Medicare Long-Term Care Hospital
Prospective Payment System

Payment Rule Brief — Final Rule
Program Year: FFY 2013

Overview

On August 1, 2012, the Centers for Medicare and Medicaid Services (CMS) released the federal fiscal year (FFY) 2013 final payment rule for the Medicare Long-Term Care Hospital Prospective Payment System (LTCH PPS). The final rule reflects the annual update to the Medicare fee-for-service (FFS) LTCH payment rates and policies based on regulatory changes put forward by CMS and legislative changes previously adopted by Congress.

A display version of the final rule Federal Register and other resources related to the LTCH PPS are available on the CMS Web site at https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/LongTermCareHospitalPPS/LTCPPS-Regulations-and-Notices-Items/CMS-1588-F.html.

An online version of the final rule Federal Register will be available on August 31 at https://www.federalregister.gov/.

A brief of the final rule along with Federal Register (FR) page references for additional details are provided below. Program changes adopted by CMS are effective for discharges on or after October 1, 2012 unless otherwise noted (at the time of this writing, the official Federal Register has not been published. As a result, the page references provided below refer to the unofficial display version of the Federal Register).

LTCH Payment Rate

Incorporating the adopted updates, the table below lists the LTCH standard federal rates for FFY 2013 compared to the rates currently in effect. CMS is adopting its proposal to apply a prospective budget neutrality adjustment reduction to the rate in FFY 2013. However, a legislative moratorium prevents CMS from applying the adjustment prior to December 29, 2012. As a result, CMS is adopting its proposal to use two different LTCH standard federal rates during FFY 2013 (FR display pages 1,831-1,836).

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<td></td>
<td>$40,222.05</td>
<td>$40,915.95 (proposed at $41,026.88)</td>
<td>$40,397.96 (proposed at $40,507.48)</td>
<td>+0.4% *(proposed at +0.7%)</td>
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* The percent change shown reflects a comparison of the FFY 2013 rate that takes effect on December 29 compared to the FFY 2012 rate. The percent change from the FFY 2012 rate to the final rate for October 1 – December 28 is 1.7% (proposed at 2.0%).
The table below provides details of the adopted updates for the LTCH standard federal rates for FFY 2013.

<table>
<thead>
<tr>
<th>Unadjusted Marketbasket (MB) Update</th>
<th>Final LTCH Rate Updates (Oct. 1, 2012 – Dec. 28, 2012) +2.6% (proposed at +3.0%)</th>
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</thead>
<tbody>
<tr>
<td>Affordable Care Act (ACA)-Mandated Productivity MB Reduction</td>
<td>-0.7 percentage points (proposed at -0.8 percentage points)</td>
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<tr>
<td>ACA-Mandated Pre-Determined MB Reduction</td>
<td>-0.1 percentage points (unchanged)</td>
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<tr>
<td>ACA-Adjusted MB Update</td>
<td>+1.8% (proposed at +2.1%)</td>
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<tr>
<td>Prospective Budget Neutrality Adjustment Reduction</td>
<td>Not Applicable (unchanged)</td>
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<tr>
<td>Wage Index Budget Neutrality Adjustment</td>
<td>-0.0735% (proposed at -0.097%)</td>
</tr>
<tr>
<td>Overall Rate Change</td>
<td>+1.7% (proposed at +2.0%)</td>
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Prospective Budget Neutrality Adjustment Reduction
Since the implementation of the LTCH PPS in FFY 2003, CMS has maintained that it has the statutory authority to apply a prospective (permanent) reduction to the LTCH standard rate in order to neutralize for any increase in aggregate payments that may have occurred as a result of transitioning LTCHs from a cost-based payment system to a PPS. CMS first suggested applying a budget neutrality adjustment reduction to the standard rate in 2007. Legislative moratoria have prevented CMS from implementing such a reduction for 5 years.

With the current legislative moratorium set to expire, CMS is adopting its proposal to move forward with a prospective budget neutrality adjustment reduction to the LTCH standard rate. Based on an analysis presented in the proposed and final rules, CMS believes that the transition to the PPS in FFY 2003 increased aggregate payments to LTCHs by 3.75%. For FFY 2013, CMS is adopting its proposal to apply a permanent reduction of 1.266% to the rate beginning with discharges occurring on or after December 29, 2012 (current law prevents CMS from implementing the adjustment prior to December 29). CMS is also adopting its proposal to implement comparable full year reductions to the LTCH rate in FFYs 2014 and 2015 to achieve the total adopted 3.75% reduction *(FR display pages 919-983)*.

