

## **X. Outlier Policy and Elimination of Transitional Corridor Payments for CY 2004**

### *A. Outlier Policy for CY 2004*

For OPSS services furnished between August 1, 2000 and April 1, 2002, we calculated outlier payments in the aggregate for all OPSS services that appear on a bill in accordance with section 1833(t)(5)(D) of the Act. In the November 30, 2001 final rule (66 FR 59856, 59888), we specified that beginning with 2002, we would calculate outlier payments based on each individual OPSS service. We revised the aggregate method that we had used to calculate outlier payments and began to determine outliers on a service-by-service basis.

As explained in the April 7, 2000 final rule (65 FR 18498), we set a target for outlier payments at 2.0 percent of total payments. For purposes of simulating payments to calculate outlier thresholds, we proposed to continue to set the target for outlier payments at 2.0 percent. For 2003, the outlier threshold is met when costs of furnishing a service or procedure exceed 2.75 times the APC payment amount, and the current outlier payment percentage is 45 percent of the amount of costs in excess of the threshold.

For the reasons discussed in detail in section XI.E of this preamble, we proposed to establish two separate outlier thresholds, one for community mental health centers (CMHCs) and one for hospitals. For CY 2004, we proposed to continue to set the target for outlier payments at 2.0 percent of total OPSS payments (a portion of that 2.0 percent, 0.36 percent, would be allocated to CMHCs for PHP services). Based on our simulations for 2004, we proposed to set the hospital threshold for 2004 at 2.75 times the APC payment amount, and the proposed 2004 payment percentage applicable to costs over the threshold at 50 percent. We proposed to set the threshold for CMHCs for 2004 at 11.75 times the APC payment amount and the 2004 outlier payment percentage applicable to costs over the threshold at 50 percent. In this final rule, we are setting the target amount for outlier payments at 2.6 times the APC payment for hospitals and 3.65 times the APC payment for CMHCs. For 2004, the hospital outlier threshold is met when costs of furnishing a service or procedure exceed 2.6 times the APC payment amount and the outlier payment percentage is 50 percent of the amount of costs in excess of the threshold. Similarly, for CMHCs the threshold is met when costs of furnishing a service or procedure exceed

3.65 times the APC payment amount and the outlier payment percentage is 50 percent of the amount of costs in excess of the threshold.

We received several comments concerning our proposal to establish two separate outlier pools, one for hospitals and another for CMHCs, and to determine eligibility for outlier payments by applying an outlier threshold of 2.75 times the APC payment for hospitals and 11.75 times the APC payment for CMHCs. The comments we received concerning that proposal are summarized in section XI.E.3 along with our responses. Comments we received pertaining to other aspects of our proposal for outlier payments are summarized below:

*Comment:* One hospital association contended that outpatient services that qualify for outlier payments should receive 80 percent of their costs above the threshold, rather than the proposed level of 50 percent. The association stated that an increased payment level would help to ameliorate the level of losses incurred by hospitals, such as teaching hospitals, that provide complex outpatient services and would make OPSS policy consistent with the policy under the IPPS. The association also pointed out that because we apply an outlier threshold that is a multiple of the APC payment, rather than a fixed dollar amount, hospitals that provide certain costlier services must absorb significantly more costs before even qualifying for outlier payments, making it even more important to increase the outlier payment percentage. The association recognized that increasing the payment percentage would require additional funds and recommended that we seriously consider increasing the outlier payment pool from its current level of 2.0 percent of total OPSS payments to 3.0 percent, the maximum allowed by law for 2004 and beyond.

*Response:* Although we acknowledge the importance of outlier payments to providers, those payments are intended to ensure that the Medicare program shares, to some extent, in the extraordinarily high costs a provider may incur in caring for specific patients in unusual circumstances. Outlier payments are not intended to be paid on a routine or regular basis for treating the majority of Medicare beneficiaries. The APC payments are developed to be reasonable and adequate payment for all but the most extraordinary cases. At this time, we do not believe that it would be appropriate to shift additional funds from APC payments in order to increase the outlier payment percentage. Increasing the outlier pool would result in reduced payments for the majority of

services providers furnish in order to make increased payments for the rare, extraordinarily high cost cases a provider may treat.

*Comment:* A hospital association commented that we have furnished very little data on actual outlier payments under the OPSS, so hospitals have no way of knowing whether actual payments were higher or lower than estimated outlier payments and are unable to comment on the proper outlier threshold for OPSS. The association pointed out that we have historically furnished data on actual outlier payments in the IPPS rule and recommended that we furnish data on OPSS outlier payments so that hospitals may be able to make informed comments on the proper threshold.

*Response:* Based on hospital and CMHC claims submitted for the period April 1, 2002 through December 31, 2002, outlier payments for that period amounted to 1.78 percent of total OPSS payments. The outlier target we were trying to achieve for that period was 1.5 percent of total OPSS payments. Outlier payments to hospitals alone amounted to 1.54 percent of total OPSS payments to hospitals, while outlier payments to CMHCs amounted to 49.8 percent of their total OPSS payments.

### *B. Elimination of Transitional Corridor Payments for CY 2004*

Since the inception of the OPSS, providers have been eligible to receive additional transitional payments if the payments they received under the OPSS were less than the payments they would have received for the same services under the payment system in effect before the OPSS. Under 1833(t)(7) of the Act, most hospitals that realize lower payments under the OPSS received transitional corridor payments based on a percent of the decrease in payments. However, rural hospitals having 100 or fewer beds, as well as cancer hospitals and children's hospitals described in section 1886(d)(1)(B)(iii) and (v) of the Act, were held harmless under this provision and paid the full amount of the decrease in payments under the OPSS.

Transitional corridor payments were intended to be temporary payments to ease providers' transition from the prior cost-based payment system to the prospective payment system. Beginning January 1, 2004, in accordance with section 1833(t)(7) of the Act, transitional corridor payments will no longer be paid to providers other than cancer hospitals and children's hospitals. Cancer hospitals and children's hospitals are held harmless permanently