

Small Entity Compliance Guide

Changes to the Hospital Outpatient Prospective Payment System and CY 2011 Payment Rates; Changes to the Ambulatory Surgical Center Payment System and CY 2011 Payment Rates; Changes to Payments to Hospitals for Graduate Medical Education Costs; Changes to Physician Self-Referral Rules and Related Changes to Provider Agreement Regulations; Payment for Certified Registered Nurse Anesthetists Services Furnished in Rural Hospitals and Critical Access Hospitals

Federal Register 75 FR xxxxx

42 CFR Parts 410, 411, 412, 413, 416, 419, and 489

[CMS-1504-FC]

RIN 0938-AP41

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA, P.L. 104-121, as amended by P.L. 110-28, May 25, 2007) contains requirements for issuance of “small entity compliance guides.” Guides are to explain what actions affected entities must take to comply with agency rules. Such guides must be prepared when agencies issue final rules for which agencies were required to prepare a Final Regulatory Flexibility Analysis under the Regulatory Flexibility Act.

The complete text of this final rule with comment period can be found on the CMS Web site at: <http://www.cms.gov/HospitalOutpatientPPS/>

This final rule would revise the Medicare hospital outpatient prospective payment system (OPPS) to implement applicable statutory requirements and changes arising from our continuing experience with this system, and to implement certain provisions of the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010 (Affordable Care Act). These provisions include OPPS provisions, such as changes to the wage index, market basket update, and removal of some cost-sharing for preventive services, but also changes to the physician self-referral rules and provider agreement regulations and changes to payments to hospitals for graduate medical education costs.

Additionally, in this final rule, we describe the finalized changes to the amounts and factors used to determine the payment rates for Medicare hospital outpatient services paid under the prospective payment system for CY 2011 and to policies addressing the basis for receiving payment. Furthermore, this rule implements further revisions to refine our policy for physician supervision of hospital outpatient therapeutic services, offering some flexibility that is consistent with ensuring safe, high quality care for Medicare beneficiaries.

In addition, this rule updates the revised Medicare ambulatory surgical center (ASC) payment system to implement applicable statutory requirements and changes arising from our continuing experience with this system. In this rule we set forth the applicable

relative payment weights and amounts for services furnished in ASCs, specific Healthcare Common Procedure Coding System (HCPCS) codes to which these changes apply, and other pertinent ratesetting information for the CY 2011 ASC payment system.

Approximately 40 percent of the hospitals and 75 percent of the ASCs that participate in Medicare are small entities, either because their revenues fall below the Small Business Administration's size standards for small businesses, or because they are nonprofit, or both.

The effects of this final rule with comment period vary considerably by type of hospital, location, bed size, and other variables, as well as by type of ambulatory surgical center, location, patient population, and types of surgical procedures provided, among other factors.

With respect to payment for hospital outpatient services, overall we estimate that payments to hospitals under the OPPTS will increase by about 2.5 percent on average in CY 2011, taking into consideration the hospital market basket update factor of 2.60 percent less a 0.25 percentage point reduction required under the Affordable Care Act, resulting in an update factor of 2.35 percent. Also, as required by the statute, we will reduce the update by 2.0 percentage points for hospitals required to participate but that did not participate in quality data reporting for outpatient services or did not report the quality data successfully in CY 2010 for the full CY 2011 update, resulting in a 0.35 percent update for those hospitals. Because effects will vary from hospital to hospital, this rule may have a significant impact on a substantial number of small entities. Effects on ASCs will be more complex and depend in large part on the mix of services ASCs provide. We are providing ASCs with a 0.2 percent update for CY 2011, based on the 1.5 percent estimated Consumer Price Index for All Urban Consumers applicable to the ASC payment system less a multifactor productivity adjustment of 1.3 percent required under the Affordable Care Act. The overall effects of this final rule with comment period on CY 2011 Medicare ASC payment system and OPPTS payment are intended to be budget neutral.

This rule imposes no direct Federal compliance requirements on hospitals or ASCs. In order to assist hospitals in understanding and adapting to changes in Medicare billing and payment for procedures, we have developed a Web page for hospital outpatient services that includes substantial downloadable explanatory materials at:

<http://www.cms.gov/HospitalOutpatientPPS/>.

We have a similar Web page focusing on ASCs at:

<http://www.cms.gov/ASCPayment>