Marketbasket Update
CMS is adopting its proposal to move to a LTCH-specific marketbasket value beginning with FFY 2013. Currently, CMS uses a combined rehabilitation, psychiatric and long-term care (RPL) marketbasket value. CMS believes the adopted change results in a marketbasket that more accurately reflects the cost structures of LTCHs. The LTCH-specific value is based on LTCH Medicare cost report data from FFY 2009. The RPL marketbasket is currently estimated to be 2.7%, 0.10 percentage points higher than the adopted LTCH-specific value of 2.6% *(FR display pages 839-895)*.

Sequestration Reductions
Absent from the final rule is guidance as to how CMS will implement the 2.0% sequestration reduction to all lines of Medicare payment set to take effect on January 1, 2013. Sequestration reductions were authorized by Congress as part of the Budget Control Act (BCA) of 2011. It is believed that the 2.0% downward reduction will be applied at remittance (the time Medicare contractors pay each Medicare FFS claim) and will be incorporated into the cost report settlement *(no FR reference)*.
Wage Index, COLA, and Labor-Related Share

Wage Index
The labor-related portion of the LTCH standard federal rate is adjusted for differences in area wage levels using a wage index. CMS did not propose and is not adopting any major changes to the calculation of Medicare LTCH wage indexes. As has been the case in prior years, CMS will use the most recent inpatient hospital wage index, the FFY 2013 pre-rural floor and pre-reclassified hospital wage index, to adjust payment rates under the LTCH PPS for FFY 2013. A complete list of the wage indexes for payment in FFY 2013 is available in Tables 12A and 12B on the CMS Web site at [https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/LongTermCareHospitalPPS/LTCHPPS-Regulations-and-Notices-Items/CMS-1588-F.html](https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/LongTermCareHospitalPPS/LTCHPPS-Regulations-and-Notices-Items/CMS-1588-F.html) (FR display pages 1,841-1,844).

COLA
For LTCHs in Alaska and Hawaii, the LTCH PPS provides a cost-of-living adjustment (COLA). The COLA is made by multiplying the nonlabor-related portion of the federal operating rate by the applicable COLA factor. For FFY 2013, CMS is adopting its proposal to use the same COLA factors used to adjust payments in FFY 2012 (as originally used to adjust payments in FFY 2011) which are based on the U.S. Office of Personnel Management’s 2009 COLA factors. CMS is also adopting a process outlined in the proposed and final rules for updating the COLA factors for FFY 2014. A list of the FFY 2013 COLA factors is available on FR display page 1,849 (FR display pages 895-900 and 1,846-1,849).

Labor-Related Share
CMS is adopting its proposal to significantly reduce the labor-related share of the standard rate from 70.199% for FFY 2012 to 63.096% (proposed at 63.217%) for FFY 2013. The change in labor share is related to CMS’ decision to move the LTCH PPS from the RPL-based marketbasket value to a LTCH-specific marketbasket value. This is the second consecutive significant decrease to the labor share used under the LTCH PPS. The labor share in FFY 2011 was 75.271%. This change increases payments to LTCHs with a wage index less than 1.0 and decreases payments for those with wage indexes greater than 1.0 (FR display pages 877-887).

MS-LTC-DRGs
Each year, CMS updates the Medicare Severity-Long-Term Care-Diagnosis Related Group (MS-LTC-DRG) classifications and relative weights. These updates are made to reflect changes in treatment patterns, technology, and any other factors that may change the relative use of hospital resources. Although the DRGs used to classify patients under the LTCH PPS are identical to those used under the inpatient PPS, the relative weights are different for each setting.

CMS is not adopting any major changes to the way the MS-LTC-DRG weights are calculated and is not creating or deleting any MS-DRGs for FFY 2013. The updated FFY 2013 MS-LTC-DRGs and weights are available in Table 11 on the CMS Web site at [https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/LongTermCareHospitalPPS/LTCHPPS-Regulations-and-Notices-Items/CMS-1588-F.html](https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/LongTermCareHospitalPPS/LTCHPPS-Regulations-and-Notices-Items/CMS-1588-F.html) (FR display pages 807-839).

HCO Payments
High cost outlier (HCO) payments were established under the LTCH PPS to provide additional payments for extremely costly cases. Outlier payments are made if the estimated cost of the case exceeds the payment for the case plus a fixed-loss amount. Costs are determined by multiplying the facility’s overall cost-to-charge ratio
LOS FFY 2016 partial $17,931 CMS determination CMS payment per marketbasket the proposal lowest CMS Legislative adopted LTCH adopted 4 LTCHQR | (CCR) CMS | determined LTCH determination equal to 5/6 of the average LOS for the MS-LTC-DRG. Payments for SSO cases are currently based on the lowest of four calculated amounts:

1) the full MS-LTC-DRG amount;
2) 120% of the MS-LTC-DRG per diem;
3) 100% of cost; or
4) a blend of the comparable inpatient PPS MS-DRG per diem and 120% of the MS-LTC-DRG per diem.

