Implementation period for outpatient payment rule cut short by CMS delays

Nearly a month past the statutory November 1, 2013 deadline, the Centers for Medicare & Medicaid Services (CMS) released its final 2014 hospital outpatient and ambulatory surgical center (ASC) payment rule, CMS-1601-FC.

CMS published the rule in the December 10, 2013 Federal Register. The deadline for comments is January 27, 2014.

Meanwhile, CMS did not change the January 1, 2014 effective date of the rule, despite protests from industry representatives that the implementation period was already too short. “The proposed timeline is entirely inadequate,” Donna Slosburg, BSN, LHRM, CASC, executive director of the ASC Quality Collaboration, concluded when the proposed rule was released in July 2013.

Under the rule, ASCs were slated to begin collecting quality data on January 1, 2014 for the 2016 payment determination. Implementation includes establishing procedures for collecting and reporting the additional data, training staff, and modifying software. The anticipated November 1 date for issuing the final rule would have given ASCs and hospital outpatient departments 60 days to prepare. The delayed release gave them just 34 days.

Held up by shutdown
The reason for the crunch is the government shutdown, which led to the furlough of 65 CMS employees, according to a report in the Bloomberg Bureau of National Affairs (Bloomberg BNA) newsletter. The October shutdown coincided with the period when CMS was going to review public comments on the proposed rule and develop the final rule.

In a memorandum to affected healthcare organizations, CMS said it was still reviewing its policy in light of the shutdown, but would hold “generally” to the January 1, 2014 deadline.

According to Paige Fillingame, an attorney with King & Spalding LLP in Houston, the shutdown could trigger a provision in the Administrative Procedure Act that a federal agency may waive a statutory deadline for a “good cause.”

Fillingame notes, “It is likely that the recent government shutdown will be viewed as ‘good cause’ for delaying publication while maintaining the original January 1, 2014 effective date.”

The American Hospital Association (AHA) warned the delay would cause hardship to hospitals.

“Such late issuance will put providers in the very difficult position of having to implement new policies, procedures, and payment formulas with only 5 weeks’ notice,” AHA stated in a memorandum to CMS.

ASCs may have an advantage in that respect because of their independence and flexibility, according to the Ambulatory Surgery Center Association. Kara Newbury, assistant director for government affairs for health policy, agrees the shutdown may give CMS some leeway, such as releasing portions of the rule over a longer period, but says most ASCs will manage to comply.
“ASCs are extremely nimble and efficient,” Newbury says, “and while any delay in the release of the rule will be burdensome for centers, ASCs will move quickly to ensure that they are prepared come January 1, 2014.”

—Paula DeJohn

References