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IN THIS ISSUE

IN THIS ISSUE
Increased Scrutiny to Obtain and Maintain Medicare and Medicaid Enrollment - Final Regulations Published
by Donna J. Senft

Rewarding Quality? Not Exactly - CMS Proposes Value-Based Purchasing Rule
by Kristin Cilento Carter

Can We Use 340B Drugs for...? New Answers on the Horizon
by Christine M. Morse

Editors: Leslie Demaree Goldsmith and Carel T. Hedlund

Rewarding Quality? Not Exactly - CMS Proposes Value-Based Purchasing Rule

By: Kristin Cilento Carter

After years of hinting that the Medicare payment practices would be modified so that the Centers for Medicare and Medicaid Services (CMS) would no longer be a passive purchaser of health care services, CMS released a proposed rule to implement a hospital value-based purchasing program under which a portion of hospital payment for inpatient services would be based on quality of care. The proposed rule [PDF] was published in the Federal Register on January 13, 2011, and implements Section 3001(a) of the Patient Protection and Affordable Care Act (Pub. L. 111-148) (ACA), which requires CMS to establish a value-based purchasing program applicable to hospital discharges occurring on or after October 1, 2012. Beginning in fiscal year (FY) 2013, CMS proposes that hospitals will receive value-based incentive payments that are based on the hospital meeting specified performance standards. In accordance with the statute, the program must be budget neutral and, thus, will be funded by a 1% reduction in base operating hospital DRG payments for each discharge in FY 2013, which will incrementally increase to a 2% reduction by FY 2017.

CMS proposes to initially adopt 18 measures for the value-based purchasing program for FY 2013. By statute, CMS is required to ensure that the performance measures include six specified conditions or topics: Acute Myocardial Infarction (AMI); Heart Failure (HF); Pneumonia (PN); Surgeries, as measured by the Surgical Care Improvement Project (SCIP); Healthcare-Associated Infections (HAI); and the Hospital Consumer Assessment of Healthcare Providers and Systems survey (HCAHPS). In addition, selected measures must have been reported on the *Hospital Compare* website for at least one year prior to the performance period. Accordingly, the measures selected by CMS for FY 2013 are measures that are currently reported by hospitals participating in CMS' Hospital Inpatient Quality Reporting (IQR) program (formerly known as "RHQDAPU"). CMS

proposes that it will evaluate a hospital's performance taking into account 17 clinical process of care measures currently reported under the Hospital IQR program, as well as eight measures included within the HCAHPS patient experience of care survey.

For the FY 2013 incentive payments, CMS proposes that it will use data associated with hospital discharges from the fourth quarter 2011 and the first and second quarters of FY 2012, as the "performance period" for the proposed clinical process of care and HCAHPS measures. A hospital's performance on each measure during the performance period will be compared with a "baseline period" from July 1, 2009 to March 31, 2010. Whether the hospital receives a value-based incentive payment, and the amount of such payment, will be based on either how well the hospital performs on the specified quality measures during the performance period or how much the hospital's performance improves on the quality measures from its performance during the baseline period. The higher a hospital's achievement or improvement during the performance period, the higher the hospital's value-based incentive payment.

CMS proposes that it will inform each hospital of its estimated performance score and value-based incentive payment for FY 2013 through the QualityNet website at least 60 days prior to October 1, 2012, as required by statute. CMS further proposes that it will notify each hospital of the exact amount of its value-based incentive payment adjustment for FY 2013 discharges on November 1, 2012.

In the proposed rule, CMS sets forth its rationale for selecting the measures to be evaluated under the value-based purchasing program, along with its proposed methodology for calculating a hospital's overall performance score taking into account both an achievement score and improvement score. In addition, CMS sets forth its proposed methodology for determining the incentive payment amounts to each hospital. These payments will increase linearly, with lower performing hospitals receiving lower amounts, and higher performing hospitals receiving higher incentive payments. Furthermore, CMS proposes additional measures for future fiscal years.

While the statute precludes hospitals from challenging the methodology adopted by CMS to implement the value-based purchasing program, CMS will do a future rulemaking to address the process and timing by which a hospital can challenge the calculation of its individual performance assessment and score. CMS seeks comments regarding the appropriateness of an agency-level appeals process under which CMS personnel having appropriate expertise in the value-based purchasing process would decide the appeal.

Comments to the proposed rule are due no later than 5 p.m. on March 8, 2011.

Ober|Kaler's Comments

CMS must, under the statute, implement a value-based purchasing program effective with discharges on or after October 1, 2012. All acute care hospitals should carefully review the proposed rule and consider submitting comments regarding the proposed value-based purchasing methodology, which will yield clear winners and losers. Under the proposed methodology, hospitals that do not either exceed the achievement standards by outperforming other hospitals across the country on the performance measures, or do not demonstrate a clear improvement on the proposed measures from the baseline period, will undoubtedly receive reduced Medicare reimbursement under the value-based purchasing program. Hospitals should also review their procedures and protocols associated with the quality measures selected for the FY 2013 value-based incentive payments, as the performance period will begin under the proposed rule starting with 4th quarter 2011 discharges.