



**American Hospital
Association**

Regulatory Advisory

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Skilled Nursing Facilities: Final PPS Changes for 2006

A Message to AHA Members:

On August 4, 2005, the Centers for Medicare & Medicaid Services (CMS) published in the *Federal Register* a final rule for refining the skilled nursing facility prospective payment system (SNF PPS). The final provisions are highly similar to those in the May 2005 proposed rule, and the American Hospital Association (AHA) is disappointed in CMS' failure to make more substantial changes to improve payment adequacy for the most complex and costly SNF patients. While the final rule is more helpful to hospital-based SNFs than the proposed regulation, hospital-based SNFs will nevertheless continue to face extreme financial pressures.

Some of the provisions of the rule, such as the market basket update, will take effect October 1, 2005, while implementation of other structural changes to the payment system will be delayed until January 1. The final rule is available online at:
<http://a257.g.akamaitech.net/7/257/2422/01jan20051800/edocket.access.gpo.gov/2005/pdf/05-15221.pdf>.

Please review this advisory and share it with key hospital and SNF staff to assess its impact on your organization.

The AHA will be distributing an issue brief discussing our concerns about Medicare's treatment of hospital-based SNFs and will subsequently host a member call to discuss the final rule, issue brief and related issues. We will continue to push for a SNF PPS outlier policy and a hospital-based facility adjustment to improve payment to hospital-based SNFs that treat Medicare's most complex and sick SNF patients. We will also work with CMS to help secure future improvements to the payment system that represent true refinements to the system. To discuss any questions or concerns about this final rule, contact Rochelle Archuleta, AHA senior associate director of policy, at (202) 626-2320.

Sincerely,

Rick Pollack
Executive Vice President

August 25, 2005



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Skilled Nursing Facilities: Proposed PPS Changes for 2006

On August 4, 2005, the Centers for Medicare and Medicaid Services (CMS) published in the *Federal Register* a final rule concerning skilled nursing facility (SNF) payments under Medicare for fiscal year (FY) 2006. The rule contains a long-awaited refinement of the SNF prospective payment system (SNF PPS), but in general, falls short of the improvements that were anticipated and are still needed. The proposed changes, other than the payment system modifications, will take effect October 1, 2005. The structural changes to the payment system, including new payment categories and a new payment add-on, will become effective on a delayed basis beginning January 1, 2006.

Background

The SNF PPS was implemented in 1998 and replaced a cost-based payment system. Under the SNF PPS, providers receive a per diem payment from Medicare if a SNF patient admission was immediately preceded by a hospital stay of at least three days. Payments are currently based on 44 payment categories called resource utilization groups (RUGs) and cover all costs of providing care to patients in each RUG (with exceptions), including therapy and other ancillary services, such as diagnostic tests, supplies and pharmacy expenses.

The SNF PPS has been widely criticized for under-reimbursing providers for costly nontherapy ancillary services, such as dialysis, intravenous feeding and medications, ventilator care and prescription drugs. These services are frequently used by medically complex Medicare patients who are most commonly treated in hospital-based SNFs. Since 1998, this pattern of under-reimbursement has caused one in three hospital-based SNFs to close, resulting in reduced access to care for many medically complex Medicare patients.

In recognition of this problem, Congress initiated several temporary payment adjustments. Two of these payment adjustments, which were authorized under the Balanced Budget Refinement Act (BBRA) of 1999 and the Benefits Improvement and Protection Act (BIPA) of 2000, were to remain in effect until CMS comprehensively refine the SNF PPS. Under the final rule, the remaining payment add-ons, a 20 percent adjustment for medically complex RUGs and a 6.7 percent adjustment for rehabilitation RUGs, will be terminated after December 31, 2005.

Major Provisions in Final Rule

Market Basket Increase

The final rule includes the statutorily required market basket update of 3.1 percent, which would take effect October 1 and will increase Medicare payments to SNFs by an estimated \$530 million.

SNF PPS Refinement

Although most stakeholders have been waiting for a comprehensive refinement of the SNF payment system since its introduction in 1998, CMS has instead retained the current payment system along with minor structural changes and a new payment add-on that replaces the current, larger add-ons. The AHA is disappointed that CMS has yet to develop a payment system that can appropriately predict and reimburse nontherapy ancillary costs associated with medically complex SNF patients, who are often treated in hospital-based SNFs. We will encourage the agency to complete the planned time study to update the payment system's estimates of nursing and therapy resources utilized to reflect operational practices under the current payment system. We will also strongly urge CMS to support a continuation of the promising research initiated by the Urban Institute on alternative designs for the SNF PPS.

