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## 2026 Outpatient Rule Contains Concerning Site-Neutral & 340B Provisions

On July 15, the Centers for Medicare and Medicaid Services (CMS) released its annual proposed update to the outpatient prospective payment system (OPPS) payments to hospitals with an overall 2.4% payment increase.

The proposed rule also contains significant updates to several policies, including:

- Site-neutral payments
- 340B
- Price Transparency
- Phasing out the Inpatient Only list
- Updates to Hospital Quality programs

CMS proposes to expand site-neutral payment policies to drug administration services delivered in an off-campus hospital outpatient department (HOPD), relying on similar authority used in the 2019 OPPS rule to expand site-neutral payments to clinic visit services (Emergency and Management or E&M codes). These changes would pay hospitals 40% of the OPPS payment rate, which CMS estimates to be the "physician equivalent" rate, and are aligned with proposals Congress considered last session in the Lower Costs More Transparency Act that passed the House of Representatives but died in the U.S. Senate. WHA has advocated against such cuts, which do not take into consideration higher costs hospitals face for providing care 24/7, differentiating them from services provided at physician offices. CMS estimates the impact to be a reduction in hospital payments of about \$280 million in 2026, as they will be carried out in a non-budget-neutral manner, as done in the 2019 OPPS rule. WHA estimated the impact of these cuts under the Lower Costs More Transparency Act considered by Congress in 2023 to be about \$114 million in lower payments to Wisconsin hospitals over a period of 10 years. CMS is also asking for comments on whether it should expand the site-neutral clinic visit (E&M code) cuts from the 2019 OPPS rule to apply to on-campus HOPDs.

For 340B, the rule would require hospitals to respond to an acquisition cost survey for covered outpatient drugs, following an April 15 Executive Order from President Trump. This appears to be in response to a 2022 U.S. Supreme Court decision that ruled the former Trump administration acted unlawfully when it reduced the Prospective Payment System (PPS) hospital 340B reimbursements because it did not utilize data from such a survey. CMS says it intends to do the survey starting at the end of 2025 and into 2026, to inform rates for the 2027 outpatient rule. Additionally, the agency is considering expediting its recoupment of hospital payments that went out due to the previously ruled unlawful 340B cuts being applied in a budget neutral manner. The agency had previously finalized a recoupment strategy recouping the full \$7.8B in payments from 2026-2042. The new timeline would fully recoup these payments by 2031, or even as early as 2028.

On price transparency, CMS has proposed a requirement for hospitals to report actual allowed amounts by payer, broken into 10th, median and 90th percentiles. This follows an executive order issued by President Trump on February 25 announcing it intended to update such requirements. While hospitals are currently encouraged to use 835 remittance data and a 12-month lookback period, the proposed rule would make both mandatory. It also would require a named senior leader to attest to the accuracy of the data. Additional updates include requiring hospital NPIs in the files and offering a reduced penalty for hospitals that accept CMS findings without appeal.

CMS also proposes to phase out the inpatient-only list that currently exists for 1,731 procedures/services. The list would be phased out over three years beginning in 2026 with the removal of 285 mostly musculoskeletal type services and 16 non-musculoskeletal services that include cardiovascular, lymphatic, digestive, gynecological and endovascular procedures. While WHA has supported lifting regulations that create unnecessary burdens in health care, WHA has also noted caution for how changes like this may lead to cherry-picking of services for non-hospital settings that do not provide the same level of care, which can create a strain on hospital payor mixes, threatening their financial viability.

The agency also proposes updates to its quality programs, including adopting a new electronic clinical quality measure for Emergency Care Access and Timeliness as well as removing three measures related to health equity and measures of COVID-19 vaccination coverage for health care workers, among other proposed changes.

WHA is still reviewing the entire rule in anticipation of its September 15 comment deadline.

## IN THIS ISSUE

- 2026 Outpatient Rule Contains Concerning Site-Neutral & 340B Provisions
- Health Leaders Weigh Impact of New Medicaid Policies During July WHN
- Help Grow Wisconsin Physicians
- Time is Running Out to Submit Your Nomination for the 2025 Global Vision Community Partnership Award

## EDUCATION EVENTS

**Jul. 23, 2025**

EMTALA Update 2025

**Aug. 8, 2025**

WHA Financial Workshop

**Aug. 26, 2025**

Infection Prevention and Antibiotic Stewardship