
MEMORANDUM

To: AAHKS **From:** Epstein Becker & Green, P.C.
Date: November 2, 2018
Re: **Summary of the CY 2018 HOPPS Final Rule**

The Centers for Medicare and Medicaid Services (CMS) released the calendar year (“CY”) 2019 Medicare Hospital Outpatient Prospective Payment System (HOPPS) and Ambulatory Surgical Center Final Rule on November 2, 2018. In September, AAHKS submitted comments in response to the HOPPS Proposed Rule. The following is a summary of CMS actions in the Final Rule related to those comments.

I. Proposed Changes to the Inpatient Only (IPO) List

CMS sought stakeholder input on whether CPT code 01402, “Anesthesia for open or surgical arthroscopic procedures on knee joint; total knee arthroplasty”, should be removed from the inpatient only IPO list and whether the code meets the five criteria used by CMS to identify procedures that should be removed. CMS particularly wanted comment on whether CPT code 01402 meets criteria 3 and 4. The five criteria are: (1) Most outpatient departments are equipped to provide the services to the Medicare population; (2) The simplest procedures described by the code may be performed in most outpatient departments; (3) the procedure is related to codes that we have already removed from the IPO list; (4) a determination is made that the procedure is being performed in numerous hospitals on an outpatient basis; and (5) A determination is made that the procedure can be appropriately and safely performed in an ASC, and is on the list of approved ASC procedures or has been proposed by is for addition to the ASC list.

AAHKS Comment:

AAHKS confirmed that CPT code 01402 is indeed is related to 27447 (TKA) which was removed from the IPO list effective in 2018. Further, the procedure is indeed being performed in hospitals on an outpatient basis. However, AAHKS posed to CMS that a more relevant factor is whether the procedure in question is being performed in numerous hospitals on *Medicare beneficiaries* on an outpatient basis. AAHKS stated that, in light of the continued confusion among providers as to CMS’s policy towards TKA, CMS should carefully consider whether the move of CPT 01402 from the IPO will exacerbate confusion over the physician’s role in determining the appropriate admission status for TKA.

A different commenter opposed the removal of CPT code 01402 from the IPO list because the commenter believed that there would be potential detrimental lateral impacts on hospitals participating in the Comprehensive Care for Joint Replacement (CJR) Model, the Bundled Payments for Care Improvement (BPCI) Initiative, the Hospital Value-Based Purchasing (VBP) Program, and the Hospital Readmissions Reduction Program (HRRP).

CMS Response:

CMS will move forward with removal of “Anesthesia for open or surgical arthroscopic procedures on knee joint; total knee arthroplasty”, from the IPO in 2019. It stated that any concerns regarding the impact on CJR or BPCI should be brought to the attention of the Center for Medicare and Medicaid Innovation (CMMI).

II. Ongoing Impacts from the Removal of TKA from the IPO List – Sec.IX

CMS offered no discussion of TJA procedures and the IPO list in the 2019 Proposed Rule. The agency did not propose removing THA from the IPO list, as it had implied it would in prior years. Nor did CMS comment in the Proposed Rule on the provider confusion stemming from the removal in 2018 of TKA from the IPO list and that procedure’s interplay with the Medicare 2-midnight rule policy. Nevertheless, in its comment letter, AAHKS repeated its request that CMS mitigate provider confusion around TKA and 2 midnight rule by (1) reminding hospitals that CMS expects that physicians should determine each Medicare TKA patient’s admission status; and (2) CMS should apply an interim policy under which all TKA admissions longer than 24 hours are presumed to be inpatient status unless the patient satisfies certain clinical standards for outpatient surgery.

CMS Response:

In response to a request for data on morbidity and mortality rates for TKA performed in the outpatient setting versus in the inpatient setting, CMS stated that it does not have sufficient data at this time for a meaningful comparison of quality outcomes associated with TKA procedures. CMS will consider reviewing mortality rates in the future when appropriate data are available, though the agency “would not expect there to be statistically significant differences in morbidity and mortality among Medicare beneficiaries based solely on whether the patient was admitted to the hospital or remained a hospital outpatient (especially because it is likely the same surgeon, the same clinical protocol, and the same staff at a given hospital for both inpatient and outpatient orthopaedic procedures).”

CMS continued,

We remind readers that there are several short stay inpatient cases with a length of stay of 1 or 2 days, which is generally similar to the length of stay for outpatient cases. To be clear, there is a plethora of surgical

procedures that may be performed on either an inpatient basis or an outpatient basis. However, we are not aware of differences in clinical outcomes for patients based solely on this factor. While there are some studies relating to the non-Medicare population regarding differences in outcomes, depending on whether the care setting is inpatient versus outpatient (which could include ASCs), we are not aware of any such studies since the TKA has become a payable procedure under the OPPI in 2018. In addition, we note that interested stakeholders are welcome to research these or other statistics by analyzing data that Medicare makes available.

In response to AAHKS's request for guidance to hospitals on the physician's primary role in TKA admission status decisions, CMS offered the following statement:

We continue to believe that the decision regarding the most appropriate care setting for a given surgical procedure is a complex medical judgment made by the physician based on the beneficiary's individual clinical needs and preferences and on the general requirement that any procedure be reasonable and necessary. We also reiterate our previous statement that the removal of any procedure from the IPO list does not require the procedure to be performed only on an outpatient basis. Rather, we believe that as technology and clinical practice continue to evolve, beneficiaries should continue to receive care in the most appropriate setting. While we continue to expect providers who perform an outpatient TKA procedure on Medicare beneficiaries to use comprehensive patient selection criteria to identify appropriate candidates for the procedure, we believe that the surgeons, clinical staff, and medical specialty societies representing physicians who perform outpatient TKA procedures and possess specialized clinical knowledge and experience are most suited to create such guidelines.
