

# Report on Medicare Compliance Volume 30, Number 27. July 26, 2021

## In Proposed OPPS Rule, IPO List Is Back, Fines Are Higher for Transparency Noncompliance

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By Nina Youngstrom

In a stunning reversal, CMS won't eliminate the inpatient-only list (IPO) and will return 298 procedures it moved off the list in 2021 because of concerns about the safety of Medicare beneficiaries when procedures like limb amputations are performed on outpatients, according to the proposed 2022 outpatient prospective payment system (OPPS) rule announced July 19.<sup>[1]</sup> If the provision is finalized, CMS would revert to moving procedures off the IPO list one at a time and sparing them from medical review for two years. At the same time, CMS proposed to erase its 2021 policy of covering 258 procedures when they're performed at ambulatory surgery centers (ASCs) in 2021. With the two moves, CMS is assuming more responsibility for patient safety at a population level, experts say.

"CMS has taken a very different approach and determined relying on individual decisions by physicians and other safeguards are not sufficient to ensure the safety of beneficiaries," said Edward Hu, M.D., system executive director of physician advisor services at UNC Health in Chapel Hill, North Carolina.

The proposal brings financial relief to hospitals because Medicare only pays for procedures on the IPO list when they're performed on inpatients. Other procedures and medical admissions fall under the two-midnight rule. "When you talk to a surgeon, their mouth hangs open," said Al Gore, M.D., physician advisor and director of utilization management at St. Joseph Health System in Santa Rosa, California. "How can you do this procedure as outpatient?" He says device implants are a theme with many orthopedic procedures off the IPO list and cardiac procedures that were headed in that direction. If the device costs \$30,000 and an ambulatory payment classification (APC) for the procedure pays \$15,000, Gore wondered how hospitals would absorb the cost of all procedures without an IPO list.

### 'The Compliance Nightmare of the Century'

But the proposal may put hospitals between a rock and a hard place during the five months before the OPPS rule takes effect. "This is the compliance nightmare of the century," said Ronald Hirsch, M.D., vice president of R1 RCM. It seems strange to push the two-midnight rule on physicians for the 298 procedures when CMS told them to forget what it said about the IPO list. "One possible solution that would check all boxes is to stop all physician education and allow them to continue what they're doing," Hirsch said. To prevent improper claims, hospitals would then review every inpatient admission for the 298 surgeries before claims are submitted to determine if they comply with admission requirements, Hirsch said. He noted that total hip and knee replacements and some spine procedures will stay off the IPO list because they were individually removed before CMS's wholesale policy change.

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