In 2007, CMS adopted changes to the SSO policy to capture very short stays (cases with a LOS shorter than the LOS captured under the original SSO outlier policy). Beginning with discharges on or after July 1, 2007, CMS adopted a policy to pay 100% of the comparable inpatient PPS MS-DRG per diem (as opposed to the blended per diem) for LTCH cases with a LOS of less than or equal to the average LOS plus one standard deviation for that same DRG under inpatient PPS (very short stay cases).

Legislative moratoria have delayed the application of the “inpatient PPS comparable per diem amount” payment option for very short stay cases for 5 years. With the current legislative moratorium set to expire, CMS will apply this previously adopted modification to the SSO payment policy effective with discharges on or after December 29, 2012 (FR display pages 915-918).

LTCHQR Program

The ACA required CMS to implement a quality data pay-for-reporting program for providers paid under the LTCH PPS. Last year, CMS adopted 3 measures that providers must collect data on this year to implement the Long-Term Care Hospital Quality Reporting (LTCHQR) Program. LTCHs that fail to successfully participate in the LTCHQR Program receive reduced payments through a reduction of 2.0 percentage points to the LTCH marketbasket update. CMS makes these payment determinations each year. CMS will make the first payment determination related to the 3 measures adopted last year in FFY 2014. Details on the measures and rules adopted for FFY 2014 payment determinations are available in FR display pages 51,743-51,756 of FFY 2012 LTCH PPS final rule at https://federalregister.gov/a/2011-19719. Data on patient-related measures collected under the LTCHQR Program are collected on all patients, regardless of payer (FR display pages 1,442-1,533).

CMS is using the FFY 2013 rulemaking process to adopt updates to the LTCHQR Program for FFYs 2015 and 2016 payment determinations.

**FFY 2015 Payment Determinations**

For FFY 2015 payment determinations, CMS is not expanding the LTCHQR Program. Rather, CMS is adopting its proposal to retain the 3 measures adopted for FFY 2014 payment determinations. These measures include:
- National Health Safety Network (NHSN) Catheter-associated Urinary Tract Infection (CAUTI) Outcome Measure (National Quality Form (NQF) #0138);
- NHSN Central line-associated Blood Stream Infection (CLABSI) Outcome Measure (NQF #0139); and
- Percent of Residents with Pressure Ulcers That Are New or Worsened (Short-Stay) (application of NQF #0678)

As proposed, CMS will require data submission on the FFY 2015 payment determination measures for discharges occurring during calendar year 2013. Complete detail on the data submission methods and timeframes for FFY 2015 payment determinations are provided in the Federal Register (FR display pages 1,450-1,479).

**FFY 2016 Payment Determinations**

For FFY 2016 payment determinations, CMS is adopting its proposals, with some modification, to expand the LTCHQR Program. CMS will evaluate a total of 5 measures, retaining the 3 adopted measures for FFYs 2014 and 2015 payment determinations and adding the following 2 measures:

- Residents or Patients Who Were Assessed and Appropriately Given the Seasonal Influenza Vaccine (NQF #0680); and
- Influenza Vaccination Coverage among Healthcare Personnel (NQF #0431)

Due to industry and other concerns, CMS is not adopting its proposals that would have expanded the LTCHQR Program to the following 3 measures:

- Percent of Residents or Patients Assessed and Appropriately Given the Pneumococcal Vaccination (NQF #0682);
- Ventilator Bundle — a process measure that facilitates the use of certain protocols designed to mitigate ventilator-related infections; and
- Restraint Rate per 1,000 Patient Days (not NQF endorsed)

As proposed, CMS will require data submission on the FFY 2016 payment determination measures for discharges occurring during calendar year 2014. Complete detail on the data submission methods and timeframes for FFY 2016 payment determinations are provided in the Federal Register (FR display pages 1,479-1,532).

