



April 26, 2019 *Special Regulatory Update*

Congress is in recess this week.

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ACEP Meets with OSHA to Expand Protections from ED Violence

This week, ACEP held a meeting with the Occupational Safety and Health Administration (OSHA) in order to discuss strengthening protections for healthcare workers, especially those in the ED, from workplace violence. Currently, no such federal regulation exists, but OSHA has begun to explore its development. ACEP has long advocated for such protections, and in 2017, a representative from ACEP, Dr. James Phillips, appeared at an OSHA public stakeholder meeting where he provided the emergency physician's perspective on this issue.

More recently, ACEP drew attention to the issue by releasing results of a survey it held that reported nearly half of emergency physicians polled had been physically assaulted, with more than 60 percent occurring in the past year—the survey drew the attention of major media outlets such as [NBC News](#) and a front page [story in the Boston Globe](#). ACEP worked with Congressional offices to refine H.R. 1309, The Workplace Violence Prevention for Health Care and Social Service Workers Act, and last month sent a [letter of support](#) asking Congress to consider how EDs in particular are staffed to ensure the important provisions of this legislation are implemented appropriately.

ACEP will continue to work with OSHA as it develops the proposed regulation to protect healthcare workers to ensure that it addresses the unique needs of those who work in emergency departments.

NIH Awards \$350M in Grants to 4 States to Reduce Overdose Death

Last Thursday, April 18, the Department of Health and Human Services (HHS) awarded \$350 million in grants to four states significantly impacted by the opioid epidemic. The National Institute of Health (NIH) selected the following research sites for the HEALing Communities Study: University of Kentucky, Boston Medical Center, Columbia University and Ohio State University. The HEALing Communities goal is to reduce overdose deaths by 40 percent over three years. This study is part of the NIH HEAL (Helping to End Addiction Long-term) Initiative, a trans-agency effort to speed scientific solutions to end the opioid crisis.

Each of the four sites is partnering with 15 or more communities to measure the impact of integrating evidence-based prevention, treatment and recovery interventions across primary care, behavioral health, justice, and other settings in highly affected parts of the country.

This study is designed to track the efforts of communities to do the following:

- Reduce the incidence of opioid use disorder;
- Increase the number of individuals receiving medication-based treatment for opioid use disorder;
- Increase treatment retention beyond six months;
- Provide recovery support services; and
- Expand the distribution of naloxone.

For more information, please click [here](#).

CMS Releases the ACA Final Notice of Benefit and Payment Parameters for 2020

Also on April 18, the Centers for Medicare & Medicaid Services (CMS) issued the final annual Notice of Benefit and Payment Parameters for the 2020 benefit year. This rule finalized regulatory and financial parameters (that were proposed in a proposed notice) that affect qualified health plans (QHPs) on the Affordable Care Act (ACA) Exchanges, plans in the individual, small group, and large group markets, and self-funded group health plans.

Of note, the proposed notice included a short request for comments related to price transparency. CMS is exploring ways to improve consumers' access to information about health care costs, including requiring health insurers to disclose a consumer's anticipated costs for particular services upon request within a certain timeframe. ACEP submitted a response to this request for comments, found [here](#). In the final notice, CMS acknowledges the receipt of comments on price transparency and will consider them going forward.

The final notice finalizes a technical change to how ACA subsidies for low-income Americans are calculated, potentially raising insurance costs for some customers and likely shrinking enrollment in the ACA Exchanges. CMS expects the changes in the final 2020 payment and benefit rules will result in \$980 million less in federal financial assistance in 2020 and 70,000 fewer customers.

CMS also finalized a proposal to lower the user fee rate for QHPs sold on the ACA Exchanges from 3.5 percent to 3.0 percent of premiums. Since CMS assumes that insurers typically pass the cost of the user fees down to their customers in the form of higher premiums, the agency believes that a lower user fee rate will slightly reduce premiums.

For more information, please click [here](#).

CMS Releases Annual Medicare Proposed Rules for Fiscal Year (FY) 2020

Over the last couple of weeks, CMS has released proposed regulations impacting Medicare reimbursement for a number of facility types. These rules, once finalized, would impact payment for FY 2020, which spans from October 1, 2019 to September 30, 2020.

The major fiscal year rule impacts inpatient hospitals, and on Tuesday, CMS released the FY 2020 Inpatient Prospective Payment System (IPPS) proposed rule. In the IPPS rule, CMS is proposing to increase hospital payments by approximately 3.7 percent, with a \$4.7 billion total increase in Medicare spending on inpatient hospital services in FY 2020. The major policy changes in the proposed rule include the following:

- Increasing Payment for Rural Hospitals: CMS is proposing to increase the wage index of hospitals with a wage index value below the 25th percentile.
- Incentives for Using New Technology: CMS is proposing to increase the new technology add-on payment covering high costs involving new technologies and waive for two years the requirement for evidence that medical devices meeting the Food and Drug Administration's Breakthrough Devices designations must represent "substantial clinical improvement.
- CAR-T Technology: CMS is considering new payment policies for CAR-T technology, including "additional changes to new technology add-on payments for CAR-T and changes to the formula" used to

calculate hospital payments for CAR-T.

