



Charles N. Kahn III
President and CEO

December 20, 2023

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W., Room 445-G
Washington, DC 20201

**RE: CMS–1786–FC: Medicare Program: Hospital Outpatient Prospective
Payment Final Rule (Vol. 88, No. 224), November 22, 2023**

Dear Administrator Brooks-LaSure:

The Federation of American Hospitals (FAH) is the national representative of more than 1,000 leading tax-paying hospitals and health systems throughout the United States. FAH members provide patients and communities with access to high-quality, affordable care in both urban and rural areas across 46 states, plus Washington, D.C. and Puerto Rico. Our members include teaching, acute, inpatient rehabilitation, behavioral health, and long-term care hospitals and provide a wide range of inpatient, ambulatory, post-acute, emergency, children's, and cancer services.

The FAH appreciates the opportunity to submit comments on the above-referenced final rule. We write regarding issues related to Medicare's payment for hyperbaric oxygen therapy (HBOT) and the outlier threshold. We are concerned that CMS' payment for HBOT in the final rule is incorrect and that the outlier threshold was set based on erroneous data. It is important that CMS correct both of these errors in the payment files before erroneous rates are used to determine payments effective January 1, 2024.

HBOT

In the CY 2024 OPSS proposed rule, CMS proposed a payment of \$134.51 for HBOT, a 7.5 percent increase from the CY 2023 rate. However, the final rule's published payment was only \$73.64, a 45.3 percent reduction from the proposed rule. Neither the proposed nor final rule

discussed any change in policy for this service and there are no obvious reasons for such a substantial change between the proposed and final rules.

FAH conducted an analysis of this issue using information that CMS makes available on its website. CMS’ 2024 OPSS Cost Statistics Files for the proposed and final rule rules¹ shows two lines each for HCPCS 60277 (HBOT): one for APC 5061 and one for APC 5061O. According to CMS’ documentation:

An APC number with a terminal “O” identifies an APC whose cost statistics were calculated using an offline process. The offline information was calculated using single/pseudo single bills (including single session and composite APC bills) after application of specific criteria that are discussed in the proposed rule for the APC or categories of APCs. Offline information was used to set the proposed OPSS payment amount for the APC, where appropriate.

We did not find any explanation of the offline methodology in either the proposed or final rule or any of CMS’ recent publications or the claims accounting that explains how OPSS rates for the year are calculated. The offline methodology shows a different geometric mean cost than the standard methodology in both the proposed and the final rule but a significantly different pattern in the final rule than the proposed rule.

| Costs for Hospital Outpatient Services, by HCPCS code for CY 2024 Proposed Rule | | | | | | | | | | |
|---|----|-------|--------------|------------------|-----------------|--------------|--------------|-------------|---------------------|---------|
| HCPCS | SI | APC | Payment Rate | Single Frequency | Total Frequency | Minimum Cost | Maximum Cost | Median Cost | Geometric Mean Cost | CV |
| G0277 | S | 5061 | | 1117 | 219268 | \$22.32 | \$3,137.26 | \$179.21 | \$205.37 | 119.710 |
| G0277 | S | 5061O | \$134.51 | 213798 | 219268 | \$21.58 | \$919.37 | \$134.08 | \$136.04 | 103.249 |

| Costs for Hospital Outpatient Services, by HCPCS code for CY 2024 Final Rule | | | | | | | | | | |
|--|----|-------|--------------|------------------|-----------------|--------------|--------------|-------------|---------------------|---------|
| HCPCS | SI | APC | Payment Rate | Single Frequency | Total Frequency | Minimum Cost | Maximum Cost | Median Cost | Geometric Mean Cost | CV |
| G0277 | S | 5061 | | 1170 | 242148 | \$13.91 | \$2,362.15 | \$177.16 | \$213.70 | 118.723 |
| G0277 | S | 5061O | \$73.64 | 235929 | 242148 | \$0.01 | \$823.07 | \$130.91 | \$75.61 | 121.595 |

The geometric mean cost in the proposed rule was \$205.37 on the line for 5061 and \$136.04 for 5061O—a reduction of 34 percent. For the final rule, the geometric mean cost is \$213.37 for 5061 but \$75.61 for 5061O—a reduction of 65 percent. In both cases the offline methodology shows a significantly lower geometric mean cost, but it is far lower for the final rule than the proposed rule. The geometric mean cost goes up between the proposed and final for 5061 yet goes down for 5061O. That suggests something in the offline methodology is having a disproportionate adverse effect on the final value for the code.

