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By Nina Youngstrom

A day that hospitals feared has come: CMS plans to make payments for clinic visits “site neutral,” which is a way of saying that Medicare would reimburse off-campus provider-based departments and physicians in private practice the same, according to the proposed 2019 outpatient prospective payment system (OPPS) regulation that was announced July 25.

If the proposal is finalized, site-neutral payments would take a big bite out of hospitals, attorneys say. They would also take a hit from CMS’s proposed extension of steep 340B payment cuts and the resurrection of a complicated plan to limit OPPS payments for services in “clinical families” performed before Nov. 2, 2015, when Congress ended OPPS billing by off-campus provider-based departments established after Nov. 2, 2015, under Sec. 603 of the 2015 Bipartisan Budget Act.

“They are unraveling the hospital outpatient reimbursement program,” says Boston attorney Larry Vernaglia, with Foley & Lardner LLP.

The changes won’t be budget neutral. They’re supposed to be, which means the increases and decreases in a payment rule even out for Medicare and for hospitals, says Washington, D.C., attorney Andy Ruskin, with Morgan Lewis. But this time, CMS said it’s relying on a “method for controlling unnecessary increases in the volume of covered [outpatient department] services, not an adjustment,” according to the proposed regulation. He is skeptical of the argument. “I don’t think CMS has the right to do this, and it’s hugely problematic in terms of setting precedent,” Ruskin says. He and Vernaglia also doubt the legality of cutting payments to off-campus provider-based departments that were grandfathered under Sec. 603. “It flies in the face of Congressional intent,” Vernaglia says.

But hospitals should brace themselves for the cuts because there’s a good chance the proposals will take effect Jan. 1, Ruskin contends. “All of this is likely to move forward. CMS is emboldened by its success so far with challenges to its rulemaking,” namely courts so far turning down the American Hospital Association’s lawsuit on CMS’s 340B cuts. The OPPS rule also was proposed late, leaving CMS less time to consider industry comments — “another reason to suggest it’s a foregone conclusion,” he says.

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