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**THA Federal Priority: Site Neutrality**

*Updated October 2020*

**Why this is important**

Site neutrality refers to a policy which neutralizes the payment differences between what physician offices and hospital outpatient departments are paid for certain clinical services, regardless of differences in the site of care.

**Key talking points**

* The payment cuts for hospital outpatient clinic visits threatens to obstruct access to care, especially in rural and other vulnerable communities, where these clinics provide convenient access to care.
* An analysis by the AHA comparing the Medicare patients seen in physician offices with those in hospital outpatient clinics concluded that the hospital patients have more chronic conditions and are higher utilizers of hospitals and emergency departments, indicating the legitimate differences in health status between the two groups.
* THA estimates a $1.5-$3 million negative impact on Tennessee hospitals in CY 2020 from this flawed policy.
* The FY 2021 Medicare Outpatient PPS rule fortunately included no additional negative impact to Tennessee hospitals.

**Background**

Site neutrality has been under consideration for several sessions of Congress and in 2015 Congress passed the Bipartisan Budget Act of 2015, which stipulates off-campus provider-based sites that began billing under the Outpatient Prospective Payment System (OPPS) on or after Nov. 2, 2015 would not be paid for most services under OPPS. In rulemaking the following year CMS expanded the services paid under the “site neutral” policy, further lowering payments for hospital outpatient departments (HOPD) paid under OPPS.

Congress has looked at expanding the site neutral approach for other hospital outpatient services and raised the possibility in the 115th Congress of “neutralizing” payments between inpatient rehabilitation and skilled nursing care. Since these proposals always default to the lower payment, the proposals are scored with savings and have also been seen as a tool to pay for other legislative priorities.

Since the legislative action in 2015, CMS has since expanded the services paid under the “site neutral” policy, further lowering payments for HOPDs paid under OPPS and expanding beyond the original “grandfathered” Nov. 2, 2015 limits, including CY2019 reduction to payment for routine clinical visits to off-campus hospital outpatient departments by 30% compared with CY 2018 payments, and reducing by 60% in CY2020 compared with CY2018.

**Legal timeline and decisions to date**

* **December 2018** - The American Hospital Association and several other hospital organizations filed a lawsuit to block the Administration’s site neutrality regulation.
* **September 2019** - a U.S. District Court vacated the 2019 Medicare off-campus reimbursement cuts.
* **January 2020** - CMS responded announcing it would implement the court’s order for 2019 Medicare Hospital Outpatient Prospective Payment System (OPPS) rates but would proceed with the second year of those for 2020 OPPS rates.  In a [December 19 press release](https://www.cms.gov/outreach-and-educationoutreachffsprovpartprogprovider-partnership-email-archive/2019-12-19#_Toc27549718), CMS announced its intention to correct the 2019 payment by installing a revised OPPS pricer to update the rates being applied to those claim lines. The release stated that “starting January 1, 2020, and over the next few months, the Medicare Administrative Contractors will automatically reprocess claims paid at the reduced rate; **no provider action is needed**.” The CY 2019 OPPS rule reduced Medicare payments for clinic visit services at all off-campus provider-based departments by 60 percent to match the rate for similar services at physician offices. The CMS press release quoted the [CY 2020 OPPS final rule](https://www.federalregister.gov/documents/2019/11/12/2019-24138/medicare-program-changes-to-hospital-outpatient-prospective-payment-and-ambulatory-surgical-center), stating: “We do not believe it is appropriate to at this time make a change to the second year of the two-year phase-in of the clinic visit policy.”
* **April 2020** – CMS petitions September district court decision to Federal Appeals Court
* **July 2020** – Appeals court rules HHS has authority to implement site neutral payments
* **Oct 2020** - The D.C. Circuit Court of Appeals elected not to rehear arguments on site-neutral payment reductions. The decision is an unfortunate setback for hospitals, as the rulings mean the cuts will remain in place. The hospital groups leading the challenges have not indicated what their next steps will be, or if they will appeal the rulings to the Supreme Court