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## MEMORANDUM

**TO:** RHCF Members

**FROM:** Patrick Cucinelli, Senior Director of Public Policy Solutions

**DATE:** June 13, 2011

**SUBJECT:** **Proposed Medicare SNF PPS Rule for Federal FY 2012**

**ROUTE TO:** Administrator, CFO, Billing Director, MDS Coordinator

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ABSTRACT: NYAHS reviews proposed changes in Medicare Part A rates for 2012.

### Introduction

On April 28, 2011, the Centers for Medicare & Medicaid Services (CMS) issued the Medicare skilled nursing facility (SNF) prospective payments system (PPS) proposed rule for federal fiscal year (FY) 2012. The final rule stemming from this proposal will determine nursing home Medicare Part A rates effective October 1, 2011. A copy of the rule in its entirety can be viewed in the [Federal Register Volume 76, Number 88](#).

The comment period closes at 5:00 p.m. on June 27, 2011. Comments may be submitted electronically at <http://www.regulations.gov> and following the instructions under the “More Search Options” tab. In submitting comments please refer to file code CMS-1351-P.

NYAHS is joining with our national affiliate, Leading Age (formerly AAHS), is commenting on the proposed rule. There are several significant proposals that all members should be aware of, regardless of whether you intend to submit any comments.

### Summary

CMS offers the following summary as the introduction to the proposed rule:

*This proposed rule presents two options for updating the payment rates used under the prospective payment system for skilled nursing facilities (SNFs), for fiscal year 2012. In this context, it examines recent changes in provider behavior relating to the implementation of the Resource Utilization Groups, version 4 (RUG-IV) case-mix classification system and considers a possible recalibration of the case-mix indexes so that they more accurately reflect parity in expenditures between RUG-IV and the previous case-mix classification*

*system. It also includes a discussion of a Non-Therapy Ancillary component and outlier research currently under development within CMS.*

*In addition, this proposed rule discusses the impact of certain provisions of the Affordable Care Act. It proposes to require for fiscal year 2012 and subsequent fiscal years that the SNF market basket percentage change be reduced by the multi-factor productivity adjustment. It also proposes to require Medicare SNFs and Medicaid nursing facilities to disclose certain information to the Secretary of the United States Department of Health and Human Services (the Secretary) and other entities regarding the ownership and organizational structure of their facilities. Finally, it proposes certain changes relating to the payment of group therapy services and proposes new resident assessment policies.*

*Source: CMS SNF PPS Proposed Rule for FY 2012*

Leading Age has compiled a detailed analysis of the proposed rule that can be found on their Web site by [clicking here](#), or going to [www.leadingage.org](http://www.leadingage.org) and clicking on *Members*, then *Nursing Homes*, and then *Payment and Finance*. A member password is required and any members having difficulty accessing the report should contact me and I will assist.

### **Payment Options**

As noted in the CMS summary, they are looking at two distinct payment options for the new rates effective October 1, 2011. While CMS is seeking to preserve the intended rate enhancements for complex medical care under RUGs-IV, they reported a spike in overall expenditures due to a large increase in group and individual therapy utilization. To counteract this spike, one option CMS is considering is an across-the-board 11% rate reduction for all nursing homes in 2012. Therefore, they are seeking comments on two possible payment options as follows:

#### ***Option 1***

- +2.7% market basket increase;
- -1.2% productivity adjustment; and
- A parity adjustment of 19.28% on only the nursing CMIs for the therapy groups due to over-utilization.
- Net change of -\$3.94 Billion or **-11.3% decrease in rates.**

#### ***Option 2***

- No “parity adjustment;
- +2.7% market basket increase;
- -1.2% productivity adjustment; and
- The increase in market basket reduced by the productivity factor results in a total net increase in market basket increase of +1.5% (\$530 million).

Please note that the productivity adjustment under both options is mandated by the Affordable Care Act.

**The Leading Age analysis includes rate calculation tools under both options.**

## Programmatic Changes

There are several programmatic changes, many stemming from lessons learned with the first few months of experience with RUGs-IV, including:

***The addition of a new and separate non-therapy ancillary component.*** Since NTA costs have previously been included in the nursing home component, CMS is proposing that the portion of the funds originally accounted as NTA costs in the nursing home component be transferred to this new NTA component.

***Revised the requirements that facilities must disclose at the time of enrollment and when there is a change in ownership.*** CMS wants to include information on the organizational structure of each additional disclosable party of the facility and description of the relationship of each additional disclosable party.

***Equating group and concurrent therapy allocations.*** Because of the significant increase in group therapy use that resulted in the increase in overall payment noted above, CMS is proposing the same therapy minutes allocation requirement as currently applied to concurrent therapy.

***Elimination of some the overlap between different assessments.*** Currently, there is significant overlap between the settings of the ARDs combined with the grace days between assessments. CMS would narrow the window on both the setting up the ARD and the grace period days, so as to decrease the amount of overlap.

***CMS is proposing to classify all facilities as “7-day facilities”.*** CMS is thus clarifying that an EOT OMRA is required if there is a “discontinuation” that is a break in therapy for 3 consecutive days in a row regardless of reason, whether planned or unplanned, or whether the facility provides therapy 5 times or 7 times a week.

***A new End of Therapy Resumption (EOT-R) MDS.*** The intent is to decrease the number of unnecessary assessments in cases where the same therapy regimen resumes after a brief discontinuation.

***A new Change of Therapy OMRA.*** CMS is proposing a new type of required assessment, called the Change of Therapy (COT) OMRA. This new COT OMRA assessment would be required whenever the therapy regimen has changed (more or less therapy) to such extent that it would change the resident’s RUG classification on the most recent assessment used for Medicare payment.

## Conclusion

The proposed rule also delves into some of the initiatives CMS is considering to propose in the future. For more details, on the SNF PPS proposed rule for FY 2012 please refer to the Leading Age analysis referenced above. Please also share your comments with us.

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