Services

Proposed Medicare Payment Policies for Rural Emergency Hospitals

As noted in our previous Client Resource, the Consolidated Appropriations Act ("CAA") of 2021, enacted on December 27, 2020, established a new rural Medicare provider category: Rural Emergency Hospitals ("REHs"). These providers may furnish emergency department and observation care, as well as specified outpatient medical and health services, that do not exceed an annual per patient average of 24 hours. Only certain provider types may convert to REHs—namely, critical access hospitals ("CAHs") or rural hospitals with not more than 50 beds participating in Medicare as of December 27, 2020.

Our previous Client Resource focused on the enrollment requirements and Conditions of Participation for REHs. CMS recently released the CY 2023 Proposed Rule for the Outpatient Prospective Payment System ("2023 OPPS Proposed Rule"), found here, which provides clarification on proposed Medicare payment policies and Physician Self-Referral Law ("Stark Law") updates related to REHs. The 2023 OPPS Proposed Rule proposes the following payments for items and services furnished by an REH:

Covered Outpatient Department Services. CMS proposes to pay for REH Services (defined as all covered outpatient department ("OPD") services furnished by an REH that would be paid under the OPPS when provided in a hospital paid under the OPPS for outpatient services) under the Medicare Outpatient Prospective Payment System ("OPPS") for covered OPD services increased by 5%. The beneficiary copayment amount for REH Services would be the amounts determined under the OPPS for the equivalent covered OPD service, excluding the 5% payment increase.

Non-REH Services. Those services that are not REH Services but are permitted to be performed in or by an REH (for example, laboratory services paid under the Clinical Laboratory Fee Schedule and outpatient rehabilitation services) would be paid at the same rate the service would be paid if performed in a hospital OPD and paid a fee under a fee schedule other than the OPPS.

Ambulance Services. An entity owned and operated by an REH that provides ambulance services would receive payment for such services under the ambulance fee schedule.

Post-Hospital Extended Care Services. REHs are permitted to include a unit that is a distinct part of the facility licensed as a skilled nursing facility to furnish post-hospital extended care services. For post-hospital extended care services provided by an REH in such a unit, CMS proposes to pay the REH through the skilled nursing facility prospective payment system.

Off-Campus Provider-Based Department. Items and services furnished by off-campus provider-based departments ("PBDs") that otherwise meet the definition of REH Services will receive the REH Services payment amount of the OPPS payment plus 5%. Items and services furnished by an off-campus PBD of an REH that do not meet the definition of REH Services would be paid under the payment system applicable to that item or service, provided requirements for payment are otherwise met. Thus, the Section 603 amendments to the Social Security Act limiting new off-campus provider-based department payments would not apply to an REH.

Monthly Facility Payment. Further, Medicare will pay an additional monthly facility payment to the REH. As proposed by CMS, every REH enrolled in calendar year 2023 would receive a monthly facility payment of $268,294.

Stark Law REH Exception. With respect to application of the Stark Law to REHs, CMS confirmed that an REH would be an entity that furnishes designated health services payable by Medicare by virtue of furnishing radiology and certain imaging services, clinical laboratory services, and outpatient prescription drugs, including any other designated health services that the REH elects to provide (see previous Client Resource for further information on various services that may be furnished by an REH). CMS does not believe REHs may avail themselves of the "whole hospital exception" and likely will have administrative challenges in adhering with the rural provider exception for ownership or investment interest by a physician (or immediate family member of a physician). Therefore, CMS proposes a new "REH exception" to be codified at 42 C.F.R. 411.356(c)(4) that would protect ownership or investment interests in an REH for designed health services furnished by the REH.

Each of the above payment policies includes more specific requirements which would be codified through regulation and are available to view in their entirety here.

As with any of our Client Resources, if you have questions about the above, please reach out to your Kutak Rock attorney or a member of the firm's National Healthcare Group.