



Client Alert

Contact Attorney Regarding
This Matter:

Neil W. Hoffman, Ph.D.
404.873.8594 - direct
404.873.8595 - fax
neil.hoffman@agg.com

Arnall Golden Gregory LLP
Attorneys at Law

171 17th Street NW
Suite 2100
Atlanta, GA 30363-1031
404.873.8500

2001 Pennsylvania Avenue NW
Suite 250
Washington DC 20006
202.677.4030

www.agg.com

2012 PPS Final Rule Implements Quality Reporting Program for ASCs

On November 30, 2011, the Centers for Medicare & Medicaid Services (CMS) published the final rule updating the Hospital Outpatient Prospective Payment System (OPPS) and Ambulatory Surgery Center (ASC) payment system for Calendar Year (CY) 2012 (the CY 2012 OPPS/ASC Final Rule).¹ Among other things, the CY 2012 OPPS/ASC Final Rule implements a new quality-measure reporting program for ASCs. CMS has adopted five quality measures for ASCs to report beginning October 1, 2012 for CY 2014 payment determination. Four of these are outcome measures and one a surgical infection-control measure. Also, as further discussed below, CMS is adding two structural measures for ASC reporting to begin during CY 2013 for CY 2015 payment determination, as well as one National Healthcare Safety Network (NHSN) infection-control measure for ASC reporting to begin during CY 2014 for CY 2016 payment determination. CMS also indicates that it will propose in the CY 2013 OPPS/ASC proposed rule how payment penalties will be calculated for failure to report on these measures.

Background

CMS has implemented quality-measure reporting programs for various care settings, including hospital outpatient and inpatient care. The quality-data reporting program for hospital outpatient care, known as the Hospital Outpatient Quality Reporting (Hospital OQR) Program, has been generally modeled after such program for hospital inpatient care, known as the Hospital Inpatient Quality Reporting (Hospital IQR) Program. Both of these programs have financial incentives for the reporting of quality data to CMS, as does the reporting program for physicians and other eligible professionals. In the CY 2012 OPPS/ASC Final Rule, CMS is implementing provisions of Title XVIII of the Social Security Act (the Act), as amended by the Medicare Improvements and Extension Act under Division B of Title I of the Tax Relief and Health Care Act of 2006 (MIEA-TRHCA) (Pub. L. 109-432), in establishing a similar quality-data reporting program for ASCs.

Implementation of ASC Quality Reporting Program

In the CY 2012 OPPS/ASC proposed rule, CMS proposed to implement the ASC quality measure reporting program with data collection beginning as of January 1, 2012. However, in response to comments requesting a delay in implementation to give ASCs "sufficient time to prepare and adapt to the new reporting procedures," CMS has delayed required data submission until

¹ 76 Fed. Reg. 74,122

October 1, 2012 for the CY 2014 payment determination. As of October 1, 2012, ASCs are now to submit data from the ASC Program Measurement Set for the CY 2014 Payment Determination, consisting of the following five claims-based measures:

- ASC-1: Patient Burn
- ASC-2: Patient Fall
- ASC-3: Wrong Site, Wrong Side, Wrong Patient, Wrong Procedure, Wrong Implant
- ASC-4: Hospital Transfer/Admission
- ASC-5: Prophylactic Intravenous (IV) Antibiotic Timing

The two structural measures that CMS will add for CY 2015 payment determination are as follows:

- ASC-6: Safe Surgery Checklist Use
- ASC-7: ASC Facility Volume Data on Selected ASC Surgical Procedures,² consisting of specified HCPCS codes for the following procedure categories:
 - Gastrointestinal
 - Eye
 - Nervous System
 - Musculoskeletal
 - Skin
 - Genitourinary

For CY 2015 payment determination, ASC will report on these two measures from July 1, 2013 through August 15, 2013 for the entire time period from January 1, 2012 through December 31, 2012. Such reporting will be done online [here](#).³

Also, for CY 2016 payment determination, ASCs will also begin reporting on ASC-8: Influenza Vaccination Coverage among Healthcare Personnel. Data collection on this measure will be from October 1, 2014 through March 31, 2015. CMS indicates that submission details for this measure will be proposed in future rulemaking.

CMS is also considering additional measurement areas for future ASC quality reporting program payment determinations. These include various measures under such topics as Patient Experience of Care, Procedure Specific Measures, Anesthesia Related Complications, and others.

Financial Penalties for Not Participating in Program

As amended by MIEA-TRHCA, the Act sets payment reduction for ASCs that do not participate in ASC quality reporting. Section 1833(i)(7)(A) of the Act allows the Secretary of the U.S. Department of Health and Human Services to impose on such non-participating ASCs a two-percent reduction to any annual increase provided

² With respect to this particular measure, CMS notes that there is substantial evidence that the volume of surgical procedures performed, particularly when these are high-risk procedures, is related to better patient outcomes, such as decreased surgical errors and mortality.

³ <http://www.qualitynet.org>



Client Alert

under the revised ASC payment system for such year. Note, however, that the Act also specifies that a reduction for one year cannot be taken into account in computing an annual increase factor for a subsequent year. CMS has indicated that it will propose in the CY 2013 proposed rule the method for calculating these payment penalties.

Conclusion

The CY 2012 OPPS/ASC Final Rule begins implementation of an ASC quality reporting program. As indicated above, ASCs are to begin reporting on select measures as of October 1, 2012. The CY 2012 OPPS/ASC Final Rule is available by clicking [here](#).⁴

⁴ http://www.ofr.gov/ofrupload/ofrdata/2011-28612_PI.pdf

Arnall Golden Gregory LLP serves the business needs of growing public and private companies, helping clients turn legal challenges into business opportunities. We don't just tell you if something is possible, we show you how to make it happen. Please visit our website for more information, www.agg.com.

This alert provides a general summary of recent legal developments. It is not intended to be, and should not be relied upon as, legal advice.