



**WISCONSIN HOSPITAL
ASSOCIATION**

**SUMMARY OF THE
FFY 2011
MEDICARE PROSPECTIVE PAYMENT
SYSTEM AND
CONSOLIDATED BILLING FOR SKILLED
NURSING FACILITIES
FINAL RULE UPDATE NOTICE**

August 2010

SUBMISSION OF COMMENTS

This document provides an overview of the Medicare Notice with comment period for Skilled Nursing Facilities (PPS) for federal fiscal year (FFY) 2011 published by the Centers for Medicare and Medicaid Services (CMS) in the July 22, 2010 *Federal Register*. Additional information regarding the Skilled Nursing PPS is available on the CMS Web site at <http://www.cms.hhs.gov/SNFPPS/>.

CMS must receive comments this notice by September 20 at 5 p.m. CMS requests that comments reference the file code CMS-1338-NC (July 22, 2010 *Federal Register*).

Comments can be submitted electronically at <http://www.regulations.gov>. Follow the instructions on the “More Search Options” tab (attachments should be in Microsoft® Word, WordPerfect, or Excel format).

-OR-

Regular Mail (an original and two copies):

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Department of Health and Human Services
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Baltimore, MD 21244-8016

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TABLE OF CONTENTS

I.	Overview	1
II.	Legislative Mandates	1
III.	Payment Rate	1
	- Marketbasket Update.....	1
	- Forecast Error Adjustment.....	1
	- AIDS Adjustment	2
	- Wage Index.....	2
	- Unadjusted Per Diem Federal Rates	2
	- Calculation of Payment Amount	3
IV.	Consolidated Billing	4
V.	FFY 2011 Changes	4
	- Resource Utilization Groups	4
	- Minimum Data Set 3.0.....	4
VI.	Other Provisions	6
	- Application of SNF PPS and Quality Monitoring to Swing Bed Units.....	6

I. OVERVIEW

The Centers for Medicare and Medicaid Services (CMS) published an update notice for the federal fiscal year (FFY) 2011 Medicare Skilled Nursing Facility Prospective Payment System (SNF PPS) in the July 22 *Federal Register*. The rule will be effective for services beginning October 1, 2010. All provisions of the update notice will also apply to SNF PPS payments for all non-Critical Access Hospital (CAH) swing bed services in rural hospitals.

Note: Text in italics is extracted from the July 22 *Federal Register*.

Major provisions of the rule include:

- **Marketbasket Update:** CMS will provide a full 2.3% marketbasket update for FFY 2011.
- **Forecast Error Adjustment:** CMS will implement a forecast error adjustment of negative 0.6%.
- **Resource Utilization Groups (RUGs):** With the delay in implementation of RUG-IV mandated by the Affordable Care Act (ACA) of 2010, CMS intends to develop a hybrid RUG-III grouper (HR-III) in order to group patient information collected via the Minimum Data Set (MDS) 3.0 into RUG-III categories. However, due to timing constraints, CMS will begin the fiscal year using RUG-IV for payment determinations. Once a grouper for HR-III is fully developed, CMS will retroactively adjust claims.
- **Parity Adjustment:** CMS is applying an upward 34.2% parity adjustment to the nursing case-mix weights under the hybrid RUG-III system to ensure parity between overall payments under the RUG-53 model and anticipated payments under the hybrid RUG-III system required by the ACA.

II. LEGISLATIVE MANDATES

The Balanced Budget Act (BBA) of 1997; the Balanced Budget Refinement Act (BBRA) of 1999; the Medicare Prescription Drug, Improvement, and Modernization Act (MMA) of 2003; and the ACA of 2010 each contain Medicare provisions that either currently affect program payment policy or will begin to affect payment policy in upcoming fiscal years. Where appropriate, legislative references are provided in the text below.

III. PAYMENT RATE

Marketbasket Update

Federal Register page 42890

Background: CMS is required by law to provide a SNF marketbasket update that reflects changes over time in the prices of goods and services included in covered SNF services.

CMS' Final Rule: For FFY 2011, CMS will provide a “*marketbasket increase . . . 2.3 percent, which is based on IHS Global Insight, Inc. second quarter 2010 forecast . . .*”

Forecast Error Adjustment

Federal Register page 42890 - 42891

Background: CMS is required to provide a marketbasket forecast error adjustment to SNF providers whenever the actual marketbasket increase differs from CMS' projection by a certain amount.

Originally, as established in the FFY 2004 final rule, the threshold was set at a cost differential of 0.25% or more. For FFY 2008 and subsequent years, CMS set the SNF marketbasket forecast error threshold at 0.5%.

