AAOS
AMERICAN ASSOCIATION OF ORTHOPAEDIC SURGEONS

CY 2023 Medicare Hospital Outpatient Prospective Payment/Ambulatory Surgical Center Final Rule

The Calendar Year (CY) 2023 Medicare Hospital Outpatient Prospective Payment System/Ambulatory Surgical Center (OPPS/ASC) final rule was released on November 1, 2022, by the Centers for Medicare & Medicaid Services (CMS). The annual payment rule sets policy for hospital outpatient departments and ambulatory surgical centers participating in the Medicare program and makes updates to the Hospital Outpatient Quality Payment Program. AAOS submitted formal comments on the proposed rule to CMS on September 9, 2022. The outline below compares what AAOS advocated for to what was finalized. The majority of the regulations will take effect on January 1, 2023.

Topic	AAOS Comment/Recommendation	Finalized Policy
Rural Emergency Hospitals (REH) Physician Self-Referral Law Update	AAOS welcomes the increased latitude for physicians to form value-based enterprises. As we have stated previously, care coordination is an essential element of a value-based healthcare system, and we hope that these proposed updates will improve the quality of care and health outcomes for the rural populations who have limited access to health care. AAOS believes that physician self-referral law flexibilities will ensure and expand the ability of physicians to address patient needs in rural communities especially for emergent care. Although the Stark Law sharply restricts physician ownership in hospitals, AAOS urges CMS to allow physician-owned hospitals to increase the number of their licensed beds, operating rooms, and procedure rooms (subject to applicable State licensing laws) in rural areas.	CMS is not finalizing their proposal to create an exception to the Physician Self-Referral Law for ownership or investment in REHs. CMS believes that the financial relationships under the proposed exception would present a risk of program abuse.
Changes to the Inpatient Only List	AAOS is supportive of removing CPT code 22632 (*Arthrodesis, posterior interbody technique, including laminectomy and/or discectomy to prepare interspace (other than for decompression), single interspace; each additional interspace (list separately*	CMS is removing CPT code 22632 (*Arthrodesis, posterior interbody technique, including laminectomy and/or discectomy to prepare interspace (other than for decompression), single interspace;*

	in addition to code for primary procedure) from the Inpatient Only list. CPT code 22632 is an add-on code that is typically billed with the primary procedure described by CPT code 22630, Arthrodesis, posterior interbody technique, including laminectomy and/or discectomy to prepare interspace (other than for decompression), single interspace; lumbar, which was removed from the IPO list in CY 2021. However, we are concerned that CMS is proposing to assign CPT code 22632 to status indicator "N" which means that payment is packaged, therefore no separate ambulatory payment classification (APC) payment will be allowed. These are device intensive procedures and not allowing for separate payments of devices and ancillary services is problematic for providers. We urge CMS to consider a separate cost-based payment system for devices under OPPS and thereby not finalize the N indicator for this procedure.	*each additional interspace*) from the IPO beginning in CY 2023. They are assigning CPT code 22632 to status indicator "N" for CY 2023.
Prior Authorization	AAOS has serious concerns with the increased use of prior authorization in the Outpatient Prospective Payment System. This new approach by CMS to increase the amount of prior authorization requirements for clinicians will set a very dangerous precedent. This is the second time that CMS is proposing new prior authorization requirements in the OPPS, and we urge reconsideration of these policies.	CMS is adding facet joint interventions as a category of services to the prior authorization process for Hospital Outpatient Departments beginning on July 1, 2023. CMS is adding this category based on their determination that there has been an "unnecessary increase in the volume of these services." The service category will include facet joint injections, medial

	The addition of external, third-party requirements in order to complete an internal process only adds to this challenge. AAOS requests that this proposal be formally removed from the final CY 2023 OPPS rule.	branch blocks, and facet joint nerve destruction.
ASC Covered Procedure List Nomination	AAOS appreciates the clarification provided by CMS in this rule on submission of recommendations for ambulatory surgical center (ASC) Covered Procedures by stakeholders. Medical specialty societies like ours have the clinical expertise to recommend procedures in our specialty that can be safely performed in an ASC. We also urge CMS to consider “add-on” services for a particular procedure that are important and significant for patient safety. Add-on services that trigger a complexity adjustment in the hospital outpatient setting payment must be paid separately in the ASC setting so as to create an incentive for physicians to perform the important add-on services.	CMS is finalizing a new policy to pay for complexity adjustments in the ASC setting using OPPS complexity-adjusted C-APC codes. (Listed in Addendum AA)
Payment for Non-Opioid Products Under Section 6082 of the Support Act	The AAOS supports incentives to increase the availability of non-opioid alternatives for pain management. To ensure access to opioid use disorder treatment for Medicare beneficiaries across the continuum of care, CMS must allow for separate payment for non-opioid alternatives for pain management in outpatient settings. Additionally, we encourage CMS to incentivize payment for alternative chronic pain management treatments such as acupuncture, chiropractic services, osteopathic manipulation, cognitive	CMS is finalizing a proposal to make separate payment for several non-opioid pain management drugs which function as a supply in a surgical procedure under the ASC system for CY 2023. (Table 84)

	behavioral therapy, and physical therapy, when appropriate, in outpatient settings of care.	
Promoting Competition and Transparency Regarding the Effects of Provider Mergers, Acquisitions, Consolidations, and Changes in Ownership	AAOS appreciates the Administration's recognition of the impact that consolidation is having on the healthcare industry and the ensuing "whole-of-government" approach to preventing mergers and promoting competition across industries. We request that CMS continue to invest in research on the impact of all types of healthcare consolidation on access to, and quality of, care for musculoskeletal patients.	CMS received 21 correspondences submitted in response to the Competition RFI. CMS also received 180 pieces of correspondence related to CMS' hospital price transparency efforts and its role in driving competition. CMS thanks all interested parties for their comments and will take them into consideration in the future.
OPPS Payment for Software as a Service	The AAOS supports reimbursement for use of 'Software as a Service' (SaaS) technology platforms and services. The recent pandemic has increased the speed of adoption of these technologies in health care and is likely to impact clinical trials, data interoperability, remote patient monitoring and rare disease research. Increased use of machine learning and artificial intelligence in orthopaedics has been able to improve diagnostic accuracy, identify the most critical patients and reduce human error in diagnostics and treatment. We, however, urge CMS to ensure adequate data security and patient data safety while incentivizing the use of cloud-based platforms.	CMS is adopting a policy to except certain SaaS add-on codes from their general policy of packaging add-on services. The SaaS CPT codes will be assigned to identical APCs and have the same status indicator assignments as their standalone codes. (Table 69)