



**WISCONSIN HOSPITAL  
ASSOCIATION**

---

**SUMMARY OF THE FINAL  
RY 2009 MEDICARE LONG-TERM  
CARE HOSPITALS ANNUAL  
PAYMENT UPDATES AND POLICY  
CHANGES**

---

**June 2008**

## I. OVERVIEW

The Centers for Medicare and Medicaid Services (CMS) published its Rate Year (RY) 2009 Final Annual Payment Rate Updates, Policy Changes, and Clarifications for Long-Term Care Hospitals in the May 9, 2008 *Federal Register*. In addition to annual rate updates, the rule implements certain provisions of the Medicare, Medicaid and SCHIP Extension Act of 2007 (MMSEA) that relate to LTCHs. All changes are to be effective for discharges beginning on or after July 1, 2008 unless noted otherwise.

**Note:** Text in italics is extracted from the *Federal Register*.

## II. ANNUAL UPDATE SCHEDULE

### **Consolidation of the Annual Updates for Payment with MS-LTC-DRG Weights Updates**

*(Federal Register page 26797)*

For 2009, CMS is establishing a 15-month rate period that will be effective from July 1, 2008 through September 30, 2009, after which the LTCH rate years will commence on October 1.

CMS is revising the annual update schedule for LTCH PPS payments to coincide with the schedule for Inpatient PPS payments because the MS-LTC-DRG weights are recalibrated at the same time as the weights for the Inpatient MS-DRGs. This will eliminate the need to update LTCH payments twice each year – once for the July 1 rate year and again for the October 1 weights update.

## III. PAYMENT RATE

### **Marketbasket Update** *(Federal Register page 26810)*

The most recent estimate for the Rehabilitation, Psychiatric and Long-Term Care (RPL) marketbasket for the LTCH 2009 Rate Year is 3.6 percent; however, CMS will update the LTCH PPS federal rate by only 2.7 percent to incorporate a negative adjustment for coding increases in the 2006 rate year. According to CMS, there was a 0.9 percent increase in case-mix during RY 2006 that is attributable to coding practice changes and not due to a true increase in patient severity. The net 2.7 percent update reflects increases over the 15-month rate period (July 1, 2008 through September 30, 2009).

### **Standard Federal Rate** *(Federal Register page 26812)*

The Medicare, Medicaid and SCHIP Extension Act of 2007 (MMSEA) mandates that, for the last 3 months of the 2008 RY, the federal base rate for LTCH PPS be the same as the base rate for RY 2007. CMS has implemented this freeze to the RY 2008 federal base rate and, therefore, proposes a standard federal rate for RY 2009 of \$39,114.36, which reflects the 2007 standard federal rate (\$38,086.04) increased by the 2.7 percent update factor described above.

### **One-Time Prospective Adjustment to the Standard Federal Rate** *(Federal Register page 26800)*

Since the implementation of the LTCH PPS in RY 2002, CMS has maintained that it has the statutory authority to apply a one-time prospective adjustment to the standard federal rate in order to neutralize for any increase in LTCH payments that may have occurred due to the change in payment methodology. In its final RY 2008 LTCH PPS rule, CMS noted that it has; “.. *provided for the possibility of making a one-time prospective adjustment to the LTCH PPS rates by July 1, 2008, so that the effect of any significant difference between actual payments and estimated payments for the first year of the LTCH PPS would not be perpetuated in the LTCH PPS rates for future years.*” The MMSEA provides that CMS shall not apply any one-time adjustment to the LTCH PPS rates for this purpose for the 3-year period that commenced on the date of the enactment of the Act.

Although CMS is precluded from implementing a one-time budget neutrality adjustment at this time, the proposed rule detailed a methodology for determining whether a one-time budget neutrality adjustment may be appropriate. According to this methodology, the one-time adjustment, if applied in RY 2009, would have been negative 3.75 percent. In this final rule, CMS updates its projections of estimated LTCH PPS payments for the next five years and notes that: “. . . while we provide these estimates of future payments under the LTCH PPS in order to provide the public with a projected estimate of payments to LTCHs, these estimates will be neither the basis for determining whether the one-time budget-neutrality adjustment available under §412.523(d)(3) of the regulations should be proposed, nor are these estimates the basis for any of the policy changes adopted in this final rule. It is also important to note that any proposal regarding the one-time budget neutrality adjustment would be based solely on the data that would be available at the time of the proposal, rather than on projections of payments under LTCH PPS for future years.”

In response to comments on this one-time adjustment asking for CMS to set a deadline for when the adjustment must be made, CMS responds: “. . . we are revising the regulations at §412.523(d)(3) to delay the effective date of any one-time budget neutrality adjustment so that any such adjustment would be made no earlier than December 29, 2010, and no later than October 1, 2012.”

#### **Wage Indexes and Labor Share** (*Federal Register* pages 26812 - 26818)

As proposed, CMS is using the FFY 2008 inpatient PPS, pre-reclassification, pre-rural floor wage indexes (which reflect hospital wage data collected from cost reports submitted by hospitals for cost reporting periods beginning during FY 2004) to determine the applicable wage index values for the RY 2009 LTCH PPS. These wage indexes are published in the Addendum, Tables 1 and 2 of the *Federal Register* (pages 26840 - 26863).

