Value-Based Payment Modifier Under the Physician Fee Schedule

**Summary:** Directs the Secretary of Health and Human Services (HHS) to develop and implement a budget-neutral payment system that will adjust Medicare physician payments based on the quality and cost of the care they deliver. Quality and cost measures will be risk-adjusted and geographically standardized. The new payment system will be phased in over a 2-year period beginning in 2015.

**Status update:** On July 1, 2011, the Centers for Medicare and Medicaid Services (CMS) issued a proposed rule that would update payment policies and rates for physicians and nonphysician practitioners (NPPs) for services paid under the Medicare Physician Fee Schedule (MPFS) in calendar year (CY) 2012, including proposals related to the value-based payment modifier.

**Next steps:**
- June 25, 2010 – CMS issues comments regarding the value-based payment modifier.
- August 24, 2010 – Comments due to the CMS regarding the proposed rule.
- Not later than November 1, 2010 – CMS will respond to comments.
- January 1, 2011 – New payment rates and policies will apply, as outlined in the new regulations, although nothing specific would change with respect to the value-based payment modifier at that time.
- July 1, 2011 – CMS issued proposed rule.
- August 30, 2011 – Comments due on proposed rule.
- November 1, 2011 – CMS final rule.
- January 1, 2012 – Changes for calendar year 2012 go into effect.
- January 1, 2012 – Secretary must submit to Congress proposed measures for quality and cost, the implementation dates, and initial performance period for 2014 (which will be used to determine payment adjustments in 2015).
- 2013 – Secretary must implement the provisions of this section through a rulemaking process.
- January 1, 2015 – Payment modifier applies to specific physicians and groups of physicians the Secretary determines appropriate. (definition of physician = 1861(r))
- January 1, 2017 – Payment modifier applies to all physicians and groups of physicians and may apply to physician assistants, nurse practitioners, clinical nurse specialists, certified registered nurse anesthetists, certified nurse-midwives, clinical social workers, clinical psychologists, registered dietitians or nutrition professionals, physical and occupational therapists, qualified speech-language pathologists and qualified audiologists.

**Additional information:**
Long summary:

Sec. 3007. Value-based payment modifier under the physician fee schedule.
Requires the Secretary to develop and implement a budget-neutral adjustment to the physician fee schedule to vary payments to physicians or groups of physicians based upon the quality of care they provide relative to cost. The modifier is separate from and does not replace the geographic adjustment factors and should promote systems-based care. In applying the payment modifier under this subsection, the Secretary shall, as appropriate, take into account the special circumstances of physicians or groups of physicians in rural areas and other underserved communities. During the initial performance period, the Secretary will provide information to physicians about the quality and cost of care they provide. Directs the Secretary to coordinate the payment modifier with the physician feedback program and other similar provisions. Further limits judicial review.

Quality and cost measures. The Secretary shall establish a composite of appropriate, risk-based measures of quality, which must be submitted to the National Quality Forum for endorsement. In addition, the Secretary shall establish a composite of appropriate measures of costs. The composite cost measure will be adjusted to remove the effect of geographic adjustments in payment rates and to take into account risk factors (such as socioeconomic and demographic characteristics, ethnicity, and health status of individuals and other factors determined by the Secretary).

Summary of the Regulations:
The proposed rule also includes proposed quality and cost measures that would be used in establishing a new value-based modifier that would reward physicians for providing higher quality and more efficient care. The Affordable Care Act requires CMS to begin making payment adjustments to certain physicians and physician groups on January 1, 2015, and to apply the modifier to all physicians by January 1, 2017. CMS intends to work closely with physicians to ensure that efforts to improve the quality, safety, and efficiency of care do not diminish patient access to care. CMS is proposing to use CY 2013 as the initial performance year for purposes of adjusting payments in CY 2015.

Legislative text:
SEC. 3007. VALUE-BASED PAYMENT MODIFIER UNDER THE PHYSICIAN FEE SCHEDULE.
Section 1848 of the Social Security Act (42 U.S.C. 1395w–4) is amended—
(1) in subsection (b)(1), by inserting “subject to subsection (p),” after “1998,”; and
(2) by adding at the end the following new subsection:
“(p) ESTABLISHMENT OF VALUE-BASED PAYMENT MODIFIER.—
“(1) IN GENERAL.—The Secretary shall establish a payment modifier that provides for differential payment to a physician or a group of physicians under the fee schedule established under subsection (b) based upon the quality of care furnished compared to cost (as determined under paragraphs (2) and
(3), respectively) during a performance period. Such payment modifier shall be separate from the geographic adjustment factors established under subsection (e).
“(2) QUALITY.—
“(A) IN GENERAL.—For purposes of paragraph (1), quality of care shall be evaluated, to the extent practicable, based on a composite of measures of the quality of care furnished (as established by the Secretary under subparagraph (B)).