As the offline methodology is not explained in the regulations or CMS’ claims accounting methodology, it is impossible for FAH to research further why the value HBOT would have declined so precipitously in the final rule relative to the proposed rule. However,

¹ Found respectively under “Related Links” at: [CMS-1786-P | CMS](#) and [CMS-1786-FC | CMS](#).

given the aberrant pattern in the final rule relative to the proposed rule, it seems likely the final rule value upon which CMS makes payment is erroneous. None of the other data presented above from CMS’ public use files can explain the aberrant pattern found in the final rule data relative to the proposed rule.

Outlier Threshold

FAH used the payment impact files that CMS makes available for the CY 2024 OPPIs proposed and final rule on its website to analyze outlier payments.² For three of our member hospitals, the cost-to-charge ratio (CCR) on the final rule impact file does not match the CCRs being used to pay the hospital. The CCRs on the final rule payment impact file are 3 to 4.5 times the CCR on the proposed rule impact file. For these hospitals, the outlier payments shown on the final rule impact file is from 79 to 146 times the amounts that are included on the proposed rule impact file.

This observation caused us to investigate whether there are other hospitals where the final rule CCRs appeared aberrant compared to the proposed rule CCRs. We found 10 such hospitals where the final rule CCR was more than double the proposed rule CCR, and the final rule outlier payments appeared excessive compared to the proposed rule impact payments. For these 10 hospitals, outlier payments represented 0.1 percent of total outlier payments in the proposed rule and 6.6 percent of outlier payments in the final rule. Total outlier payments increased from approximately \$478,000 to nearly \$46 million for these hospitals. This suggests that the final rule outlier threshold was set based on incorrect data. See below table for the information described above.

| Provider Number | Provider Name | Proposed Outpatient Cost-to-Charge Ratio | Final Outpatient Cost-to-Charge Ratio | % Change | Proposed Rule Outlier Payments | Final Rule 2024 Outlier Payment | % Change |
|---------------------------------------|--|--|---------------------------------------|----------|--------------------------------|---------------------------------|----------|
| 010101 | Citizens Baptist Medical Center | 0.063 | 0.564 | 795% | | \$2,627,990 | |
| 053040 | Encompass Health Rehabilitation Hospital Of Modest | 0.182 | 0.395 | 117% | | | |
| 074014 | Silver Hill Hospital Inc | 0.142 | 0.775 | 446% | | | |
| 100131 | Hca Florida Aventura Hospital | 0.072 | 0.238 | 231% | \$36,195 | \$2,878,688 | 7853% |
| 100206 | Hca Florida South Tampa Hospital | 0.069 | 0.226 | 228% | \$61,164 | \$3,967,491 | 6387% |
| 192004 | Kpc Promise Hospital Of Baton Rouge | 0.557 | 1.16 | 108% | | | |
| 260040 | Cox Medical Centers | 0.162 | 0.363 | 124% | \$156,372 | \$4,684,120 | 2895% |
| 260119 | Poplar Bluff Regional Medical Center | 0.063 | 0.194 | 208% | \$38,194 | \$4,245,242 | 11015% |
| 364049 | Dublin Springs | 0.252 | 1.305 | 418% | | | |
| 420079 | Trident Medical Center | 0.059 | 0.264 | 347% | \$186,589 | \$27,377,664 | 14573% |
| Total for These Hospitals | | | | | \$478,513 | \$ 45,781,195 | 9467% |
| Total Outlier Payments on Impact File | | | | | \$4,074,719 | \$ 692,057,999 | 7% |
| These Hospitals as a Percent of Total | | | | | 0.1% | 6.6% | |

² Found respectively under “Downloads” at: [CMS-1786-P | CMS](#) and [CMS-1786-FC | CMS](#).

FAH requests that CMS research this issue as soon as possible and make corrections to OPPS rates before they take effect on January 1, 2024.

We appreciate your consideration of our concerns. If you have any questions or would like to discuss further, please do not hesitate to contact me or a member of my staff at (202) 624-1500.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew M. Kuntz". The signature is fluid and cursive, with a large initial "A" and "M".