



Provider-Based Billing Yields Increased Physician Pay

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INTRODUCTION

The purpose of this paper is to clarify queries regarding the appropriate application of Provider Based Billing in relation to physician's compensation and the effects provider based status may have on such compensation. For instance, in the event a Hospital implements Provider Based Billing (PBB), a physician's compensation could increase based on potential increases in Medicare reimbursement and other sources, according to the Centers for Medicare & Medicaid Services, Department of Health and Human Services, Title 42: Public Health (42 CFR 413.65) – Requirements for a determination that a facility or an organization has provider-based status. Commercial reasonableness and fair market value (FMV) limitations, however, will likely play a role and limit the higher pay.

OVERVIEW OF PROVIDER BASED BILLING

“Provider-based” status refers to the relationship between a main provider and a provider-based entity or a department of a provider, remote location of a hospital, or satellite facility that complies with the provisions of the regulation 42 Code of Federal Regulation (42 CFR §413.65). A department of a provider comprises both the specific physical facility that serves as the site of services of a type for which payment could be claimed under the Medicare or Medicaid program, and the personnel and equipment needed to deliver the services at that facility (42 CFR §413.65(a)).

There are essentially three types of provider-based organizations under the regulation as it is established and defined. Provider-based status is defined as the relationship between the main provider (Hospital) and one of the following types of facilities:

1. A department of a provider, which is defined as an entity that is furnishing the same type of services as the main provider. An example would be the outpatient department of a hospital.
2. A provider-based entity. These are entities or facilities furnishing healthcare services of a different type than the main provider. An example of this would be a provider-based home health agency or skilled nursing facility.
3. The remote location of a hospital or satellite facility.

An additional note, several types of facilities are not considered for determination of provider-based status by Centers for Medicare and Medicaid (CMS). Some of these facilities would include home health agencies, skilled nursing facilities and ambulance companies (42 CFR §413 (a)(2)). Since there is no payment impact, there is no need or reason to seek provider-based status for these entities. Obviously, this does not mean that those types of entities cannot be operated as provider-based to a main hospital; it simply means that there is no payment impact.

EFFECTS OF PROVIDER BASED BILLING ON HOSPITAL

There are a number of implications to the hospital by establishing PBB. The most important is the reimbursement implication. A facility that is hospital-based may be paid under the Medicare Hospital Outpatient Prospective Payment System (OPPS) or Ambulatory Payment Classification System, rather than under the fee schedule for clinics. These allowances have been eliminated to a great extent; however, they allow for a separate facility fee to be generated, in addition to the professional component of the services. Generally, the overall reimbursement is more favorable for obtaining provider-based status.

More importantly, establishing PBB often entails more favorable Medicare coverage implications. For some services, Medicare will provide coverage only if the services are performed in a hospital setting. For example, partial hospitalization is only covered in a hospital outpatient department or community mental health center. The clinic operating as a physician clinic may not be able to provide certain covered services as a clinic, but would be able to do so if it qualified for provider-based status and was operated as an outpatient department of the hospital. Medicare Conditions of Participation requirements also apply to the facility, so that the outpatient department of the hospital that is set up to obtain provider-based status must meet the Medicare Conditions of Participation for the hospital, as it is in fact a functioning part of the hospital (42 CFR §489.2; see also 42 CFR 489.10).

EFFECTS OF PROVIDER BASED BILLING ON PHYSICIANS

Based on the foregoing, adopting PBB may very well increase reimbursement amounts received by the provider-hospital, thus allowing for potential increases in provider

physicians' compensation. Increasing a physician's pay as a direct or indirect result of implementing a PBB is allowable, as long as the physician's compensation remains within the FMV limitations for those services, in accordance with the exceptions to Stark Law. In terms of measuring FMV, we herein refer to the definition as contained in the Stark Law:

Fair market value means the value in arm's-length transactions, consistent with the general market value. 'General market value' means the price that an asset would bring as the result of bona fide bargaining between well-informed buyers and sellers who are not otherwise in a position to generate business for the other party, or the compensation that would be included in a service agreement as the result of bona fide bargaining between well-informed parties to the agreement who are not otherwise in a position to generate business for the other party, on the date of acquisition of the asset or at the time of the service agreement. Usually, the fair market price is the price at which bona fide sales have been consummated for assets of like type, quality, and quantity in a particular market at the time of acquisition, or the compensation that has been included in bona fide service agreements with comparable terms at the time of the agreement, where the price or compensation has not been determined in any manner that takes into account the volume or value of anticipated or actual referrals(42 CFR §411.351; see also 42 CFR 411.357(c)(2)(i)).

Assuming a hospital or provider currently has a Stark compliant, FMV compensation structure in place for the Physicians, the increase in pay to the Physicians must remain within those limitations. Typically this compensation structure is based on a work relative value units (wRVU) model. If increasing the compensation to the Physicians exceeds the confines of the current, previously established and agreed upon wRVU structure, it may be necessary to reevaluate and adjust the Physicians' wRVUs, in order to more accurately and adequately comply with the current FMV. Thus, assuring that the Physician's rate of payment per wRVU is within FMV / commercially reasonable parameters is overarching to any forms of reimbursement.

Additionally, there may need to be a determination that the adjustment, if necessary, is commercially reasonable. In analyzing this, we again refer to the Stark Law definition,

which is an arrangement that would make commercial sense if entered into by a reasonable party of similar type and size and a reasonable physician of similar scope and specialty, if there were no potential business for referrals between the parties.

It is important to take into account the Internal Revenue Service (IRS) definition for reasonable compensation when adjusting wRVUs and compensation, which is "the amount that would ordinarily be paid for like services by the enterprises (whether taxable or tax-exempt) under like circumstances," taking into consideration all forms of cash and noncash compensation as well as their definition of FMV, which is "the price at which property or the right to use property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy, sell or transfer property or the right to use property, and both having reasonable knowledge of relevant facts" (26 CFR §53.4958-4(b)(i) and (ii)(A)).

Based on the analysis above, implementation of Provider Based Billing by a Hospital will likely increase the reimbursement amount received from Medicare and other comparable sources. Additionally, this increase could flow, either directly or indirectly, to the Physicians, thereby increasing their compensation, as long as it is within the confines of the fair market value of their services.

For more information on exploring the physician-hospital alignment for your organization's future, and specific initiatives discussed in this report, contact Coker Group's Jared Thomas, at (757) 689-2225, jthomas@cokergroup.com.

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