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*Editors: [Leslie Demaree Goldsmith](#) and [Carel T. Hedlund](#)*

## CMS Proposes Physician Payment Reductions for Services Within Three-Day Payment Window

By: [Thomas W. Coons](#)

In its recently proposed [Calendar Year 2012 Physician Fee Schedule \(PFS\) Update \[PDF\]](#), 76 Fed. Reg. 42772, 42914-42917 (July 19, 2011), the Agency proposes to expand the three-day payment window policy to include physician practices that are wholly-owned or wholly-operated by hospitals. More specifically, CMS proposes to reduce Medicare payment to physicians under the PFS where, within three days of receiving the physician service, the patient is admitted to a hospital that wholly owns or wholly operates the physician practice. The proposed rule, if implemented, will be effective for services furnished on or after January 1, 2012.

Under the proposed rule, CMS would establish a new Medicare HCPCS modifier to signal to the claims processing system that payment should be made as if the service had been provided in the hospital and not in the physician's office. Although the site of service on the claim will be a physician's office, the payment amount will be the same as the amount that would have been paid if the site of service had been the hospital. For CPT/HCPCS codes with a technical component (TC)/professional component (PC) split and that fall within the three-day window, CMS would pay only the professional component for those codes. For codes without a TC/PC split CMS would pay only the facility rate for the codes. Special rules would apply to surgical services included within global surgical package payment rules to capture certain pre-admission diagnostic and non-diagnostic services.

As a consequence of the proposed rule, each wholly-owned or wholly-operated physician practice will be required to manage its billing processes to ensure that it bills for physician services correctly when a subsequent, related inpatient

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admission occurs to the hospital that wholly owns or wholly operates the physician practice. Each admitting hospital, in turn, will be responsible for notifying the wholly-owned or wholly-operated physician practice of the related inpatient admission. This will undoubtedly create significant administrative burdens.

#### **Ober|Kaler's Comments**

The guidelines as to when a practice is wholly-owned or wholly-operated by a hospital may be unclear to personnel who enroll physician practices with Medicare. Currently, physician practices enroll in Medicare using the CMS enrollment form 855B. The enrollment form reports certain pertinent practice information such as ownership, organizational structure, and operational duties. Similarly, hospitals enroll in Medicare using CMS form 855A, which reports hospital information such as ownership, organizational structure and operational duties. Medicare administrative contractors will use data from these forms to establish the ownership relationships for identified physician practices. These forms, however, may be an inaccurate data source in identifying whether a practice is "wholly" owned or operated by a hospital as that term is defined in CMS regulations.

Physician practices that fit within the three-day payment rule will be substantially disadvantaged under the proposed rule. Thus, both hospitals and physician practices may wish review their current ownership and operational structures and to ensure that their 855A and 855B forms to ensure that the data CMS has is accurate. Moreover, those entities may be well advised to revisit their current structure and operation to determine whether changes would be appropriate if the proposed rule is adopted in its current form.

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