

# How Medicare Rule Would Impact Orthopedic Technology Firms

Issued on April 28, the 2010 Inpatient Prospective Payment System (IPPS) rule underscores the need for technology companies to play an active role in Medicare's rule-making process.

The rule proposes payment levels that are lower than in recent history and costly reporting requirements that will place increased burdens on hospitals. While effective payment rates proposed for orthopedic technologies are expected to increase, all innovators and manufacturers should expect challenges from hospital procurement officers who again face payment problems with one of the nation's largest carriers.

This article will provide a brief review of key provisions within the draft rule. Review of payment rates, impact on some orthopedic procedures and concerns by Centers for Medicare & Medicaid Services (CMS) regarding "code creep" are addressed. Readers are encouraged to review the agency's rule, provide comment and become actively engaged in the rule-making process.

## Indirect Impact on Orthopedics

PearlDiver Technologies Inc., a Fort Wayne, Ind.-based life sciences and technology company, conducted an analysis of the proposed rule's impact on orthopedics.

Based on the changes in payment noted in the rule, certain orthopedic market sectors will be positively impacted in fiscal year 2010. (See chart at right).

This direct impact should be good news for the orthopedic industry, except that manufacturers' sales and

marketing divisions must contend with the rule's negative impact on hospitals.

## Historically Low Payment Update

Inpatient hospitals affected by the proposed rule must adjust to a low payment update from CMS. The 2.1 percent update is reflective of inflation, which by itself is "disappointing" to analysts and indeed is significantly lower than in previous years.

Moreover, CMS proposes this 2.1 percent update despite the Medicare Payment Advisory Commission's (MedPAC) report to Congress in March, which indicated a payment update of 2.7 percent would be appropriate.

## CMS Pays 'Down' for Hospitals' Coding 'Up'

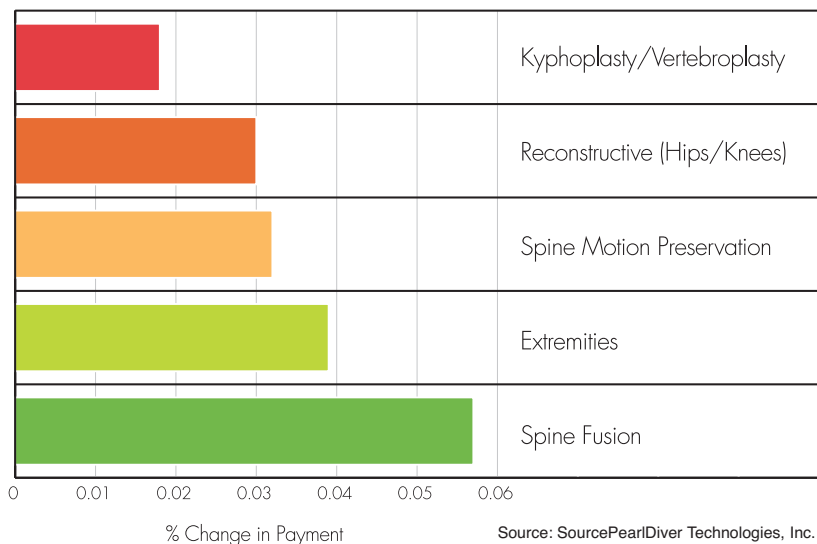
The 2.1 percent proposed payment

update for FY 2010 is already lower than inpatient hospitals had expected. However, the real problem for hospitals' balance sheets will likely occur once a "documentation and coding" adjustment is phased in over time.

CMS' Medicare Actuary found, in an analysis of 2008 data, that Medical Severity Diagnosis Related Group (MS-DRG) coding did not reflect actual changes in patients' severity of illness. Therefore, CMS is proposing a downward documentation and coding adjustment of -1.9 percent for FY 2010. Compare this with a cumulative FY 2008 and 2009 documentation and coding adjustment of -1.5 percent presently in effect, and the relative impact these proposed changes will have on hospitals is more easily understood.

CMS deems such an adjustment necessary because inpatient hospitals'

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billing departments are purported to have been misusing the MS-DRG system, creating an inaccurate picture of inpatient hospitals' true case mixes.

The MS-DRG system, which was phased in for use in 2008, divides certain general diagnoses into two or three

MS-DRG codes, based on patients' severity of illness, which have individual guidelines that CMS believes hospitals did not follow properly. For example, the pre-2008 DRG for degenerative nervous system disorders was 012 and saw an average national payment of

\$4,548.24. In 2008, that DRG became MS-DRGs 056 and 057, depending upon whether the patient exhibited major complications or comorbidities (MCC). The "without MCC" MS-DRG saw a national average payment of \$4,509.61, whereas the "with MCC" code paid much higher, at \$8,373.53.

