COSMOS
Navigate the Compliance Universe

# Report on Medicare Compliance Volume 33, Number 10. March 18, 2024
# IOPs Are New Avenue for Patients, But Compare Rule to Manual for Compliance Sake

By Nina Youngstrom

Medicare coverage of intensive outpatient programs (IOPs) for mental health and substance use disorder (SUD) treatment began Jan. 1, 2024, but hospitals that go down this road should be aware of an opening for errors. The 2024 outpatient prospective payment system rule[1] spells out requirements that aren't mentioned, or are between the lines, in the Medicare Benefit Policy Manual, an expert said.[2]

For one thing, Medicare doesn't cover virtual IOP services, said Georgia Rackley, senior clinical specialist with Sunstone Consulting. That wasn't up to CMS, she noted. Sec. 4124 of the 2023 Consolidated Appropriations Act, which authorized Medicare to cover IOPs, doesn't include the virtual delivery of services. That's the same restriction placed on partial hospitalization programs (PHPs) in the Social Security Act, which makes sense on the one hand because Medicare IOPs are modeled on PHPs in terms of the types of services provided and the documentation requirements, Rackley noted. On the other hand, the no-virtual option is surprising because some commercial payers, which were ahead of CMS in covering IOPs, allow virtual delivery. In fact, she just completed a project related to IOP services provided by a national company that's exclusively virtual.

Although Medicare doesn't cover virtual IOP services, if the IOP arranges a physician consult for medication, the physician's services can be provided virtually through the end of 2024 because they bill independently of the IOP, Rackley explained.

## Only Physicians Can Certify Patient Eligibility

Another requirement that might be overlooked: physicians must certify patient eligibility for IOPs, the same as with PHPs. That means physicians only, not advanced practice providers. The reason CMS gives for this requirement is that "it's baked into the Social Security Act that PHP certification has to be by a physician so they are unable to change this requirement because they have modeled IOP after PHP requirements," Rackley said. "Its hands were tied."

But CMS had leeway with opioid treatment programs provided at IOPs. On top of physicians, other nonphysicians may fulfill the certification and plan of care requirements, including nurse practitioners, physician assistants, marriage and family therapists and others.

One more thing: Medicare only covers IOPs at hospital outpatient departments, critical access hospitals, community mental health centers, rural health clinics and federally qualified health centers. "My heart dropped a little when I saw they're covering [mostly] only hospital-based IOPs," Rackley remarked. "It eliminates IOPs being run out of physician offices. Maybe that will change when they get their feet wet."

It's good to see Medicare join private payers in covering IOPs, especially with the opioid epidemic, Rackley said. IOPs provide outpatient mental health and SUD treatment in "a distinct and organized intensive ambulatory treatment service, offering less than 24-hour daily care, in a location other than an individual's home or

inpatient or residential setting," CMS says in an MLN booklet on mental health services that was updated in January.[3] It's more intense than outpatient day treatment or psychosocial rehabilitation, but less intense than a PHP.

The services provided in an IOP are:

- Individual or group psychotherapy;
- Occupational therapy;
- Services of other staff (e.g., social worker, psychiatric nurses);
- Drugs and biologicals that can't be self-administered;
- Individualized activity therapies that aren't mainly recreational;
- Family counseling services;
- Patient training and education; and
- Medically necessary diagnostic services related to mental health treatment, including SUDs.

Although they're modeled after PHPs, IOPs don't require as many hours per week—nine compared to 20 hours for PHPs. Also, the physicians aren't required to document in the certification that the patient may be at risk for hospital admission if they don't receive the services.

Although CMS was slower than commercial payers to cover IOPs, it's more generous, Rackley said. It includes occupational and activity therapy that may not be covered by a private payer.

In terms of documentation and supervision requirements, Medicare requires physicians to certify that the patient requires at least nine hours of services a week. The certification should include the diagnosis and need for intensive outpatient services, which will be provided under an individualized plan of care that includes intensive services "reasonable and necessary to treat the presentation of serious psychiatric symptoms (including SUD) and to prevent relapse or hospitalization." CMS noted that a treatment plan "should document ongoing efforts to restore the individual patient to a higher level of functioning that would permit discharge from the program, or reflect the continued need for the intensity of the active therapy to maintain the individual's condition and functional level and to prevent relapse or hospitalization. Activities that are primarily recreational and diversionary, or provide only a level of functional support that does not treat the serious presenting psychiatric symptoms (including SUD) placing the patient at risk, do not qualify as intensive outpatient program services."

Physicians are also required to sign a recertification every 60 days that explains the patient's response to the IOP's therapeutic interventions, their symptoms and treatment goals.

CMS noted in an MLN Matters (13,496) that hospitals and community mental health centers must put condition code 92 on claims for IOP services.[4]