



**WISCONSIN HOSPITAL
ASSOCIATION**

**SUMMARY OF THE MEDICARE
LONG-TERM CARE HOSPITALS
PROSPECTIVE PAYMENT SYSTEM
FINAL FFY 2010 RULE**

September 2009

I. OVERVIEW

The Centers for Medicare and Medicaid Services (CMS) published the final federal fiscal year (FFY) 2010 Long-Term Care Hospital Prospective Payment System (LTCH PPS) rule in the August 27, 2009 *Federal Register*. All changes are effective for discharges beginning on or after October 1, 2009 unless noted otherwise.

Note: Text in italics is extracted from either the May 22, 2009 or the August 27, 2009 *Federal Register*.

II. PAYMENT RATE

Marketbasket Update

Federal Register page 43968

CMS' Final Rule: For FFY 2010, CMS will provide a full marketbasket update of 2.5 percent to the LTCH PPS standard federal rate. *"...for this final rule, we used IHS Global Insight, Inc.'s second quarter 2009 forecast of the RY 2010 market basket estimate for the LTCH PPS using the FY 2002-based RPL market basket..."*

Documentation and Coding Adjustment

Federal Register pages 43969 – 43972

CMS' Proposal: For FFY 2010, CMS proposed to reduce the LTCH PPS standard federal rate by 1.8 percent to recoup program payment increases in the 2007 and 2008 rate years (RYs) that were due to coding improvement. According to CMS, there was a 0.5 percent increase in case-mix during RY 2007 and a 1.3 percent increase in RY 2008, both of which are attributable to coding practice changes and not due to increases in patient severity.

CMS' Final Rule: CMS reconfirms its calculations of the 0.5 percent coding case-mix increase for RY 2007 and 1.3 percent increase in RY 2008, but will postpone implementation of the 1.3 percent offset to be consistent with the policy established in the final Inpatient PPS rule.

"In this final rule, . . . in determining the RY 2010 update to the LTCH PPS standard Federal rate, we are applying an adjustment for changes in documentation and coding that do not reflect an increase in patients' severity of illness of -0.5 percent. . . . However, after consideration of public comments, and consistent with the decision to postpone the application of the prospective adjustment for estimated FY 2008 documentation and coding increases under the IPPS. . . we have decided to delay the application of the FY 2008 documentation and coding adjustment of -1.3 percent that was proposed under the LTCH PPS for RY 2010."

Standard Federal Rate

Federal Register page 44022

CMS' Final Rule: For FY 2010, the standard federal rate will be \$39,896.65, reflecting a full marketbasket increase of 2.5% minus 0.5% for the 2007 documentation and coding adjustment, which yields a 2.0% increase over the RY 2009 standard rate.

Wage Indexes and Labor Share

Federal Register pages 44023 – 44026

Background: FFY 2010 is the first year that the LTCH PPS rate year will coincide with the federal fiscal year and inpatient PPS rate year area wage levels.

CMS' Final Rule: For FFY 2010, CMS is adopting its proposal to use the same data collected from cost reports submitted by Inpatient PPS hospitals for periods beginning on or after October 1, 2006 that were used to compute the final FFY 2010 acute care hospital inpatient wage indexes, without taking into consideration geographic reclassifications or rural floors. There no longer will be a lag between the wage indexes used for IPPS and those used for LTCH PPS. The LTCH wage indexes for FFY 2010 are published in the Addendum, Tables 12A and 12B of the *Federal Register* (pages 44192 - 44213).

Based on the most recent data, but retaining the same methodology for calculating the labor-related share, CMS is increasing the labor-related portion of the federal rate from 75.662 percent to 75.779 percent for FFY 2010.

III. MS-LTC-DRGs

MS-LTC-DRG Classifications

Federal Register pages 43947 – 43967

Background: The Medicare Severity (MS)-Long-Term Care (LTC)-Diagnosis Related Groups (DRGs) are structurally identical to the Inpatient MS-DRGs; patients are classified into these MS-DRGs and relative weights are calculated for both IPPS and LTCHs using the same methodology at the same time. Weights are recalibrated every year in order to reflect the current level of resources needed by the average patient in each MS-LTC-DRG.

