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ADVISORY E-ALERT

November 30, 2018

CMS Boosts Independent Physician Practice and Physician-Owned Facilities: Cuts Payments to Hospital Outpatient Clinics By 40% and Increases Payments to ASCs by 2.1%

In one fell swoop, CMS pulled the rug out from under hospital control of physician practice, rendering many, if not almost all, hospital outpatient clinics unprofitable.

CMS also announced a 2.1% increase in the level of payments to ASCs, many of which are physician owned. At the same time, CMS has added almost 200 new procedures to the list of procedures approved for ASC payment. It estimates that annual Medicare payment to ASCs will increase by approximately $300 million to around $4.89 billion per year.

This is a story about the positive impact these changes will make on opportunities for physicians, both in connection with independent medical practices and in respect of physician-owned facilities such as ASCs.

The Back Story

Spurred on in large part by Obamacare, hospitals “aligned” physicians by, in many cases, acquiring their practices and rolling the former independent physicians, together with many new-hires, into hospital-owned or hospital-controlled practices.

The key to this was the fact that those practices, in their guise as “hospital outpatient clinics,” were reimbursed by Medicare on a fee schedule (the Outpatient Prospective Payment System, “OPPS”) that was approximately 40% richer than the amount the exact same services were reimbursed to independent physician practices under Medicare’s Physician Fee Schedule.

Why, you might ask, would the government do that? Well, hospitals, through much better lobbying than physicians could muster, had fooled the government into believing that cost drives value. And everyone knows that hospitals have outrageous costs.

But the reality is that cost has nothing to do with value. Do you care that the local market loses five cents on every pound of grapes that you buy? No, the thought never enters your mind. You just know that you’re willing to pay 88 cents a pound for grapes.

Finally, the government has realized the same thing. In the vernacular, “grapes is grapes.”

The exact same service by the exact same physician on Tuesday, which becomes a hospital outpatient clinic by way of the hospital's acquisition of the medical practice on Wednesday, will be reimbursed the same way on Thursday. This is the notion of "site neutrality" behind the 40% cut to hospital outpatient clinics under the just announced 2019 OPPS.

Of course, the American Hospital Association wants to sue to stop what some hospital folks have called a "roadblock to care." Roadblock? Care? No, it's simply the end of an entitlement, and the dawning of the realization that the emperor never actually had any clothes. It's a start in dismantling a hospital-centric healthcare system. It's a reduction in healthcare spending for both Medicare and for the patients whose co-pays shot up due to hospital slight of hand: slap up a sign, call it a hospital clinic, and jack up the amount due.

What This Means For You

CMS's changes signal a major shift in favor of independent physician practice.

With the economics of running outpatient clinics turned upside down, we can expect to see hospitals closing their clinics. Some hospitals will close completely. (See The Impending Death of Hospitals.) We can also expect to see them withdrawing from the role of physician employer, at least as to office-based physicians.

Jettisoned physician-employees will be seeking new opportunities, perhaps at a significant distance from where they currently call home.

The inability to control physicians through employment will have a significant impact on referral patterns both within surviving hospital system structures and without.

Community practice physicians will be particularly well-placed to gain referrals from which they were previously, in all practicality, shut out.

Additionally, I expect the change in referral patterns to be a major boost to physician-owned facilities, including ambulatory surgery centers and what I call a Massive Outpatient Clinic™: A combination of an ASC, a medical office building, and one or more of a menu of complementary offerings — essentially a "non-hospital hospital."

There are additional reasons for my bullishness on physician-owned ASCs:

First, if the government's eyes are open to the fact that cost doesn't drive value, then payments to hospital outpatient departments ("HOPDs") will soon be reduced to ASC fee schedule levels. That will moot most HOPDs.

Second, as mentioned above, CMS is also expanding the role of, and improving the economics for, freestanding (read that as physician-owned) ASCs.

Among other things, the 2019 payment rules for ASCs provide for a 2.1% increase in payment to freestanding surgery centers, add almost 200 new codes to the list of procedures approved for ASC payment, and call for a number of "surgery-like" procedures to be added to the covered list. On the interventional surgery front, 12 additional cardiac catheterization procedures will be added to the ASC approved payment list. And, very

catheterization procedures will be added to the ASC approved payment list. And, very interestingly, instead of the historically applied, more general CPI-based adjustment formula, CMS is proposing to use the same "market basket" approach it uses to adjust hospital outpatient department ("HOPD") rates in connection with 2019 payments, forward.

What do you know, it's win-win! Physicians win because independent practice is strengthened. Patients win because the co-pays will be lower, both for physician visits and in connection with surgeries at ASCs as opposed to at HOPDs.

Sorry hospitals! There are only 2 wins to go around.

The time is now to begin considering how you are going to take advantage of the situation. Let's start the conversation today.

Wisdom. Applied. 120: Physician Behind Bars for Referrals: Kickbacks, Bribes, and Mail Fraud

Former physician Dr. Greenspan, at 80 years old, will conceivably spend the rest of his life behind bars due to his connection with the Biodiagnostic Laboratory Services, LLC scam.

All Things Personal

As I'm writing this on the day after Thanksgiving, I can imagine that about 10 million people are at the outlet mall about 30 minutes away, fighting over yoga pants, shoes, and puffy jackets. Why not? (I mean, besides the other 9.999999 million people pushing and shoving.) After all, the stuff is on super sale.

Which makes me think, is it possible to create a healthcare services venture along the lines of an outlet mall?

Earlier this month, North Canyon Medical Center, located in Gooding, Idaho, had a "flash sale" of sorts. On November 15th, it rolled back prices for some services for the day, charging just $19.18 for X-ray, lab, and family medicine services to celebrate its 100th anniversary. But I'm not thinking of that deep a discount because I'm all for making a profit. I mention North Canyon merely because it offers food for thought.

The medical outlet mall would offer more than a conglomeration of services — that model already exists.

I'm talking about both a large variety of services, plus discounted prices due in part to the mall's slightly remote location separating it from the population center and from being in direct competition with the various providers' main sites of operation.

Sure, there'd be the need to negotiate special payor agreements. But the concept isn't much different from medical tourism, just medical tourism at home — a medical "staycation."

Think about it.

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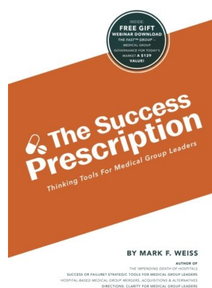
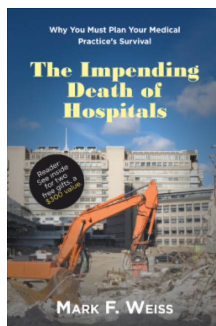
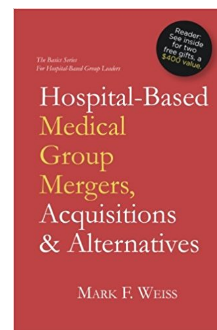
- Quoted in Becoming a Cheetah and Other Survival Tactics, Summer 2018, Communique

Books and Publications

We all hear, and most of us say, that the pace of change in healthcare is quickening. That means that the pace of required decision-making is increasing, too. Unless, that is, you want to take the "default" route. That's the one is which you let someone else make the decisions that impact you; you're just along for the ride. Of course, playing a bit part in scripting your own future isn't the smart route to stardom. But despite your own best intentions, perhaps it's your medical group's governance structure that's holding you back. In fact, it's very likely that the problem is systemic. The Medical Group Governance Matrix introduces a simple four-quadrant diagnostic tool to help you find out. It then shows you how to use that tool to build your better, more profitable future. Get your free copy here.







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