Productivity Adjustment: Ambulatory Surgical Centers

**Summary:** Incorporates a productivity adjustment into payment updates for Part B providers who do not already have such an adjustment, including ambulatory surgical centers.

**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 both hospital outpatient departments (HOPDs) and ambulatory surgical centers (ASCs) for calendar year (CY) 2012. For ASCs the proposed update is an increase of 0.9 percent for CY 2012.

**Next steps:**
- 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.

**Additional information:**
- McDermott, Will, and Emery article regarding the impact on ambulatory surgical centers -- [http://www.mwe.com/index.cfm/fuseaction/publications.nldetail/object_id/d8474ecf-4a8a-4ec2-b9a0-ed1a34f73a81.cfm](http://www.mwe.com/index.cfm/fuseaction/publications.nldetail/object_id/d8474ecf-4a8a-4ec2-b9a0-ed1a34f73a81.cfm)

**Long summary:**
Sec. 3401. Revision of certain market basket updates and incorporation of productivity improvements into market basket updates that do not already incorporate such improvements (as modified by sec. 10319 and sec. 1105 of HCERA).

*(with only provisions relevant to ambulatory surgical centers)*

*Productivity adjustment.* Beginning in 2011, applies a productivity adjustment to consumer price index (CPI) updates for these Part B items and services: ambulance, laboratory, **ambulatory surgical center**, durable medical equipment, prosthetic devices, orthotics and prosthetics, and any fee schedules applicable to medical supplies, home dialysis supplies and equipment, therapeutic shoes, parenteral and enteral nutrients, equipment, and supplies, electromyogram devices,
salivation devices, blood products, and transfusion medicine. The productivity adjustment is the 10-year moving average of changes in annual economy-wide private non-farm business multi-factor productivity (as projected by the Secretary for the 10-year period ending with the applicable year, fiscal year, cost reporting period, or other annual period). The productivity adjustments may cause a negative update and may result in payment rates for a year being less than the payment rates for the preceding year.

**Summary of the Proposed Regulations:**

*ASC Payment Rate Updates*—Payments to ASCs are updated annually based on the consumer price index for all urban consumers (CPI-U). CMS is projecting that the CPI-U for CY 2012 will be 2.3 percent. As required by the Affordable Care Act, CMS is proposing to reduce the annual update by a productivity adjustment projected to be 1.4 percent in CY 2012. **Therefore, CMS is proposing to apply a 0.9 percent update for CY 2012.**

**Legislative text:**

SEC. 3401. REVISION OF CERTAIN MARKET BASKET UPDATES AND INCORPORATION OF PRODUCTIVITY IMPROVEMENTS INTO MARKET BASKET UPDATES THAT DO NOT ALREADY INCORPORATE SUCH IMPROVEMENTS. (portions omitted)

''(F) PRODUCTIVITY AND OTHER ADJUSTMENT.—After determining the OPD fee schedule increase factor under subparagraph (C)(iv), the Secretary shall reduce such increase factor—

'(i) for 2012 and subsequent years, by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II); and

'(ii) for each of 2010 through 2019, by the adjustment described in subparagraph (G).

The application of this subparagraph may result in the increase factor under subparagraph (C)(iv) being less than 0.0 for a year, and may result in payment rates under the payment system under this subsection for a year being less than such payment rates for the preceding year.

''(G) OTHER ADJUSTMENT.—For purposes of subparagraph (F)(ii), the adjustment described in this subparagraph is—

'(i) for each of 2010 and 2011, 0.25 percentage point;

'(ii) for each of 2012 and 2013, 0.1 percentage point;

'(iii) for 2014, 0.3 percentage point;

'(iv) for each of 2015 and 2016, 0.2 percentage point; and

'(v) for each of 2017, 2018, and 2019, 0.75 percentage point.''.

(k) AMBULATORY SURGICAL CENTER SERVICES.—Section 1833(i)(2)(D) of the Social Security Act (42 U.S.C. 1395l(i)(2)(D)) is amended—

(1) by redesignating clause (v) as clause (vi); and

(2) by inserting after clause (iv) the following new clause:

''(v) In implementing the system described in clause (i) for 2011 and each subsequent year, any annual update under such system for the year, after application of clause (iv), shall be reduced by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II). The application of the preceding sentence may result in such update being less than 0.0 for a year, and may result in payment rates under the system described in clause (i) for a year being less than such payment rates for the preceding year.''.