New RUGs. Under the final rule, the 44 RUGs of the SNF PPS will remain in effect for the first quarter of FY 2006 (October 2005 through December 2005). Beginning January 1, 2006, the RUG system will be modified by the addition of nine new RUGs intended to capture some of the sickest and most costly SNF patients. The new RUGs will include patients who qualify for both a rehabilitation RUG *and* one of the "extensive services" RUGs. Patients eligible for these nine new "extensive plus rehabilitation" RUGs must meet the following criteria:

- Qualify for one of the 14 rehabilitation RUGs through either estimated or actual therapy minutes; *and*
- Qualify for one of the "extensive services" RUGs, which requires the following:
 - an activities of daily living (ADL) score greater than 7; and
 - having received at least one of the following:
 - Within the last 14 days in either the prior hospital or SNF stay:
 - IV medications; or
 - Ventilator/respirator care; or
 - Tracheotomy; or
 - Suctioning; or
 - Within the last seven days in either the prior hospital or SNF stay:
 - IV feeding during the prior seven days.

A crosswalk to the new RUGs is available on page 45033 of the final rule.

Payment Add-ons. As a result of the addition of the new RUGs, which CMS interprets as a SNF PPS "refinement," the two current payment add-ons will be removed at the end of 2005 representing an annual \$1.4 billion reduction in Medicare payments. These add-ons will be replaced on January 1, 2006 with a new 8.41 percent add-on that will be applied to the nursing component of each of the 53 RUGs, including the nine new RUGs. CMS estimates that the new payment add-on will increase Medicare payments by \$700 million per year. This resulting net loss in add-on revenue of \$700 million per year will exacerbate the precarious financial status of

hospital-based SNFs that, under this final rule, will continue to bear the burden of continued underpayment of nontherapy ancillary services. CMS views the new add-on as a proxy for a precise method of reimbursing SNFs for nontherapy ancillary services, which is yet to be developed.

While the AHA appreciates CMS' efforts to shift Medicare funds toward sicker SNF patients, we are concerned about the financial ramifications of this rule, especially following the elimination of the current add-ons after December 31, and the resulting \$700 million loss. It is unclear how many patients will be eligible for the new, higher paying RUGs. We are also very concerned about hospital-based SNFs treating extensive service patients who do not receive rehabilitation. This group of patients will be ineligible for the new, higher paying RUGs even though they, like the patients who qualify for the new RUGs, are very sick and typically also utilize nontherapy ancillary services. Non-rehabilitation, extensive services patients currently receive a 20 percent payment add-on will experience a significant payment reduction beginning January 1. It is likely these patients will encounter even greater challenges in accessing SNF care than they already face.

In Table 12 of the final rule, CMS estimates that hospital-based SNFs, in aggregate, will experience a greater payment increase (7.7 percent) than freestanding SNFs (between 2.2 and 2.6 percent). However, hospital-based SNFs currently face an estimated *negative* 87 percent margin when treating Medicare patients. Therefore, ongoing efforts to address the payment system's shortcomings remain especially critical for hospital-based SNFs.

The SNF field awaits a CMS report to Congress, which will hopefully include the background analysis used by the agency to develop the final rule and a detailed description of the pending steps CMS plans to take to develop a means of appropriately compensating SNFs caring for complex patients. The AHA will work with CMS in its efforts to develop a SNF payment system that appropriately reimburses SNFs for this vulnerable group of patients.

New Labor Market Area Definitions

In response to recommendations from the AHA and others, CMS agreed to phase in the implementation of new labor market definitions based on core-based statistical areas (CBSAs) through a one-year phase-in. Beginning October 1, the CBSA definitions will replace metropolitan statistical areas (MSAs) to reflect current labor markets and wage differences across markets. During the FY 2006 phase-in, wage-index adjustments will be based using a 50-50 blend of the CBSA and MSA wage indices (both using FY 2002 hospital wage data). In FY 2007 and beyond, only the CBSA index will be used for making wage index adjustments. Table A in the final rule (page 45079) includes the transition wage index table.

Other Provisions

Payment Add-on for AIDs Patients

The 128 percent payment add-on for AIDs patients will remain in effect during FY 2006.

Employment of Nurse Practitioners and Certified Nurse Specialists

CMS clarified that “indirect employment relationships” exist when a nurse practitioner or certified nurse specialist meets both of the following conditions: 1) has a direct employment relationship with an employer other than the SNF; and 2) that employer enters into an agreement with the SNF to provide general nursing services to the SNF’s patients.

OMRA Requirements

CMS also clarifies that the Other Medicare Required Assessment (OMRA) is due on the designated “assessment reference date” (ARD) referred to in the OMRA. The ARD must fall eight to 10 days after the last day of therapy, including physical, speech and occupational therapies. CMS states that the “last day of therapy” is the final day on which a therapy is furnished – not the date on which a therapy discharge order is received or written in the patient’s medical record. CMS also notes that Saturdays and Sundays and “therapeutic leave days” are to be counted in the eight to 10-day timeframe.