For more information on the IPPS proposed rule, please click [here](#).

Beyond the IPPS proposed rule, CMS has also released the following rules:

- On April 17, CMS issued a proposed rule that would update Medicare payments for Inpatient Rehabilitation Facilities (IRFs) in FY 2020. CMS is proposing to increase IRF payments by 2.5 percent based on a market basket update that CMS calculates in the rule. For more information click [here](#).
- On April 18, CMS issued a proposed rule to update Medicare payments for Inpatient Psychiatric Facilities (IPFs). Based on a market basket update CMS calculates in the rule, CMS estimates total IPF payments to increase by 1.7 percent or \$75 million in FY 2020. For more information click [here](#).
- On April 19, CMS issued a proposed rule that updates hospice payment rates by 2.7 percent (\$540 million increase in their payments) for FY 2020. For more information click [here](#).
- On April 19, CMS issued a proposed rule that updates the Medicare payment rates and the quality programs for skilled nursing facilities (SNFs). CMS projects aggregate payments to SNFs will increase by \$887 million, or 2.5 percent, for FY 2020 compared to FY 2019. For more information click [here](#).

It is important to note that the major Medicare rule impacting physician payments is released later in the year since it is based on a calendar year rulemaking cycle rather than a fiscal year cycle.

2019 Medicare Trustees Report is Released

On Monday, the Medicare Board of Trustees released the 2019 Medicare Trustees Report, an annual report which evaluates the current status of the two Medicare Trust Funds and provides financial projections for the next 75 years. The year's report estimates that the Hospital Insurance (HI) Trust Fund, which covers costs under Medicare Part A, will be depleted by 2026, the same year that was projected in last year's report.

It is important to note that the Supplementary Medical Insurance (SMI) Trust Fund, which covers Medicare Part B (including physician) spending, does not face the same fiscal challenges as the HI Trust Fund. The financing of the SMI Trust Fund is structured in such a way that premium income and general revenue income are reset each year to cover expected costs and preserve an adequate contingency margin. **Like last year, the report acknowledges that annual Medicare updates for physicians, which were set by the Medicare Access and CHIP Reauthorization Act (MACRA), do NOT keep pace with the average rate of physician cost increases. The Trustees believe that, absent a change in the delivery system or future legislative update to physician rates, access to Medicare-participating physicians will become a significant issue in the long term.**

The full 2019 Medicare Trustees report can be found [here](#).

CMMI Announces New Primary Care Payment Models

On Monday, the Center for Medicare & Medicaid Innovation (CMMI) announced the [CMS Primary Cares Initiative](#), which includes new voluntary payment models that CMS believes will transform primary care to deliver better value for patients throughout the healthcare system.

The CMS Primary Cares Initiative will provide primary care practices with five new payment model options under two paths: Primary Care First and Direct Contracting. CMMI hopes to include 25 percent of all Medicare Fee-for-Service beneficiaries in this initiative—or nearly 11 million people. CMMI also estimates that a quarter of all primary care practitioners as well as other health care providers will participate.

The Primary Care First (PCF) payment model options will provide payment to individual primary practices through a simplified total monthly payment. Physicians will be eligible for a performance-based adjustment providing an upside of up to 50% of revenue as well as a small downside (10% of revenue)

incentive to reduce costs and improve quality, assessed and paid quarterly. PCF also includes a payment model option that provides higher payments to practices that specialize in care for high need patients, including those with complex, chronic needs and seriously ill populations. Applications for this model should be made available in the next month, with a start date of January 2020.

While the PCF model focuses on individual primary care practice sites, the Direct Contracting (DC) model aims to engage larger organizations that have experience taking on financial risk and serving larger patient populations, such as Accountable Care Organizations (ACOs). Participants in this model will have an option of being liable for either 50 percent of the total cost of care or taking on full risk. CMS is also seeking comment on a third option that would allow organizations to assume responsibility for the total cost of care and health needs of a population in a defined geographic region. The start date for this model is also slated for 2020.

CMS based the design of these payment model options on considerable stakeholder input. The models draw from Physician-Focused Payment Model Technical Advisory Committee (PTAC) review of proposals. It is important to note that ACEP developed an emergency-medicine focused model called the Acute Unscheduled Care Model (AUCM) that was [endorsed by the PTAC](#). We look forward to working with the HHS Secretary and CMMI on implementing the AUCM.



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