Medicare Site Neutral Payment Policy Map

The Medicare site neutral payment policy is a complex patchwork of policies. Congress and the Centers for Medicare & Medicaid Services (CMS) began implementing payment neutrality between hospital outpatient departments and physician offices in 2017 by reducing payments for certain off-campus hospital outpatient departments to an equivalent amount paid under the Physician Fee Schedule (PFS). In 2019, CMS expanded this site neutral payment policy to clinic visits provided at all off-campus hospital outpatient departments. The American Hospital Association (AHA), the Association of American Medical Colleges (AAMC), and three health systems won a lawsuit against the U.S. Department of Health and Human Services (HHS) arguing the expansion of the Outpatient Prospective Payment System (OPPS) reduction to all off-campus hospital outpatient departments is outside the scope of their authority, and HHS is considering an appeal. The site neutral payment policy does not apply to on-campus hospital outpatient departments, which are located within 250 yards of the hospital.

Medicare payment for off-campus hospital outpatient departments

CMS reimburses non-exempt, off-campus hospital outpatient departments at an amount that is supposed to be equivalent to the non-facility PFS amount, which is currently set at 40% of the OPPS rate for each service. CMS determined the amount by analyzing the most common codes billed by off-campus hospital outpatient departments and evaluating the average discrepancy between their corresponding OPPS and PFS rates. CMS believes this policy will achieve the goals of the Bipartisan Budget Act of 2015 “to reduce the Medicare payment incentive for hospitals to purchase physician offices, convert them to off-campus [departments], and bill under the OPPS for items and services they furnish there” (83 FR 59512).

Off-campus hospital outpatient departments are exempt from the site-neutral payment reduction if they billed Medicare prior to November 2015 or were granted an exemption due to being under construction or under acquisition in November 2015. Off-campus outpatient departments providing emergency and cancer care may also be exempt. Excepted hospital outpatient departments can shift to site-neutral payment as a result of facility relocation, remodeling, or change in ownership, however.

Beginning in 2019, CMS expanded its site-neutral payment policy to clinic visits (HCPCS code G0463) at all off-campus hospital outpatient departments – whether grandfathered in or not. These services are the most common hospital outpatient service billed to Medicare. CMS is phasing in this payment reduction over two years. In 2019, clinic visits will be paid approximately 70 percent of the OPPS rate, and in 2020 and beyond, 40 percent of the OPPS rate. CMS implemented this provision in a non-budget neutral way and estimated it will remove $380 million from Medicare spending for outpatient care in 2019 and $640 million in 2020.

Legislative and regulatory milestones

2015 Congress passed the Bipartisan Budget Act of 2015, which provides that new, off-campus hospital outpatient departments not billing under OPPS as of November 2, 2015 would be subject to a site neutral payment policy. This created two groups of off-campus hospital outpatient departments – ones that were grandfathered in and excepted from the site neutral payment policy and ones that were not. Emergency services were also excepted.

2016 In the 21st Century Cures Act, Congress added exceptions to the site neutral payment policy for certain cancer hospitals and off-campus outpatient departments that were “mid-build” in 2015 if they filed the necessary paperwork for an exception.
CMS began requiring off-campus hospital outpatient departments to include a modifier on their Medicare claims to identify them as excepted from site neutral payment policy or non-excepted.

2017 CMS set the payment rate for non-excepted, off-campus hospital outpatient departments at 50% of OPPS rates.

2018 CMS reduced the payment rate for non-excepted, off-campus hospital outpatient departments to 40% of OPPS rates.

2019 CMS extended site-neutral payments to clinic visits furnished in all off-campus hospital outpatient departments. AHA, AAMC, and other hospitals sued HHS and a U.S. district court overturned CMS’ policy, ruling the administration exceeded its authority. HHS appealed. Also in the 2019 OPPS proposed rule, CMS proposed but did not finalize a policy to expand site-neutral payment policies to any new services that an off-campus outpatient department did not previously provide. While they did not finalize this provision, CMS noted they are monitoring the expansion of services in excepted off-campus hospital outpatient departments.

2020 Despite the court ruling against it, CMS finalized the second-year phase in of its site neutral policy and reduced OPPS payments for clinic visits by 60 percent. CMS states it is working to ensure affected 2019 claims for clinic visits are paid consistent with the court’s order, even while the agency moves forward with full implementation of payment cuts for 2020.

Lawsuits challenging the site neutral payment policy expansion

In December 2018, the AHA, AAMC, Mercy Health Muskegon in Michigan, Olympic Medical Center in Washington, and York Hospital in Maine sued HHS and argued it overstepped its authority by applying the site neutral payment policy to all off-campus hospital outpatient departments furnishing clinic visits in the 2019 OPPS final rule. The AHA and others contend this violates the intent of Congress. In January 2019, thirty-eight hospitals filed a similar lawsuit challenging the expansion of the site neutrality policy to clinic visits.

In September 2019, a U.S. District Court judge ruled in favor of the hospitals, finding HHS had exceeded its authority by price-setting office visits. HHS is repaying the 2019 claims for clinic visits consistent with the court’s order while appealing the decision. In January 2020, the hospitals filed a second, separate lawsuit challenging the 2020 payment cuts to clinic visits.

In a July 17, 2020, opinion, the D.C. Court of Appeals reversed the ruling of the district court and found that HHS had authority to cut payments to off-campus provider-based departments for E/M services.

President’s 2020 Budget on site neutral payment policy

The 2020 HHS Budget-in-Brief (page 79) calls for extending the site neutral payment policy to all off-campus hospital outpatient departments, including off-campus emergency, cancer and grandfathered departments, and estimates it would save $28.7 billion over 10 years. The budget also calls for paying on-campus hospital outpatient departments at the PFS rate for certain services, such as clinic visits. This is estimated to save $131.4 billion over 10 years. The Budget also includes site neutral policies for post-acute care and long-term care hospitals.

Other stakeholders
The **Alliance for Site Neutral Payment** includes the American College of Physicians, the American Academy of Family Physicians, America’s Health Insurance Plans, and others and advocates for site neutral payments across all outpatient sites of service. The Medicare Payment Advisory Commission has long been a *proponent* of payment neutrality in outpatient departments and physician offices to reduce spending and provide care to patients in the most efficient site for their condition.

**AMA advocacy and resources**

In our [comment letter](#) on the 2020 OPPS proposed rule, we reiterated that “[w]hile the AMA generally supports site neutral payments, we do not believe that it is possible to sustain a high-quality health care system if site neutrality is defined as shrinking all payments to the lowest amount paid in any setting.” The AMA “believes that payment differentials between independent physician practices and hospital outpatient departments stem in part from inadequate Medicare physician payment rates—after adjustment for inflation, Medicare physician pay has declined 20 percent since 2001—and that any savings from site neutrality proposals derived from OPPS should be reinvested in improvements elsewhere in Part B, including payments to physicians.”

The AMA’s *Payment Variations Across Outpatient Sites of Service* [issue brief](#) outlines the variations in payment policies for sites of service. It also links to relevant Council on Medical Service reports, including a Council report on the site-of-service differential from Interim Meeting 2018.