

CMS-1545-P-10 Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 2008

Submitter : Mr. David McClure

Date & Time: 06/29/2007

Organization : Tennessee Hospital Association

Category : Health Care Provider/Association

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-1545-P-10-Attach-1.DOC



#10

June 29, 2007

Leslie Norwalk, Esq.
Acting Administrator
Centers for Medicare & Medicaid Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W., Room 445-G
Washington, DC 20201

RE: CMS-1545-P, Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY2008

Dear Ms. Norwalk:

The Tennessee Hospital Association (THA), on behalf of our over 200 healthcare facilities, including hospitals, skilled nursing facilities, home care agencies, nursing homes, and health-related agencies and businesses, and over 2,000 employees of member healthcare institutions, such as administrators, board members, nurses and many other health professionals, appreciates the opportunity to submit comments on the Centers for Medicare & Medicaid Services (CMS) on the fiscal year (FY) 2008 consolidated billing for skilled nursing facilities prospective payment system (PPS) proposed rule.

Market Basket Index

CMS has proposed to raise the 0.25 percentage point threshold for forecast error adjustments under the SNF PPS to 0.5 percentage points effective with FY 2008. Under current regulations, CMS is required to provide a marketbasket forecast error adjustment whenever the error exceeds a threshold of 0.25 percentage points. This threshold was established in the FY 2004 final rule. This adjustment measures the difference between the forecasted and actual marketbasket increase against a specified threshold each year. CMS acknowledges for FY 2006 (the most recently available fiscal year for which there is final data), the estimated increase in the market basket index was 3.1 percentage points, while the actual increase was 3.4 percentage points, resulting in a 0.3 percentage point understatement. **The Tennessee Hospital Association opposes the threshold change as proposed by CMS. CMS has provided no justification for such a significant change which represents an approximate 10 percent understatement of the adjustment. THA further recommends that CMS correct past under-projections with a payment increase to facilities.**

Leslie Norwalk, Esq.

June 29, 2007

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Revising and Rebasing

Currently, the SNF marketbasket is based on fiscal year 1997 total facility costs and CMS proposes to rebase to fiscal year 2004. CMS also proposes a change from using the current methodology based on total facility costs to an allowable cost methodology. CMS acknowledges it has insufficient data to quantify the impact of a change in methodology. **The Tennessee Hospital Association supports the rebasing of costs from 1997 to 2004; however, absent supporting data from CMS we oppose the revision of the current methodology based on total facility costs to an allowable cost methodology. CMS should not make a change in the methodology absent documented evidence of the impact.**

CMS notes the use of freestanding SNF data only to determine true costs for the marketbasket update each year since hospital-based SNF data would skew the marketbasket index due to allocations for overhead. CMS' use of only freestanding SNF data penalizes hospital based SNFs especially in rural areas due to the lack of alternative post acute resources, i.e., long term acute care facilities, rehabilitation units and limited resource Home Health Agencies and transportation. CMS by using this freestanding policy has had the impact of closing many hospital based SNFs because of the greater cost of care for higher acuity patients. **The Tennessee Hospital Association recommends using a separate base for hospital based SNFs to recognize the unique patient mix cared for by hospital based SNFs – that data is available in Medicare cost reports. THA believes the continued use of freestanding only SNF cost data will result in continued facility closures and patients having to travel long distances for post acute care.**

Consolidated Billing

CMS invited public comments on the identification of particular service codes within four specified categories that identify services for exclusion. The identified categories were chemotherapy items, chemotherapy administration services, radioisotope services, and customized prosthetic devices.

The cost of one of these procedures is most often far greater than the total per day Medicare reimbursement for the patient's care. SNFs, either freestanding or hospital based, will be unable to absorb the losses for these patients. Hospital based units have a disproportionate share of this type of patients and would again be most impacted. **The Tennessee Hospital Association opposes the inclusion of these services in the consolidated billing process.**

Annual Update

For FFY 2008, based on the new marketbasket methodology, CMS has proposed the labor-related portion of the federal rate to be 73.757% which is a reduction from 75.839% used in FFY2007. **The Tennessee Hospital Association supports the reduction in the labor-related portion of the federal rate for FFY2008.**

Leslie Norwalk, Esq.

