

60 - Variations in Payment Rates to Providers

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42 CFR 422.4(a)(3)(ii) and 42 CFR 422.216(a)

A PFFS plan cannot not vary the payment rates for a provider based on the utilization of that provider's services, except under the following two circumstances:

- A PFFS plan may vary the payment rates for a provider based on the specialty of the provider, the location of the provider, or other factors related to the provider that are not related to utilization and do not violate the provider antidiscrimination rules under 42 CFR 422.205; and
- A PFFS plan may also increase the payment rates for a provider based on increased utilization of specified preventive or screening services.

All three types of PFFS plans (full, partial, and non-network plans) are still required to establish uniform payment rates in their terms and conditions of payment for deemed providers of all categories of Part A and Part B services and are required to pay these deemed providers at least the Original Medicare rates or higher. However, plans also have the flexibility to establish through signed contracts or agreements with specific providers payment rates that are different than the rates listed in the terms and conditions that would otherwise apply, as long as the variations in payment rates are not based on utilization (as described above). As noted in section 40.1 of this chapter, providers with signed contracts or agreements with a PFFS plan are considered direct-contracting providers.

PFFS plans may vary payment rates for their direct-contracting providers as long as the rates are not based on utilization, with the payment rates being effective according to the terms of the contract or agreement between the plan and the provider. However, PFFS plans must continue to establish uniform payment rates for deemed providers in their terms and conditions of payment. As noted in section 40.2 of this chapter, all deemed providers have the right to decide, on a patient-by-patient and visit-by-visit basis, whether to treat plan members unless the provider becomes a direct-contracting provider by entering into a signed contract or agreement with the plan to see plan members over a certain period of time.

Example 1: PFFS plans may utilize the flexibility to establish provider-specific payment rates to encourage participation by providers who otherwise would not have agreed to accept the payment rates listed in the terms and conditions of payment. For example, a PFFS plan that lists a payment rate of 100% of Original Medicare for cardiology services in the terms and conditions of payment that apply to deemed providers can establish a higher provider-specific payment rate (e.g., 110% of Original Medicare) through a signed contract or agreement to encourage a provider in a rural area to provide these services.

Example 2: A PFFS plan that intends to increase payment rates to a provider based on increased utilization of specified preventive or screening services may establish the rates in its signed contracts or agreements with direct-contracting providers and/or in the terms and conditions of payment for deemed providers. The plan may also choose to apply this policy on a provider-by-provider basis.

PFFS plans must maintain a record of all provider-specific payment rates that they negotiate with direct-contracting providers along with the final rates paid. PFFS plans must also have the capacity to report this information to CMS or to an independent entity contracted by CMS upon request.

Section 70 of this chapter discusses the payment rules for direct-contracting and deemed providers in each of the three types of PFFS plans.