MINTZ LEVIN
Mintz Levin Cohn Ferris Glovsky and Popeo PC

Health Law Alert: TRICARE Announces Implementation of Medicare's Outpatient Prospective Payment System

12/23/2008

TRICARE is the Department of Defense (DoD) health care system that delivers care to its approximately 8.7 million uniformed services beneficiaries (active duty, retirees, and dependents of each) through military treatment facilities or through arrangements with non-DoD facilities that contract with intermediaries. In 2001, Congress mandated that TRICARE conform its payment methodologies to those used by Medicare.[1]

On December 10, 2008, as the most recent step in implementing this mandate, DoD released a final rule implementing a hospital outpatient prospective payment system (OPPS) for TRICARE that is based on that used by Medicare.[2] Currently, outpatient services rendered to TRICARE patients are reimbursed under allowable charge methodologies that include CHAMPUS Maximum Allowable Charge rates and Ambulatory Surgery Rates. Under the new TRICARE OPPS, hospital outpatient services will be paid on a rate-per-service basis that varies according to the Ambulatory Payment Classification (APC) group to which the services are assigned. The Level I Current Procedural Terminology and Level II Healthcare Common Procedure Coding System codes and descriptors will be used to identify and group the services within each APC.

TRICARE intends for its OPPS to track Medicare's by keeping up to date with the Medicare OPPS methodology, including all statutory and regulatory modifications, new guidance that CMS may issue, and any other changes to the amounts or factors used to determine the payment rates for outpatient services.

While TRICARE plans to remain as true as possible to Medicare's OPPS methodology, there will be some deviations required to accommodate the uniqueness of the TRICARE program. For example, Medicare's OPPS imposes a coinsurance that was initially frozen at 20% of the national median charge for the services within each APC, or 20% of the APC payment rate, whichever is greater. DoD concluded that the imposition of this unadjusted national coinsurance amount would have an adverse financial impact on TRICARE beneficiaries (*i.e.*, a significantly higher cost-sharing for TRICARE Prime beneficiaries), so TRICARE will use its own outpatient deductible and cost-sharing/copayment system.

The TRICARE OPPS proposed rule was published on April 1, 2008 and included proposals for two types of adjustments to the Medicare OPPS methodology: a temporary transitional payment adjustment (TTPA) and a temporary military contingency payment adjustment (TMCPA).

In the final rule, the TTPA system includes all hospitals, both network and non-network, and allows a transition from current rates to Medicare OPPS rates over a specified time period to ease the financial impact of the introduction of the new methodology. For network hospitals, the TTPA covers a four-year period, and for non-network hospitals, a three-year period, with reductions in each of the transition years.

The TTPA provides for rates established in each of the transition years as set percentages of the Medicare OPPS rates for the equivalent APCs. For network hospitals the following applies:

- Year 1: The five clinic-visit APCs will be set at 175% of the Medicare APC level and the five ER-visit APCs will be set at 200%.
- Year 2: The five clinic-visit APCs will be set at 150% of the Medicare APC level and the five ER-visit APCs will be set at 175%.
- Year 3: The five clinic-visit APCs will be set at 130% of the Medicare APC level and the five ER-visit APCs will be set at 150%.
- Year 4: The five clinic-visit APCs will be set at 115% of the Medicare APC level and the five ER-visit APCs will be set at 130%.
- Year 5: All 10 APCs will be at 100% of Medicare APC levels.

For non-network hospitals the following applies:

- Year 1: Clinic- and ER-visit APCs will be set at 140% of the Medicare APC level.
- Year 2: Clinic- and ER-visit APCs will be set at 125% of the Medicare APC level.
- Year 3: Clinic- and ER-visit APCs will be set at 110% of the Medicare APC level.
- Year 4: All 10 APCs will be at 100% of Medicare APC levels.

Further, in response to recommendations to adopt, modify, or extend temporary adjustments for network hospitals deemed essential for military readiness and support during contingency operations, the final rule will allow the reimbursement of higher payment rates for hospital-based outpatient health care services, if doing so is determined necessary to ensure adequate preferred-provider networks. For example, TRICARE could determine that the initial TTPA of 200% for ER visits in a particular network hospital is not sufficient to ensure network adequacy, and, as a result, an additional TMCPA of 25% (*i.e.*, 225% of the OPPS rate for ER visits in this example) would be necessary to support military contingency operations. This higher rate will be authorized only if all reasonable efforts have been exhausted in attempting to create an adequate network and that it is cost-effective and appropriate to pay the higher rate to ensure an appropriate mix of primary care and specialists in the network.

The final rule is effective February 9, 2009; however, it will not be implemented until May 1, 2009. Because TRICARE represents a significant payer for hospital services, especially in certain geographic areas of the country, the impact on hospital outpatient payment revenue is expected to be substantial. DoD estimates that the total reduction in hospital revenue in the first year of implementation of the TRICARE OPPS provisions (which, for purposes of DoD's Regulatory Impact Analysis, is assumed to be April 1, 2009 to March 31, 2010) to be approximately $460 million.

Endnotes

[1] 10 U.S.C. §§ 1079(j)(2), 1079(h).

[2] 73 Fed. Reg. 74945 (Dec. 10, 2008).

For assistance in this area, please contact one of the attorneys listed below or any member of your Mintz Levin client service team.

Stephen M. Weiner
(617) 348-1757
SWeiner@mintz.com

Nili S. Yolin
(212) 692-6799

NSYolin@mintz.com