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Medicare Packaged Pay Will Squeeze High-Tech Hospital Care

By **Jeff Overley**

Law360, New York (July 17, 2013, 3:26 PM ET) -- Medicare's new plan to expand its use of packaged payments for items and services often delivered together will further force hospitals to consider the costs of care, demanding more efficiency and potentially driving providers to shun drugs and devices that are newer and pricier, attorneys say.

In a proposed rule issued last week, federal regulators said they intend to bundle seven categories of tests, medicines and procedures into larger payments for outpatient primary services, such as surgeries or imaging.

So, if a laboratory test was performed on the same day as an operation, and both involved the same doctor and patient, the hospital would probably receive a bulk payment instead of billing separately for the test and surgery.

"They are trying to say to hospitals, 'Look, hospitals, you perform services, and we just want to pay you a flat rate, and we don't want you to continue to nickel and dime us with every single service,'" said Andrew Ruskin, a Medicare reimbursement expert at Morgan Lewis & Bockius LLP.

Overall, the financial impact to hospital bottom lines is expected to be virtually flat — a 0.1 percent dip — but there could be great variance depending on location and customer base.

Rural hospitals and urban hospitals with more than 500 beds, for example, would on average see their compensation jump 0.6 percent because of increased bundling, while all other urban hospitals would experience a decline of 0.3 percent to 0.6 percent, the Centers for Medicare and Medicaid Services projects in figures that exclude the impact of packaged lab tests.

In addition, the "impact on any given hospital would vary based on the mix of services furnished by the hospital," CMS wrote in the proposed rule.

Ever since the current prospective payment system debuted in 2000, CMS has moved consistently toward packaging and away from a fee-for-service approach that many observers says creates an incentive to overtreat.

In the proposed rule, CMS argued that combining payments encourages providers to run a tighter ship and to negotiate more aggressively with suppliers for better prices on drugs and devices.

The counterargument is that a fixed price will drive hospitals in some instances to use cheaper medicines and more affordable equipment, perhaps at risk of sacrificing extra quality.

"Are they going to stint on care? One would hope hospitals and providers are not going to do that," said Jason B. Caron, a health partner at McDermott Will & Emery LLP. "But I think that we can all acknowledge that ... financial incentives change behaviors."

CMS often relies on data that are several years old when calculating payments, which is virtually inevitable, given the size and scope of the American health care system and its products. As a result, a lump-sum payment might not reflect the latest and greatest innovations in technology, Ruskin said.

"Essentially the trade-off is always between incentivizing efficiency and facilitating the use by providers of the latest technologies in their care of patients," he said.

The seven categories proposed to be packaged include drugs used as supplies in diagnostic tests; drugs used as supplies in surgeries; certain diagnostic lab tests; secondary procedures always performed in addition to primary procedures; certain ancillary services, such as chest X-rays; certain diagnostic tests that support a primary procedure; and removal of worn-out or defective implantable devices.

The manner in which overall compensation changes when payments are packaged varies, with some services potentially becoming more lucrative and others encountering belt-tightening.

For a specific and common type of heart exam — myocardial perfusion imaging — total payments for the scan and associated supplies are actually proposed to be 14 percent larger than the current sum of separate payments for the same items and test.

On the other hand, bulk payments for surgeries and products used to repair diabetic foot ulcers would be based on an average cost for "skin substitute" materials for which prices vary widely. That's a good example of how hospitals will be forced to take a closer look at both the quality and cost certain goods.

"Hospitals are a mix of clinical and administrative types, and the administrative types are going to have a say," Ruskin said.

Attorneys cautioned that some providers are open to packaging, and that doctors will probably continue to push for the best treatments. But it could be some time before the full impact of expanded bundling is known.

"It may be that [hospitals] are not going to be as interested in embracing the cutting-edge technology for each patient, even if it's something that providers more often than not might [prefer]," Caron said. "We'll see to what extent the pendulum swings."

--Editing by John Quinn and Jeremy Barker.