June 29, 2007

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The THA appreciates the opportunity to submit these comments. If you have any questions about our remarks, please feel free to contact me or David McClure, vice president of finance, at (615) 256-8240 or dmcclure@tha.com.

Sincerely,

Craig Becker, FACHE
President

cc: Rick Pollack, AHA, Executive Vice President

CMS-1545-P-11 Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 2008

Submitter : Mrs. Lisa Austin

Date & Time: 06/29/2007

Organization : Mountain States Health Alliance

Category : Hospital

Issue Areas/Comments

Annual Update

Annual Update

We support the reduction in the Labor-related portion of the Federal rate.

Market Basket Index

Market Basket Index

We oppose CMS proposal to raise the .25 percentage point threshold for forecast error adjustment for FY 2008. This equates to approximately 10 percent adjustment to the 3.4 market basket increase. CMS has not provided a justification for the error adjustment. This adjustment was established in the final rule for FY 2004 and CMS has not correct the past under projections.

Revising and Rebasing

Revising and Rebasing

CMS proposed changes in rebasing, which is not supported with data to quantify the impact. We recommend that CMS delay the implementation until further information can be supply and supported for a change.

CMS-1545-P-12 Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 2008

Submitter : Mr. Richard Snyder

Date & Time: 06/29/2007

Organization : Oklahoma Hospital Association

Category : Hospital

Issue Areas/Comments

GENERAL

GENERAL

Please see attachment.

CMS-1545-P-12-Attach-1.DOC

#12



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www.okoha.com

Craig W. Jones, FACHE
President

June 29, 2007

Leslie Norwalk, Esq.
Acting Administrator
Centers for Medicare & Medicaid Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W., Room 445-G
Washington, DC 20201

RE: CMS-1545-P, Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for Federal Fiscal Year 2008: Proposed Rule

Dear Ms. Norwalk:

On behalf of our nearly 150 member hospitals, health systems and other health care organizations, the Oklahoma Hospital Association (OHA) appreciates the opportunity to comment on the Centers for Medicare & Medicaid Services' (CMS) proposed rule for the Skilled Nursing Facility Prospective Payment System (SNF PPS).

Marketbasket Index

Under the SNF PPS, the Centers for Medicare and Medicaid Services (CMS) adjust the rates to compensate for the difference between the forecasted marketbasket used to set the rates and the actual increase in the marketbasket. The marketbasket forecast error adjustment is made whenever the difference exceeds a threshold of 0.25%. This threshold was established in the federal fiscal year (FFY) 2004 final rule.

CMS is proposing to raise the 0.25 percentage point threshold for the forecast error adjustment to 0.5 percentage point, effective for FY 2008. The forecasted increase in the marketbasket index for FFY 2006, the latest year for which data is available, was 3.1% compared to the actual increase of 3.4%. The 0.3 percentage point difference exceeds the current threshold and would result in an FFY 2008 rate increase. However, CMS' proposal would eliminate this adjustment since the difference does not exceed the proposed 0.5 percentage point threshold.

CMS states that "it would be appropriate at this point to recalibrate the specified threshold for triggering a forecast error adjustment, in a manner that distinguishes between the major forecast errors that gave rise to this policy initially and the far more typical minor variances that have consistently occurred in each of the succeeding years."

In fact, FFY 2006 is the first year subsequent to the establishment of the 0.25 percentage point threshold that the threshold has been exceeded.

The 0.25 threshold is appropriate for differentiating between the "typical minor variances" that occurred in FFYs 2003 through 2005 and the significant forecast error that occurred in FFY 2006. It is also significant that the forecasted marketbasket increases have consistently been lower than the actual increase (except for one year where they were the same) resulting in consistent underpayments for SNFs.