CMS' Proposal: Proposed weights for the FFY 2010 MS-LTC-DRGs were originally published in the May 22nd *Federal Register*, but subsequently were revised and released in a supplement to the proposed rule that was published in the June 3, 2009 *Federal Register*. The revision relates to the corrected RY 2009 MS-LTC-DRG weights that were published in an interim final rule in the same June 3rd *Federal Register*. The RY 2009 weights were corrected for a CMS error in the calculation of the budget neutrality factor for that rate year. The corrected budget neutrality calculation for the 2009 weights impacts the budget neutrality calculation for the 2010 weights and, hence, these weights were revised and reissued.

CMS' Final Rule: For FFY 2010, the final MS-LTC-DRG weights were recalibrated using FFY 2008 LTCH claims data and normalized by a factor of 1.07341, which was applied to each MS-LTC-DRG relative weight, after a budget neutrality factor of 0.9940041 was applied. Table 11 of the supplement to the final FFY 2010 rule (*Federal Register* pages 44183 – 44192) lists the MS-LTC-DRGs, FFY 2008 cases, relative weights, geometric length of stay (LOS), and short-stay outlier threshold.

IV. OTHER ISSUES

High Cost Outliers

Federal Register pages 44026 – 44030

Background: 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' Final Rule: For FFY 2010, CMS has set the high cost outlier fixed loss amount at \$18,425, which is significantly lower than the 2009 rate year amount of \$22,960. CMS states that the decrease in the fixed loss amount is necessary in order to maintain the requirement for estimated outlier payments to equal 8 percent of total LTCH PPS payments.

Short Stay Outliers

CMS established a special payment policy for short stay outlier (SSO) cases to ensure that LTCH payments, which are predicated on long lengths of stay, are not inappropriately applied to cases where the patient may have received only partial treatment or should have been treated in a more appropriate, short stay 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. Payments for SSO cases are 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.

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 different fourth alternative for these shortest stay cases - 100 percent of the IPPS per diem (as opposed to the blended per diem). The implementation of this policy has been delayed for three years per legislative mandate in the MMSEA.

CMS' Final Rule: For FFY 2010, per MMSEA, CMS is adopting as final its revision to the short stay outlier policy that delays implementation of a short stay outlier policy for the shortest stay cases.

V. FINALIZATION OF THE INTERIM FINAL RY 2009 RULE

The interim final rule with comment period (June 3, 2009 *Federal Register*, pages 26546 – 26569) corrected the RY 2009 MS-LTC-DRG weights for an error in CMS' calculation of the budget neutrality adjustment. According to CMS, the "... *misapplication of the rule's established methodology for calculating the budget neutrality factors resulted in relative weights that are higher, by approximately 3.9 percent.*"

Per CMS; "*Consistent with our general and longstanding policy in PPS contexts, we do not make retroactive changes to correct past errors in PPS rate-setting, regardless of whether an error resulted in higher payments to providers (as in this situation) or lower payments to providers; we also do not make prospective adjustments to PPS rates to account for errors that occurred in prior periods, regardless of whether an error resulted in higher payments or lower payments to providers. In this instance, we are, revising the FY 2009 MS-LTC-DRG relative weights to ensure proper application of the established budget neutrality methodology in updating the FY 2008 MS-LTC-DRG relative weights to FY 2009 during the fiscal year that will be effective for the remainder of the fiscal year.*"

The corrected weights have been or will be applied to all LTCH PPS payments for the remainder of the 2009 rate year (i.e. June 3, 2009 through September 30, 2009).

"After consideration of the public comments we received on the June 3, 2009 interim final rule with comment period, we are finalizing, without modification, the FY 2009 MS-LTC-DRG relative weights presented in that interim final rule with comment period, which are currently in effect."

VI. OTHER MMSEA PROVISIONS

CMS is finalizing its implementation of the provisions of the MMSEA that require a 3-year exemption from payment adjustments for certain co-located LTCHs.