Eliminating the Copay Penalty for ASC Procedures
H.R. 3006/S. 1776

Problem: Medicare beneficiaries who receive treatment in either an ambulatory surgery center (ASC) or hospital outpatient department (HOPD) are typically responsible for 20 percent of their cost of care. In HOPDs, this 20 percent copay is capped at the hospital inpatient deductible amount ($1,736 for 2026). In ASCs, however, there is no copay cap. As a result, Medicare patients treated in an ASC face higher copays for approximately 273 procedures.

Moreover, when the copay cap is applied in an HOPD, the hospital is made whole, meaning that Medicare pays the hospital the difference between what 20 percent of the procedure would have yielded and the capped amount of $1,736. Since Medicare reimburses HOPDs significantly more than ASCs for virtually every procedure, this flawed policy incentivizes beneficiaries to choose the higher cost site of care, adding unnecessary costs to the Medicare program. This is especially true in communities where providers receive higher reimbursement due to a higher cost of living.

This problem came to light as higher cost procedures such as total joint replacements began shifting to the ASC setting. The copay penalty disincentivizes this migration, costing taxpayers more money.

A Barrier to Equitable Access to Care: Medical beneficiaries with supplemental insurance (SI) coverage are likely insulated from this copay penalty since SI would cover all or most of the beneficiary's copayment responsibility. For those without SI, however, the higher copayment in the ASC makes the setting cost-prohibitive, reducing access to care.

Since racial disparities are observed in SI coverage, this access issue is exacerbated for certain beneficiaries. Specifically, a study analyzing racial disparities in SI found that only 40 percent of Black beneficiaries are covered by SI in contrast to 72 percent of White beneficiaries,[1] which impacts Black beneficiaries' use of outpatient services in Part B.

Solution: It is imperative that Congress act to expand Medicare beneficiaries' access to surgical care by applying the copay cap that exists for HOPD services to the ASC setting as well. This action would reduce Medicare costs, provide greater access to care, and eliminate situations where out-of-pocket costs for beneficiaries treated in ASCs are higher than for patients treated in HOPDs.

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[1] Brunt, Christopher S. "Supplemental Insurance and Racial Health Disparities under Medicare Part B." *Health Services Research*, John Wiley and Sons Inc., Dec. 2017, www.ncbi.nlm.nih.gov/pmc/articles/PMC5682138/.

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