

Health Policy Update – January 28, 2020

Hospital Groups Sue Over 2020 Site Neutral Payment Cuts

On January 13, a group of three hospitals along with the American Hospital Association and the Association of American Medical Colleges sued the Centers for Medicare & Medicaid Services over the agency's site neutral payment policy that was included in the 2020 Hospital Prospective Payment Policy Final Rule.

The hospitals originally sued CMS over the site neutral payment policy in 2019 after the agency imposed deep reimbursement cuts for clinic visits at certain hospital facilities. While a federal district court ruled in favor of the hospitals — arguing CMS overstepped its authority in making the cuts — CMS continued to include the cuts in the 2020 rule.

In the new lawsuit, the hospitals reiterated their arguments from last year, stating that the court ruled CMS does not have the authority to implement such policies. Among other requests, the hospitals have asked the court to declare the 2020 Medicare site-neutral policy beyond CMS' authority and unenforceable as well as require CMS to "conform its payment policies and conduct to the requirements of the Medicare Act."

To view the complaint, [CLICK HERE](#).

Supreme Court Will Weigh Validity of State Laws Regulating PBMs

On January 10, the Supreme Court agreed to hear a case regarding an Arkansas state law regulating pharmacy benefit managers (PBMs). The law would have required PBMs to reimburse pharmacies for generic drugs at a price at minimum equal to the pharmacies' cost for the drug. In 2018, the U.S. Court of Appeals for the 8th Circuit struck down the law, ruling that it was preempted by the federal Employee Retirement Income Security Act.

This case could revive the law, which could affect state efforts to lower drug prices through limits on PBMs' activities and profits. The decision by the Supreme Court to hear the case is a win for the more than 30 states and the Trump administration, who all supported the request for review.

The case is *Rutledge v. Pharmaceutical Care Management Association*, No. 18-540, and the Supreme Court has not yet scheduled a date for oral arguments.

To read more on the case, [CLICK HERE](#).

Report Finds Significant Variability in Oncology Drug Costs Across Sites of Service

On January 16, the Employee Benefit Research Institute published a report that found treatment costs provided in hospital outpatient departments (HOPDs) were consistently and significantly higher than the same treatments provided at freestanding physician offices.

The analysis, which covered over 18,000 users of the top 37 infused oncology drugs prescribed to employment-based and commercially insured patients in 2016 found that hospital prices for the top infused cancer drugs averaged 86.2% more per unit than in doctor offices. HOPDs charged more on average for each drug the study analyzed, ranging from 128.3% (nivolumab) higher to 428.0% (fluorouracil) higher than physician offices charged for the same drugs. Overall, the mean annual reimbursement to providers per user of infused cancer drugs was \$13,128 in freestanding physician

offices and \$21,881 in hospital outpatient departments. Ultimately, commercial insurers would have saved nearly \$10,000-or 45%-per user had hospital unit prices for these medicines matched physician office prices.

To read the report, [CLICK HERE](#).

GAO Report Faults HRSA for Lapses in 340B Program Oversight

On January 10, the U.S. Government Accountability Office (GAO) released a new report that found weaknesses in the Health Resources and Services Administration's (HRSA) oversight of hospitals participating in the 340B Drug Discount Program that may have resulted in some hospitals receiving discounts for which they are not eligible. In examining the contracts of 258 nongovernmental hospitals across the country (less than 10% of the total nationwide), GAO found that while most contracts obligated hospitals to provide healthcare services to low-income patients—a key requirement for 340B participation—few contracts included details about the obligations such as the amount and type of care hospitals were required to provide. Therefore, it is extremely difficult to determine whether participating hospitals actually meet eligibility requirements under the law.

In addition, GAO found that HRSA did not conduct reviews to determine whether or not the documents provided by hospitals as justification for eligibility in the 340B program were actual contracts—nearly 10% of the hospitals examined in the study did not have binding contracts and therefore should not have been allowed to participate in the program. Meanwhile, 5% of hospitals participating in the program did not appear to meet the requirements to serve low-income populations.

To read the GAO report, [CLICK HERE](#).

MedPAC Issues Payment Recommendations, 340B Study Following January Meeting

The Medicare Payment Advisory Commission (MedPAC) concluded its January meeting with a series of recommendations for physicians and hospitals. MedPAC recommended no changes to the physician fee schedule for 2021 but also emphasized the need to collect more data on practice operation costs. While current law also calls for no payment increases for physicians in 2021, those who participate in the Merit-based Incentive Payment System (MIPS) program will see as much as a +/- 7% reimbursement change that is tailored to performance. Physicians who participate in advanced alternative payment models are eligible for a 5% incentive payment depending on their performance. In previous years, MedPAC has recommended CMS eliminate that MIPS program entirely arguing the costs of implementing it outweighed the resulting improvements in performance.

MedPAC also conducted an analysis that compared the average monthly spending on cancer drugs between 340B and non-340B hospitals and physician offices, for five types of cancer (breast, colorectal, prostate, lung, and leukemia). It was previously tasked by Congress with looking at whether 340B drug discounts influence drug spending. MedPAC found that for 340B hospitals, average spending by cancer type at 340B hospitals is 2-5% higher than non-340B hospitals, and 1% lower to 7% higher than physician offices, but the reason for the higher spending appears to be specific to the type of cancer rather than incentives created by 340B discounts. However, the commissioners did note the results were not conclusive. The final report will be issued in March.

To view the MedPAC presentation on the 340B program, [CLICK HERE](#).

To view the full list of agendas, meetings, and presentations, [CLICK HERE](#).