CMS is also adopting two new and six revised CBSA-based labor market definitions for inclusion in the wage index methodology for LTCH PPS. Finally, CMS is also adopting a policy for determining a LTCH PPS wage index value for labor market areas in which there is no IPPS hospital (for cost report data); although there are currently no LTCHs in such areas.

The area wage index is applied to the labor-related portion of the standard federal rate to adjust for differences in area wage levels. For RY 2009, CMS is decreasing the labor-related portion of the federal rate from 75.788 percent to 75.662 percent.

## **IV. LTC DRGs**

#### **MS-LTC-DRG Classifications** (*Federal Register* page 26792)

The FY 2008 Inpatient PPS final rule adopted MS-DRGs, which are diagnosis and severity based. The MS-LTC-DRGs are structurally identical to the Inpatient MS-DRGs and, hence, patients are classified into these DRGs using the same methodology. Although the relative weights for MS-LTC-DRGs are different than those for Inpatient MS-DRGs; the weights are recalibrated for both Inpatient PPS and LTCHs at the same time. Weights are updated every year in order to reflect the current level of resources needed by the average patient in each MS-LTC-DRG. The weights for both sets of DRGs are updated in keeping with the IPPS payment update cycle. In prior years, that meant that the LTCH PPS payments were updated once at the beginning of the rate year, in July, and again in October when the DRG weights were recalibrated. In this final rule, CMS is revising the LTCH PPS rate year to comport with the IPPS rate year by extending the 2009 rate year through September 30, 2009.

The MS-LTC-DRGs were adopted beginning October 1, 2007 (FY 2008) and are being transitioned over 2 years. For the first year of the transition, 50 percent of the relative weight for an MS-LTC-DRG is based on the average LTC-DRG weight and 50 percent is based on the MS-LTC-DRG weight. These weights will continue to apply for the first three months of the 2009 rate year. On October 1, 2008, when the weights are recalibrated, 100

percent of the weights will be based on the MS-LTC-DRGs. In future rate years, beginning on October 1, 2009, the MS-LTC-DRG weights would be recalibrated at the same time as the rest of the LTCH PPS payment updates.

**Budget Neutrality** (*Federal Register* page 26796)

For the current MS-LTC-DRGs, that became effective on October 1, 2007, the weights were normalized by a factor of 1.020302, which was applied to each MS-LTC-DRG relative weight, after which a Budget Neutrality factor of 1.003924 was applied.

Table 11 of the Addendum to the FY 2008 IPPS final rule lists the MS-LTC-DRGs and their respective transition blended budget neutral weights.

## V. OTHER ISSUES

**High Cost Outliers** (*Federal Register* pages 26819 - 26824)

High cost outlier cases are those that have extraordinarily high costs as compared to the costs of most LTCH discharges. CMS makes outlier payments for any discharges where the cost of the case exceeds the adjusted LTCH PPS payment plus a fixed-loss amount. Costs are determined by multiplying the facility's overall Cost to Charge Ratio (CCR) by the allowable charges for the case. Costs in excess of the LTCH PPS payment plus the threshold are reimbursed at 80 percent. CMS has established a target of 8 percent of total LTCH PPS payments to be set aside for high cost outliers.

CMS has revised its proposed fixed loss amount to reflect more recently available data; the final amount for RY 2009 will be \$22,960, which is 10.7 percent higher than the 2008 rate year amount of \$20,738. CMS justifies the increase in the fixed loss amount as necessary in order to maintain the requirement for estimated outlier payments to equal 8 percent of total LTCH PPS payments.

## VI. INTERIM FINAL RULES

**Short Stay Outliers**

May 6, 2008 *Federal Register* pages 24871 – 24881  
Interim final rule with comment period

CMS established a special payment policy for Short Stay Outlier (SSO) cases to ensure that a LTCH payment rate that is based upon a long LOS is not inappropriately applied to a case where the patient may have received only partial treatment or should have been treated in a more appropriate setting.

The SSO payment policy applies to cases with a covered LOS of less than or equal to five-sixths of the geometric mean LOS. Currently, payment for SSO cases is based on the lowest of four calculated amounts: 1) 100 percent of cost; 2) 120 percent of the LTC-MS-DRG per diem; 3) the full LTC-MS-DRG case amount; or 4) a blend of the IPPS-DRG per diem and 120 percent LTC-MS-DRG per diem; and 4) In its RY 2008 final LTCH PPS rule, CMS adopted a short stay threshold for the shortest stay cases (those with a LOS less than or equal to the mean LOS plus one standard deviation for that DRG under IPPS) and a fourth alternative for these shortest stay cases - 100 percent of the IPPS per diem (as opposed to a blend).

In this interim final rule with comment period, CMS is adopting a three-year delay in the implementation of the fourth SSO payment option as mandated by the MMSEA. **Comments on this rule must be received by CMS no later than 5 pm on June 30, 2008.**

**New LTCHs and Satellite Facilities**

May 22, 2008 *Federal Register* pages 29699 – 29711

Interim final rule with comment period

CMS is implementing a three-year moratorium on the establishment of new LTCHs and LTCH satellite facilities; and on increases in beds in existing LTCHs and LTCH satellite facilities as mandated by the MMSEA. **Comments on this rule must be received by CMS no later than 5 pm on July 21, 2008.**