD settings or are considering creating new off-campus HOPDs or acquiring existing physician practices, as well as the physicians involved, should evaluate the likely impact of the site neutral payment policies and plan proactive steps to address the changes.

For more information, please contact the attorney listed below.



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