



266 West 37<sup>th</sup> Street, 3rd Floor  
New York, NY 10018  
212.869.3850/Fax: 212.869.3532

September 15, 2025

VIA ELECTRONIC SUBMISSION

Dr. Mehmet Oz  
Administrator  
Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
P.O. Box 8016  
Baltimore, MD 21244-8016

**Re: RIN 0938-AV51: CY26 Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems Proposed Rule (CMS-1834-P)**

The Medicare Rights Center (Medicare Rights) appreciates this opportunity to comment on the **CY26 Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems** proposed rule. Medicare Rights is a national, nonprofit organization that works to ensure access to affordable and equitable health care for older adults and people with disabilities through counseling and advocacy, educational programs, and public policy initiatives. Each year, Medicare Rights provides services and resources to over three million people with Medicare, family caregivers, and professionals.

**General Comments**

Our comments are informed by our work helping callers to our National Helpline navigate and afford their care. These experiences drive us to support efforts within this rule to bring more sustainability and rationality to Medicare payment, including by establishing greater site neutrality.

**IX. Services That Will Be Paid Only as Inpatient Services**  
**C. Proposed CY 2026 Changes to IPO List**

CMS proposes to eliminate the inpatient-only (IPO) list for Medicare payment over a three-year period starting in CY 2026. We are generally supportive of allowing trained medical professionals to use their judgment to provide appropriate care in appropriate settings, and to the extent that the inpatient only list has limited providers ability to do so for particular services that can safely and responsibly be provided for Medicare beneficiaries on an outpatient basis, we support their removal from the inpatient only list.

In the proposed rule, CMS asserts that the elimination of the inpatient only list is appropriate because of advances in medical practice but does not explain why the existing process for removing services from the list is insufficient.

We urge any changes to be taken with care and caution. In the past, when procedures have been removed from the IPO, there has been a subsequent increase in provider burden and confusion.<sup>1</sup> In addition, patients with complex needs may lose access to appropriate care if providers find an outpatient procedure too medically risky and an inpatient procedure too administratively burdensome, or if providers mistakenly believe that the procedure will not be covered on an inpatient basis.

As noted in the rule, significant guardrails and mitigation strategies are necessary to prevent unintended outcomes, including those above and others that may reduce or challenge beneficiary access to care. We appreciate CMS's recognition of the need to ensure patient safety, reduce the chances of negative financial consequences for beneficiaries, and to ensure that the change does not reduce access to needed care.

In addition to the important considerations included in the proposed rule, we encourage CMS to take steps to mitigate the effect of this change on access to post-acute care. Because coverage for Skilled Nursing Facility care and some home health care is dependent on a prior 3-day inpatient stay, payment changes that push people into outpatient status can have significant subsequent effect on their ability to access coverage for necessary post-surgical care. In the same way that the rule proposes to pause medical review on the basis of patient status for services previously included on the inpatient only list, CMS should consider targeted exemptions to the 3-day hospital stay requirement for people receiving services currently on the IPO list as outpatients.

We urge CMS to carefully consider whether the goals articulated in the rule can be better achieved, with less disruption, by utilizing existing processes to accomplish the elimination of the list through item-by-item review. Under such an approach, the agency could take into account the safety of each procedure, the potential need for post-acute care, the complex beneficiary costs, the likely financial incentives providers would face that may override a purely medical decision, and engage in specific rulemaking, policy development, or educational efforts to mitigate against such negative consequences.

Though it is beyond this scope of this proposed rule, we urge CMS to explore more wholesale waivers of the 3-day rule, including through CMS Innovation Center demonstrations or data analysis of populations with such waivers in place. As evidenced by this very proposal, medicine has changed since the 3-day rule was created, and its continued existence merely penalizes beneficiaries who are not lucky enough to have a provider with the option of waiving the requirement.

## **X. Nonrecurring Policy Changes**

### **A. Method to Control Unnecessary Increases in the Volume of Outpatient Services Furnished in Excepted Off-Campus Provider-Based Departments (PBDs)**

#### **6. Impact of Unnecessary Increases in Volume on the OPPS**

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<sup>1</sup> See, e.g., Chad Krueger, *et al.*, "The Removal of Total Hip and Total Knee Arthroplasty From the Inpatient-Only List Increases the Administrative Burden of Surgeons and Continues to Cause Confusion" (October 2020), <https://pubmed.ncbi.nlm.nih.gov/32444233/>.

CMS proposes to extend site neutral payments to drug administration services delivered by previously excepted or “grandfathered” off-campus provider-based departments. Because we are in favor of transitioning services and procedures to lower cost settings where possible and of shifting payment to reflect that those services and procedures do not require the overhead expenses of hospital settings, we support this proposal.

## **Conclusion**

Thank you again for the opportunity to provide comment. For additional information, please contact Lindsey Copeland, Federal Policy Director at [LCopeland@medicarerights.org](mailto:LCopeland@medicarerights.org) or 202-637-0961 and Julie Carter, Counsel for Federal Policy at [JCarter@medicarerights.org](mailto:JCarter@medicarerights.org) or 202-637-0962.

Sincerely,

A handwritten signature in cursive script that reads "Fred Riccardi".

Fred Riccardi  
President  
Medicare Rights Center