

## Proposed 2023 CMS Outpatient Rule Establishes New REH Payment Methodology

On July 15, the Centers for Medicare and Medicaid Services (CMS) released its proposed 2023 Outpatient Perspective Payment System (OPPS) Rule with a proposed overall 2.7% payment increase.

CMS also released the long-awaited proposed payment structure for the new Rural Emergency Hospital designation created by the Consolidated Appropriations Act, 2021. The new designation will allow rural hospitals with less than 50 beds to convert to a new type of facility that sustains emergency department services and hospital outpatient services but does not provide inpatient services, though they must provide observation care. The payment would be the normal OPPS rate plus 5%, as well as a monthly facility payment that is based on the gap between cost-based CAH payments and normal OPPS payments.

Given the [recent Supreme Court decision](#) ruling CMS acted unlawfully in cutting PPS 340B hospital payments by about 30%, CMS acknowledges it will not be able to continue its recent 340B cuts. However, it says the timing of the decision did not give it ample time to address those cuts in the proposed rule. CMS says it expects the final rule to apply the previous rate of average-sale-price (ASP) plus 6% but seeks comment on how best to provide a remedy for hospitals impacted by the previous cuts from 2018-2022.

In addition to these changes, CMS also proposes several other updates, including:

- Removing ten services from the inpatient-only (IPO) list, allowing them to be performed on an outpatient basis.
- Continuing to reimburse hospital-based outpatient mental health telehealth services (including audio-only) made possible by the public health emergency (PHE) waivers even if the public health emergency ends and Congress fails to pass legislation authorizing the continued telehealth flexibilities.
- Bi-weekly lump-sum payments to address the costs of hospitals sourcing domestically produced NIOSH-approved N95s.
- Publishing Overall Hospital Quality Star Ratings in 2023, though it may suppress certain data that continues to be substantially impacted by COVID.
- Establishing a new prior authorization category for facet joint interventions, including guided joint injections and targeted nerve destruction in the neck and back.
- Seeks comments on what additional data it should share to analyze the impact of mergers, consolidations, and acquisitions on the affordability and availability of health care, citing President Joe Biden's [executive order](#) from July 2021.
- Seeks comments on how to encourage software developers to address potential bias among algorithms in clinical decision support software, risk modeling, and computer-aided detection.

WHA will continue analyzing the [nearly 900-page rule in](#) anticipation of the Sept. 13 comment deadline. Contact WHA Vice President of Federal and State Relations [Jon Hoelter](#) with questions.