The proposal to increase the threshold to a level that would eliminate the first forecast error adjustment that has been provided since FFY 2004 is blatantly unfair. OHA urges CMS to withdraw this proposal and maintain the threshold for forecast error adjustments at the current 0.25% percentage point level.

Furthermore, I would like to point out that despite inflation, an error of 0.25% is no more "minor" in FFY 2008 than it was in FFY 2004.

CMS may also wish to consider using a marketbasket forecast error adjustment that compares cumulative unadjusted forecast errors with an error threshold. Under this approach, an error of 0.15% in FFY X1 combined with an error of 0.20% in FFY X2 would result in a cumulative error in excess of the error threshold, causing an error adjustment to be made for FFY X3.

Thank you for the opportunity to submit these comments. If you have any questions, please feel free to contact me at rsnyder@okoha.com or (405) 427-9537.

Sincerely,

OKLAHOMA HOSPITAL ASSOCIATION



Richard K. Snyder
CFO & VP Finance and Information Services

CMS-1545-P-13 Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 2008

Submitter : Mr. Stephen Harwell

Date & Time: 06/29/2007

Organization : Healthcare Association of New York State

Category : Health Care Provider/Association

Issue Areas/Comments

GENERAL

GENERAL

see attachment

CMS-1545-P-13-Attach-1.DOC



Healthcare Association
of New York State

June 29, 2007

Ms. Leslie Norwalk, Esq.
Acting Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
Attention: CMS-1545-P
7500 Security Boulevard
Baltimore, MD 21244-8012

Re: CMS-1545-P, Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for Federal Fiscal Year 2008; Proposed Rule

Dear Ms. Norwalk:

The Healthcare Association of New York State (HANYS), on behalf of our more than 550 hospitals, nursing homes, home health agencies, and other health care providers, welcomes the opportunity to comment on the proposed rule related to the Medicare Skilled Nursing Facility Prospective Payment System (SNF PPS).

Marketbasket Index

Under the SNF PPS, the Centers for Medicare and Medicaid Services (CMS) adjust the rates to compensate for the difference between the forecasted marketbasket used to set the rates and the actual increase in the marketbasket. The marketbasket forecast error adjustment is made whenever the difference exceeds a threshold of 0.25%. This threshold was established in the federal fiscal year (FFY) 2004 final rule.

CMS is proposing to raise the 0.25 percentage point threshold for the forecast error adjustment to 0.5 percentage point, effective for FY 2008. The forecasted increase in the marketbasket index for FFY 2006, the latest year for which data is available, was 3.1% compared to the actual increase of 3.4%. The 0.3 percentage point difference exceeds the current threshold and would result in an FFY 2008 rate increase. However, CMS' proposal would eliminate this adjustment since the difference does not exceed the proposed 0.5 percentage point threshold.

CMS states that *"it would be appropriate at this point to recalibrate the specified threshold for triggering a forecast error adjustment, in a manner that distinguishes between the major forecast*

errors that gave rise to this policy initially and the far more typical minor variances that have consistently occurred in each of the succeeding years.”

In fact, FFY 2006 is the first year subsequent to the establishment of the 0.25 percentage point threshold that the threshold has been exceeded as the table below shows.

	FFY 2003	FFY 2004	FFY 2005	FFY 2006
Forecasted Marketbasket	3.1	3.0	2.8	3.1
Actual Marketbasket	3.3	3.0	2.9	3.4
Difference	0.2	0.0	0.1	0.3

The 0.25 threshold is appropriate for differentiating between the “typical minor variances” that occurred in FFYs 2003 through 2005 and the significant forecast error that occurred in FFY 2006. It is also significant that the forecasted marketbasket increases have consistently been lower than the actual increase (except for one year where they were the same) resulting in consistent underpayments for SNFs. A proposal to increase the threshold to a level that would eliminate the first forecast error adjustment that has been provided since FFY 2004 is blatantly unfair. **HANYS urges CMS to withdraw this proposal and maintain the threshold for forecast error adjustments at the current 0.25 percentage point level.**

HANYS appreciates having the opportunity to comment on the proposed rule. If you have any questions regarding our comments, please contact me at (518) 431-7777 or sharwell@hanys.org.

