

Summary of Open Payment provisions within the 2015 proposed Medicare physician fee schedule

Executive Summary

On July 3, the Centers for Medicare & Medicaid Services (CMS) issued a [proposed rule](#) that would update payment policies and rates for services furnished under the Medicare physician fee schedule beginning January 1, 2015. In an AAFP [media statement](#) released after the proposed rule became available, the AAFP expressed disappointment that current law requires CMS to slash Medicare physician payments by 20.9 percent unless Congress intervenes before March 31, 2015. The AAFP continues to call on Congress to repeal the flawed sustainable growth rate (SGR) formula and pass payment reform legislation that builds on the value of the services provided rather than the volume of those services.

Medicare predominately pays physicians and other practitioners for care management services as part of face-to-face visits. However, citing a commitment to support primary care, CMS will begin payment in 2015 for managing the care of Medicare patients with two or more chronic conditions outside of a face-to-face visit. The Medicare allowance will be approximately \$42, and the service can be billed no more frequently than once per month per qualified patient.

As part of this regulation's release, CMS issued three fact sheets discussing [overall payment policy proposals](#), outlining changes to the [quality reporting programs](#), and summarizing [proposals on the Value Modifier](#). The AAFP will send CMS extensive regulatory comments on this proposed regulation before the comment period closes on September 2, 2014. The final 2015 Medicare physician fee schedule is expected to be released in November.

Open Payments

Background

On February 1, 2013, the Centers for Medicare & Medicaid Services (CMS) released the final regulation titled "Medicare, Medicaid, Children's Health Insurance Programs; Transparency Reports and Reporting of Physician Ownership or Investment Interests." More commonly referred to as the "Sunshine Act" and now rebranded as the "National Physician Payment Transparency Program: Open Payments," this final regulation implements the *Affordable Care Act*. This provision is designed to make information publicly available about payments or other transfers of value from certain manufacturers of drugs, devices, biologicals, and medical supplies covered by Medicare, Medicaid, and the Children's Health Insurance Program (CHIP) (defined as "applicable manufacturers") to physicians and teaching hospitals (i.e., "covered recipients").

The law specifies that applicable manufacturers must annually report all payments or transfers of value (including gifts, consulting fees, research activities, speaking fees, meals, and travel) that they make to covered recipients. In addition to reporting on payments, applicable manufacturers also must report ownership and investment interests held by physicians (or the immediate family members of physicians) in such entities.

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In the final rule, CMS stated that they “understand the importance of continuing medical education” and that reporting requirements “should not include compensation for accredited or certified continuing education payments.” The regulation discussed that, “Accredited and certified continuing education that complies with applicable standards of the accrediting and certifying entities generally includes safeguards designed to reduce industry influence” and that CMS believes that “reportable payments or transfers of value made to support accredited and certified continuing medical education should remain in a distinct category from unaccredited or non-certified continuing education.”

The final rule discusses how CMS received numerous comments that urged CMS to exempt from reporting indirect payments or other transfers of value for education. CMS responded and agreed that “industry support for accredited or certified continuing education is a unique relationship” and that “industry standards for commercial support, create important and necessary safeguards prohibiting the involvement of the sponsor in the educational content.”

However, CMS believes that even with this separation, the sponsor could still influence the selection of faculty by offering suggestions to the accredited or certified continuing education provider. Although the continuing education provider may not be required to follow these suggestions, CMS believes that it may often be impossible to distinguish when a suggestion is influential. Therefore, CMS finalized policy that payment made to a speaker at a continuing education program is not an indirect payment or other transfer of value for the purposes of this rule and, therefore, does not need to be reported, when all of the following conditions are met:

- The event at which the covered recipient is speaking meets the accreditation or certification requirements and standards for continuing education of one of the following:
 - The Accreditation Council for Continuing Medical Education (ACCME)
 - The American Academy of Family Physicians
 - The American Dental Association’s Continuing Education Recognition Program
 - The American Medical Association
 - The American Osteopathic Association
- The applicable manufacturer does not pay the covered recipient speaker directly
- The applicable manufacturer does not select the covered recipient speaker or provide the third party (such as a continuing education vendor) with a distinct, identifiable set of individuals to be considered as speakers for the continuing education program.

Proposed Changes

Citing a need to respond to questions and experience administering the program, CMS unexpectedly proposed four changes to the Open Payments program:

- Delete the definition of “covered device” as it is duplicative of the definition of “covered drug, device, biological or medical supply,” which is already defined in regulation.
- Delete the Continuing Education Exclusion in its entirety. CMS asserts that eliminating the exemption for payments to speakers at certain accredited or certifying continuing medical education events will create a more consistent reporting requirement for industry and be more consistent for consumers who access reported data.
- Require the reporting of the marketed name of the related covered and non-covered drugs, devices, biologicals, or medical supplies, unless the payment or other transfer of value is not related to a particular covered or non-covered drug, device, biological or medical supply.
- Require applicable manufacturers to report stocks, stock options, or any other ownership interest as distinct categories.