**Other LTCHQR Program Updates**

CMS is incorporating NQF technical updates/changes to the measures adopted for FFY 2014 and subsequent year payment determinations. A full discussion of these technical updates/changes is available on FR display pages 1,450-1463. To handle potential future NQF technical updates/changes to measures adopted for use under the LTCHQR Program, CMS is adopting its proposal to use a “subregulatory” process rather than the traditional proposed and final rulemaking process. Under this policy, CMS will notify the industry of technical measure updates/changes via the CMS LTCHQR Program Web site at [https://www.cms.gov/LTCH-Quality-Reporting/](https://www.cms.gov/LTCH-Quality-Reporting/). As proposed, CMS will use this subregulatory process when the agency believes the NQF modifications would not substantially change the nature of the measure. CMS will continue to use the traditional proposed and final rulemaking process when CMS believes the NQF modifications would substantially change the nature of the measure. Similar policies have been proposed for the other quality reporting programs under the Medicare PPSs (FR display pages 1,446-1,450).

CMS is also modifying how measures are adopted and retained under the LTCHQR Program. Under the adopted policy, once a measure is adopted for use, that measure is automatically adopted for all subsequent year determinations unless CMS proposes to remove, suspend, or replace the measure. Currently, CMS
proposes to retain measures on a year-by-year basis. Stakeholder comment on the LTCHQR Program measures will be considered by CMS during the traditional rulemaking process when CMS puts forward policies for future LTCHQR Program years. CMS has proposed/adopted this policy for other quality reporting programs under the Medicare PPSs (FR display pages 1,443-1,445).

Expiration of Moratoria Related to LTCH Payment and Operational Policies

Under current law, several moratoria related to LTCH payment and operational policies are set to expire during calendar year 2012. These moratoria were first implemented during calendar year 2007 and legislatively extended multiple times. In the final rule, CMS addresses the expiring moratoria will be handled.

25% Payment Adjustment Threshold
Since 2005, CMS has pursued a policy to reduce LTCH payment amounts to the inpatient PPS amount for LTCHs that admit more than 25% of Medicare cases from an onsite or neighboring inpatient acute care hospital. Legislative moratoria have delayed the full application of the 25% payment adjustment threshold for about 5 years. The moratoria applies a less restrictive threshold to certain LTCHs and exempts other classes of LTCHs from the threshold altogether.

With the current legislative moratoria set to expire, rather than allowing the payment policy to be fully implemented, CMS is adopting its proposal, with some modification, to extend the existing moratoria for one year. In most cases, the one-year extension will be cost report period-based, effective for cost reporting periods beginning during FFY 2013 (October 1, 2012). Based on industry concern, CMS is modifying its proposal to account for a specific subset of LTCHs that will subject to a gap between the expiration of the legislative moratorium and the effective date of the adopted regulatory moratorium (LTCHs with cost reporting periods beginning between July 1, 2012 and October 1, 2012).

As adopted, the statutory moratorium and the regulatory moratorium will be implemented as follows:

- For LTCHs for which the statutory moratorium will expire effective with the hospitals’ cost reporting periods beginning on or after October 1, 2012, the regulatory moratorium will seamlessly provide for an additional moratorium for the hospitals’ first cost reporting period beginning on or after October 1, 2012.

- For LTCHs and LTCH satellite facilities for which the statutory moratorium expires effective with the hospital’s cost reporting periods beginning on or after July 1, 2012, CMS will apply a regulatory moratorium as follows:
  - For hospitals with cost reporting periods beginning on or after October 1, 2012, the moratorium will be effective for the hospital’s first cost reporting period beginning on or after October 1, 2012.
  - For hospitals with cost reporting periods beginning on or after July 1, 2012, and before October 1, 2012, the moratorium will be effective with discharges occurring beginning October 1, 2012, through the end of the hospital cost reporting period (that is, the end of the cost reporting period that began on or after July 1, 2012, and before October 1, 2012).

CMS believes that the application of the 25% payment adjustment threshold under the adopted regulatory moratorium will have virtually no impact on those hospitals for the period of July 1, 2012, through September 30, 2012. CMS notes that it does not intend to expend limited audit dollars to pursue this issue for discharges occurring during that period.
CMS cites potential future payment methodology changes to the LTCH PPS that could render the 25% payment adjustment threshold policy unnecessary as the reasoning behind extending the existing moratoria for one year (FR Display pages 903-915).

**Prospective Budget Neutrality Adjustment Reduction**
See “LTCH Payment Rate” section above.

**Inpatient PPS Comparable Per Diem Amount Payment Option Under the SSO Payment Policy**
See “SSO Payments” section above.

**Restrictions on the Establishment/Classification of New LTCHs and Bed Growth at Existing LTCHs**
Since 2007, Congress has restricted the establishment/classification of new LTCHs and bed growth at existing LTCHs. These restrictions are set to expire on December 28, 2012. CMS does not have the authority to extend these restrictions but did state in the proposed rule that they were supportive of a statutory extension of these moratoria (FR display pages 901-902).

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