



American Association of  
Clinical Urologists, Inc.

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September 8, 2022

The Honorable Chiquita Brooks-LaSure  
Administrator  
Centers for Medicare & Medicaid Services  
U.S. Department of Health and Human Services  
Hubert H. Humphrey Building, Room 445-G  
200 Independence Avenue, SW  
Washington, D.C. 20201

RE: CY 2023 Medicare Hospital Outpatient Prospective Payment System and  
Ambulatory Surgical Center Payment System Proposed Rule (CMS-1772-P)

Submitted electronically via <http://www.regulations.gov>

Dear Administrator Brooks-LaSure:

On behalf of our physician members, the American Association of Clinical Urologists (AACU) respectfully submits these comments to the Centers for Medicare & Medicaid Services (CMS) on the CY 2023 Outpatient Prospective Payment System (OPPS) and Ambulatory Surgical Center (ASC) Payment System Proposed Rule.

Founded in 1968 by urologists concerned by the government's increasing role in the practice of medicine, the AACU is a professional organization representing the interests of more than 3,700+ member urologists, and urologic societies engaged as advocacy affiliates across the United States. We are dedicated to developing and advancing health policy education as it affects urologic practice in order to preserve and promote the professional autonomy of our members and support the highest quality of care for patients.

**AACU recommends CMS continue to use the productivity-adjusted hospital market basket update to ASC payment rates.**

In 2019, CMS finalized the proposal to apply the productivity-adjusted hospital market basket update to ASC payment system rates for an interim period of 5 years (CY 2019 through CY 2023). Using the proposed hospital market basket update, CMS is proposing to update the ASC rates for CY 2023 by 2.7 percent. This proposed update would increase the ASC conversion factor to \$51.315.

Additionally, CMS has proposed that hospitals that meet quality reporting requirements also receive a 2.7% proposed increase, which translates to a conversion

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factor of \$86.785, a number that is significantly higher than the ASC conversion factor.

**AACU advocates for payment parity of ASC payment rates.**

The AACU applauds the use of the productivity-adjusted hospital market basket update to ASC payment rates. The AACU also supports the ongoing use of this methodology to calculate ASC payment rates beyond the current expiration date. The AACU believes the current methodology more accurately reflects healthcare costs than the CPI-U and are concerned that reversion back to the CPI-U would not accurately reflect healthcare costs in an era of unprecedented inflation.

The AACU, whose membership is comprised of both hospital-employed and independently practicing urologists, believes in ASC payment parity. The AACU has advocated for payment parity at hospital ASC payment rate. The AACU believes that this will continue to allow the performance of outpatient surgeries rate regardless of the setting. In 2020, it was expected that only 40 percent\* of outpatient surgeries took place in a hospital setting, meaning that a majority of patients are choosing to have their surgical procedures in ASCs.

As the number of surgical patients seeking care at ASCs continues to increase, so do associated costs for these independent centers. In addition to increased costs due to patient volume, independent ASCs face continued financial challenges as a result of the ongoing pandemic, unprecedented inflation, and critical labor shortages. The AACU believes that providing payment parity at the hospital rate for independent ASCs will help alleviate financial pressures and more appropriately reflect the critical role of ASCs in providing patient access to care.

**AACU supports the addition of C-APC 572 and the use of CY 2021 claims data.**

The AACU strongly supports the creation of CMS's proposal to add C-APC 5372 (Level 2 Urology and related services) along with supporting CMS's use of CY 2021 claims data. CMS is proposing to use CY 2021 claims data after using CY 2019 data for two rulemaking years. In turn, CMS identified eight urology procedures from APC 5375 whose geometric means are closer to the geometric mean of APC 5376 (\$8,788.53), than the geometric mean of APC 5375 (\$4,826.23). According to CMS, the reassignment of these eight codes to APC 5476 improves the resource cost and clinical homogeneity for the procedures within APC 5375 and APC 5376.



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## AACU requests that any remedy to the 340B program not adversely affect either proactively or retroactively ASC payment rates.

The AACU is concerned that following the Supreme Court ruling *American Hospital Association v. Becerra*, that in regard to the 340B program, CMS's remedy will adversely affect the ASC conversion factor. This would be particularly harmful to those entities not involved in the 340B program. Any attempt to retroactively recoup funds, especially from ASC's not participating in 340B programs, would not only be unfair but could significantly threaten the financial viability of some ASC ventures. The AACU strongly urges CMS not to adjust the proposed ASC conversion factor

The AACU is grateful to CMS for the opportunity to provide these comments on the CY 2023 Medicare Hospital Outpatient Prospective Payment System and Ambulatory Surgical Center Payment System Proposed Rule proposed rule. We look forward to future opportunities to provide comment and opportunities to work together on related policy issues. Please reach out to Kristin Jimison, AACU Director of Legislative Affairs at [kjimison@veritasamc.com](mailto:kjimison@veritasamc.com) with questions.

Sincerely,

Terrence Regan, MD  
Health Policy Committee Chair  
American Association of Clinical Urologists



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