(B) MEASURES.—

(i) The Secretary shall establish appropriate measures of the quality of care furnished by a physician or group of physicians to individuals enrolled under this part, such as measures that reflect health outcomes. Such measures shall be risk adjusted as determined appropriate by the Secretary.

(ii) The Secretary shall seek endorsement of the measures established under this subparagraph by the entity with a contract under section 1890(a).

(3) COSTS.—For purposes of paragraph (1), costs shall be evaluated, to the extent practicable, based on a composite of appropriate measures of costs established by the Secretary (such as the composite measure under the methodology established under subsection (o)(9)(C)(iii)) that eliminate the effect of geographic adjustments in payment rates (as described in subsection (e)), and take into account risk factors (such as socioeconomic and demographic characteristics, ethnicity, and health status of individuals (such as to recognize that less healthy individuals may require more intensive interventions) and other factors determined appropriate by the Secretary.

(4) IMPLEMENTATION.—

(A) PUBLICATION OF MEASURES, DATES OF IMPLEMENTATION, PERFORMANCE PERIOD.—Not later than January 1, 2012, the Secretary shall publish the following:

(i) The measures of quality of care and costs established under paragraphs (2) and (3), respectively.

(ii) The dates for implementation of the payment modifier (as determined under subparagraph (B)).

(iii) The initial performance period (as specified under subparagraph (B)(ii)).

(B) DEADLINES FOR IMPLEMENTATION.—

(i) INITIAL IMPLEMENTATION.—Subject to the preceding provisions of this subparagraph, the Secretary shall begin implementing the payment modifier established under this subsection through the rulemaking process during 2013 for the physician fee schedule established under subsection (b).

(ii) INITIAL PERFORMANCE PERIOD.—

(I) IN GENERAL.—The Secretary shall specify an initial performance period for application of the payment modifier established under this subsection with respect to 2015.

(II) PROVISION OF INFORMATION DURING INITIAL PERFORMANCE PERIOD.—During the initial performance period, the Secretary shall, to the extent practicable, provide information to physicians and groups of physicians about the quality of care furnished by the physician or group of physicians to individuals enrolled under this part compared to cost (as determined under paragraphs (2) and (3), respectively) with respect to the performance period.

(iii) APPLICATION.—The Secretary shall apply the payment modifier established under this subsection for items and services furnished—

(I) beginning on January 1, 2015, with respect to specific physicians and groups of physicians the Secretary determines appropriate; and

(II) not later than January 1, 2017, with respect to all physicians and groups of physicians.

(5) SYSTEMS-BASED CARE.—The Secretary shall, as appropriate, apply the payment modifier established under this subsection in a manner that promotes systems-based care.

(6) CONSIDERATION OF SPECIAL CIRCUMSTANCES OF CERTAIN PROVIDERS.—In applying the payment modifier under this subsection, the Secretary shall, as appropriate, take into account the special circumstances of physicians or groups of physicians in rural areas and other underserved communities.

(7) APPLICATION.—For purposes of the initial application of the payment modifier established under this subsection during the period beginning on January 1, 2015, and ending on December 31, 2016, the term ‘physician’ has the meaning given such term in section 1861(r). On or after January 1, 2017, the Secretary may apply this subsection to eligible professionals (as defined in subsection (k)(3)(B)) as the Secretary determines appropriate.

(8) DEFINITIONS.—For purposes of this subsection:

(A) COSTS.—The term ‘costs’ means expenditures per individual as determined appropriate by the Secretary. In making the determination under the preceding sentence, the Secretary may take into account the amount of growth in expenditures per individual for a physician compared to the amount of such growth for other physicians.

(B) PERFORMANCE PERIOD.—The term ‘performance period’ means a period specified by the Secretary.

(9) COORDINATION WITH OTHER VALUE-BASED PURCHASING REFORMS.—The Secretary shall coordinate the value-based payment modifier established under this subsection with the Physician Feedback Program under subsection (n) and, as the Secretary determines appropriate, other similar provisions of this title.

(10) LIMITATIONS ON REVIEW.—There shall be no administrative or judicial review under section 1869, section 1878, or otherwise of—

(A) the establishment of the value-based payment modifier under this subsection;

(B) the evaluation of quality of care under paragraph (2), including the establishment of appropriate measures of the quality of care under paragraph (2)(B);

(C) the evaluation of costs under paragraph (3), including the establishment of appropriate measures of costs under such paragraph;

(D) the dates for implementation of the value-based payment modifier;

(E) the specification of the initial performance period and any other performance period under paragraphs (4)(B)(ii) and (8)(B), respectively;

(F) the application of the value-based payment modifier under paragraph (7); and

(G) the determination of costs under paragraph (8)(A).”.

Updated September 29, 2011