Sincerely,

Stephen Harwell
Vice President
Economics, Finance, and Information

CMS- 1545-P

Because the referenced comment number does not pertain to the subject matter for CMS-1545-P, it is not included in the electronic public comments for this regulatory document.

CMS-1545-P-15 Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 2008

Submitter : Mr. Scott Amrhein

Date & Time: 06/29/2007

Organization : Continuing Care Leadership Association (CCLC)

Category : Health Care Provider/Association

Issue Areas/Comments

GENERAL

GENERAL

See attachment

CMS-1545-P-15-Attach-1.DOC

#15

CONTINUING CARE LEADERSHIP COALITION



June 29, 2007

VIA E-MAIL

Leslie Norwalk, Esq.
Acting Administrator
Centers for Medicare & Medicaid Services (CMS)
Department of Health and Human Services
Attention: CMS - 1545 - P
7500 Security Boulevard
Baltimore, Maryland 21244-1850

Subject: Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 2008; Proposed Rule, File Code: CMS-1545-P

Dear Ms. Norwalk:

The Continuing Care Leadership Coalition (CCLC) represents over 100 not-for-profit and public long term care providers in the New York metropolitan area. The members of CCLC provide services across the continuum of long term care to older and disabled individuals. CCLC's members are leaders in the delivery of home care, skilled nursing care, adult day health care, respite and hospice care, rehabilitation and sub-acute care, senior housing and assisted living, and continuing care services to special populations. CCLC's members have also had a significant impact on the development of innovative solutions to long term care financing and service delivery in the U.S., with several of its members having played pioneering roles in the development of managed long term care programs in New York and Social HMO and PACE programs at the national level.

On behalf of the long term care providers in the CCLC membership, I appreciate this opportunity to comment upon the Centers for Medicare and Medicaid Services' (CMS's) proposed rule (CMS-1545-P) regarding the Skilled Nursing Facility (SNF) Prospective Payment System (PPS) for Fiscal Year (FY) 2008. The comments below are divided into general comments and comments that focus on the inadequacy of payments under the PPS for providers that provide ventilator services in the SNF setting.

Key Changes to the SNF PPS

CMS has proposed the following changes to the SNF PPS:

- Revising and rebasing the SNF market basket and providing a full market basket increase of 3.3% for FY 2008.
- Raising the threshold for the adjustment for the market basket forecast error from the current 0.25 percentage point to 0.5 percentage point, effective FY 2008.

General Comments on the FY 2008 Proposed Rule

CCLC appreciates, and is supportive of, CMS's proposal to provide a full market basket increase of 3.3% in FY 2008. This action is critical to ensuring that Medicare rates of payment keep pace with the increasing costs of goods and services associated with the delivery of quality care by skilled nursing facilities in New York State, 54%¹ of which already incur losses at the operating level.

While supporting the market basket increase, CCLC objects to the CMS provision to increase the market basket forecast error threshold from 0.25 percentage point to 0.5 percentage point. CMS maintains that a higher threshold helps distinguish between the major forecast errors that occur occasionally and the far more typical minor variances that is the result of the certain level of imprecision that is inherently associated with measuring statistics.

CCLC contends that the CMS proposal will create financial hardship for many SNFs, which, like the majority of those in New York State, are already operating from a precarious position financially. SNFs in New York State collectively experienced a -2.6% operating margin in 2005 (reflecting a worsening position from the -1.6% average operating margin of New York SNFs in 2004). These facilities are not in a position to absorb potential losses resulting from a market basket error that is material but that falls below the 0.50 percentage point threshold. Further, if the forecast error for a consecutive number of years is below the proposed new threshold, then providers would be even more severely impacted by having to absorb the cumulative impact of the error over successive years. CCLC strongly opposes this proposed change, and even more vehemently objects to CMS's consideration of a higher threshold of 1.0 percentage point, which we contend is completely untenable, as it would only serve to magnify the compounding effect of the potential losses to providers as outlined earlier. CCLC therefore recommends that the CMS proposal to increase the forecast error threshold be withdrawn.