Medicare sees the problem as hospitals using the higher paying of the multiple MS-DRG codes now attributed to a single diagnosis (MS-DRG 056, in the example above) more often than may be appropriate. The Office of Inspector General has been targeting the issue since the new system was rolled out, but perhaps CMS considers this "adjustment" in the proposed rule a more benign, and effective, way of addressing the problem.

### **More Reporting Rules Placed on Hospitals**

The proposed rule maintains previous years' emphasis on quality improvement and quality-based purchasing of inpatient hospital services. Under the rule, 3,500 acute care inpatient hospitals would be subject to 43 quality reporting measures in order to be eligible to receive the full 2.1 percent payment update in FY 2010.

CMS requires certain inpatient hospitals to submit data on specific health conditions common among Medicare beneficiaries. Presently, CMS requires data on 28 distinct measures; the proposed rule would require reporting on an additional 15 measures on surgical care, patient safety, inpatient quality, nursing care and readmissions.

### **Challenging Environment for Orthopedics**

Orthopedic manufacturers interested in selling their technologies to inpatient hospitals must demonstrate value following the rule's proposed changes. This was true even before the rule's publication, as noted in an Ernst & Young news release. Add the pressure that this proposed rule places on inpa-

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tient hospitals, and it becomes clear that orthopedic industry stakeholders must work closely with each other and with CMS to ensure patient access to existing and emerging technologies.

CMS will accept comments on the proposed rule until June 30.

The final rule will appear in the Aug. 19 Federal Register and will generally be effective for discharges on or after Oct. 1. ❖

## References:

1. Source: [www.federalregister.gov/OFRUploadOFRData/2009-10458\\_PI.pdf](http://www.federalregister.gov/OFRUploadOFRData/2009-10458_PI.pdf) (accessed May 7)

2. Source: [www.dotmed.com/news/story/8978](http://www.dotmed.com/news/story/8978) (accessed May 7)

3. Seiber, Eric, "Physician Code Creep and Its Impact on Improper Insurance Billing," *Healthcare Financing Review*, Jun 22, 2007.

Source: [www.allbusiness.com/health-](http://www.allbusiness.com/health-care-social-assistance/4498632-1.html)

[care-social-assistance/4498632-1.html](http://www.allbusiness.com/health-care-social-assistance/4498632-1.html) (accessed May 7)

4. Eisner, Walter. "IPPS Updates Smile on Ortho," *Orthopedics This Week*, May 4.

Source: <http://ryortho.com/NEWS-SHORTS/volume5/issue14/05-04-09-BKN-IPPS.html> (accessed May 7)

5. Source: [www.ohanet.org/finance/medicare/AHA2010IHPPSAAnalysis.pdf](http://www.ohanet.org/finance/medicare/AHA2010IHPPSAAnalysis.pdf) (accessed May 7)

6. MedPAC Hospital Inpatient and Outpatient Services Report to Congress, page 68 (March).

Source: [www.medpac.gov/documents/Mar09\\_EntireReport.pdf](http://www.medpac.gov/documents/Mar09_EntireReport.pdf) (accessed May 7)

7. "News: OIG targets MS-DRGs upcoding in 2009 Work Plan," *CDI Strategies*, Oct 29, 2008.

Source: [www.hcpro.com/HIM-222458-5707/News-OIG-targets-MSDRGs-upcoding-in-2009-Work-Plan.html](http://www.hcpro.com/HIM-222458-5707/News-OIG-targets-MSDRGs-upcoding-in-2009-Work-Plan.html) (accessed May 8)

8. *Reporting Hospital Quality Data for Annual Payment Update on CMS' Web site.*

Source: [www.cms.hhs.gov/HospitalQualityInits/08\\_HospitalRHQDAPU.asp](http://www.cms.hhs.gov/HospitalQualityInits/08_HospitalRHQDAPU.asp) (accessed May 7)

9. E&Y News Release, "Failing to Demonstrate Value of Innovation is Top Risk Facing Life Sciences Sector, according to Ernst & Young."

Source: [www.ey.com/GL/en/Newsroom/News-releases/Media---News-Release---Failing-to-demonstrate-value-of-innovation-is-top-risk-facing-life-sciences-sector-according-to-Ernst---Young](http://www.ey.com/GL/en/Newsroom/News-releases/Media---News-Release---Failing-to-demonstrate-value-of-innovation-is-top-risk-facing-life-sciences-sector-according-to-Ernst---Young) (accessed May 8)

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