Comments Regarding Inadequacy of Payments for Ventilator Services

CCLC is deeply concerned that in the proposed rule CMS has not addressed the issue of fair and reasonable payment for ventilator services. The lack of a fair payment system is forcing providers to abandon these services and is jeopardizing patient access to ventilator care. Our concerns regarding this issue are detailed below:

A majority of the skilled nursing facilities (SNFs) that provide ventilator services in New York, as well as in other states across the nation, are incurring substantial losses in the delivery of ventilator services to Medicare patients. This is due to the sizable gap that exists between the per diem costs of providing ventilator services and the markedly lower per diem Medicare reimbursement rate for such care. Contributing to this gap in adequate reimbursement is the need for additional resources (which can include enhanced respiratory therapy, nursing, and speech pathology staffing, specialized equipment including pressure relief mattresses and augmentative communication devices, and extensive staff education necessary to ensure optimum clinical outcomes and maximum patient safety) to appropriately care for this complex population. A survey of our membership facilities found an average loss of approximately \$295 per patient, per day.

CMS is currently conducting the STRIVE project study, which has included some data collection from a small sample of facilities providing ventilator services. However, revisions to PPS rates based upon this data will not be completed in time to prevent several SNFs that are currently treating ventilator patients from shutting down their ventilator units as a result of payment shortfalls. The current SNF PPS simply does not account for the services and resources that facilities utilize in order to treat these patients. In some cases these facilities are forced to transfer ventilator patients to an acute care facility where the cost to Medicare is greatly increased. While the

¹ Per 2005 New York State Residential Health Care Facility Cost Reports (RHCF-4)

STRIVE project is examining the utilized resources in some ventilator programs, unless a RUG is created specifically for ventilator patients, the STRIVE project will be ineffective in remedying the existing payment shortfall problem and reflecting the true cost of care for this patient population.

The current RUGs do not reflect the variations in the cost of care to certain patient populations. In its June 2007 report to Congress, MedPAC has stated, "the current RUG classification system does not adequately address the variation in providers' costs for NTA services. NTA costs are included in the nursing component and payments are adjusted according to differences in nursing time. So, payments are the same for patients with and without respiratory therapy - including ventilator care - as long as the nursing costs are the same." MedPAC has repeatedly recommended that payment adjustments be made to non-therapy ancillary services and have continued to recommend adjustments be made to such an inadequate reimbursement rate. In their June 2007 report to Congress, MedPAC stated:

The current design of the SNF PPS results in impaired access for certain beneficiaries who require expensive NTA. MedPAC believes that there are options that can be designed that better target payments for NTA services and for stays with unusually high costs - including those patients who require ventilator care.

After careful review of the SNF PPS proposed rule for FY 2008, it is clear that CMS has not given the needed consideration to MedPAC's recommendations of on this matter. There is no provision in the proposed rule to address these types of facilities or the losses that they continue to sustain.

In addition to MedPAC's recommendations, the OIG has also issued several reports which identify access problems for patients who require high levels of services - including those who need ventilator care. As stated, if CMS does not act quickly and provide some type of relief to facilities with ventilator units, Medicare beneficiaries will continue to experience problems, such as access to care, as more ventilator units will inevitably shut down.

CCLC strongly urges that CMS use its administrative authority to modify the proposed SNF PPS rule for FY 2008 to include a rate adjustment specific to providers of ventilator services that is calibrated to compensate providers for the ventilator-related costs that are not covered under the PPS as currently configured, or as proposed in this rule.

CCLC appreciates the opportunity to provide comments on this proposed regulation. We look forward to working with CMS on this issue and would be happy to provide additional information.

Sincerely,



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President
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