CMS' Final Rule: For FFY 2011, CMS will include a forecast error adjustment of negative 0.60 percent. *"...the estimated increase in the market basket index was 3.4 percentage points, while the actual increase was 2.8 percentage points, resulting in the actual increase being 0.6 percentage point lower than the estimated increase."*

AIDS Adjustment

Federal Register pages 42888 - 42889

Background: The MMA implemented a 128% adjustment to payment rates for residents of SNFs with acquired immunodeficiency syndrome (AIDS), as indicated by diagnosis code 042. This adjustment is intended to remain in effect until the Secretary of Health and Human Services (HHS) certifies there is an appropriate adjustment in the case mix to account for the cost of care provided to these residents. This provision applies to services rendered on or after October 1, 2004.

CMS' Final Rule: For FFY 2011, CMS has not adopted any changes to the AIDS adjustment of 128%.

Wage Index

Federal Register pages 42900 - 42909

Background: The SNF PPS adjusts federal reimbursement rates to account for differences in area wage levels. In the absence of SNF-specific wage data, CMS uses the pre-reclassified, pre-rural floor inpatient acute care hospital wage indexes for the SNF PPS. CMS believes the actual location of the SNF is most appropriate for determining the wage adjustment; hospitals that are geographically reclassified for an inpatient acute payment do not receive the reclassified wage index for a SNF payment, and there is no provision for a rural floor. In addition, CMS does not apply the out-migration or occupational mix adjustments to the SNF PPS wage indexes because these policies only pertain to the Inpatient PPS.

CMS' Final Rule: For FFY 2011, CMS believes *"... that in the absence of SNF-specific wage data, using the hospital inpatient wage index is appropriate and reasonable for the SNF PPS."* In addition, *"... the budget neutrality factor for this year is 0.9997."*

Based on the relative weights from the SNF marketbasket, CMS is decreasing the labor-related share of the federal rates from 69.840% in FFY 2010 to 69.311% in FFY 2011.

Unadjusted Per Diem Federal Rates

Federal Register pages 42891 - 42892

The final unadjusted per diem federal rates for FFY 2011 are as follows:

Area	Nursing Case Mix	Therapy Case Mix	Therapy Non-Case Mix	Non-Case Mix
Urban	\$157.82	\$118.88	\$15.66	\$80.54
Rural	\$150.79	\$137.08	\$16.72	\$82.04
<i>All components reflect the 2.3% marketbasket increase and a negative 0.6% forecast adjustment.</i>				

Calculation of Payment Amount

The following table provides an example of the computation of the 66 RUGs IV-adjusted PPS rates and the 53 Hybrid RUG-III (HR-III)-adjusted PPS rates for a SNF in a hypothetical Core-Based Statistical Area (CBSA), effective October 1, 2010. These rates reflect the case-mix adjustments necessary to achieve parity (discussed below).

RUG-IV

RUG-IV Group	Labor Portion	Wage Index	Adjusted Labor	Non-Labor Portion	Adjusted Rate	Percent Adjustment	Adjusted Amount	Medicare Days	Payment
Rehabilitation Very High Plus Extensive Services Category (RVX)	\$545.24	0.8858	\$482.97	\$241.42	\$724.39	N/A	\$724.39	14	\$10,142
Extensive Services (ES2)	\$358.74	0.8858	\$317.77	\$158.84	\$476.61	N/A	\$476.61	30	\$14,298
Rehabilitation High Category (RHA)	\$260.41	0.8858	\$230.67	\$115.30	\$345.97	N/A	\$345.97	16	\$5,536
Clinically Complex 2 Category (CC2)	\$207.79	0.8858	\$184.06	\$92.00	\$276.06	128%*	\$629.42	10	\$6,294
Behavioral and Cognitive Performance (BA2)	\$143.25	0.8858	\$126.89	\$63.42	\$190.31	N/A	\$190.31	30	\$5,709
TOTAL								100	\$41,979

* Represents 128% add-on for AIDS residents as mandated by Section 511 of the MMA.

Hybrid RUG-III

HR-III Group	Labor Portion	Wage Index	Adjusted Labor	Non-Labor Portion	Adjusted Rate	Percent Adjustment	Adjusted Amount	Medicare Days	Payment
Rehabilitation Very High Plus Extensive Services Category (RVX)	\$383.12	0.8858	\$339.37	\$169.63	\$509.00	N/A	\$509.00	14	\$7,126
Rehabilitation Low Plus Extensive Services (RLX)	\$270.65	0.8858	\$239.74	\$119.83	\$359.57	N/A	\$359.57	30	\$10,787
Rehabilitation High Category (RHA)	\$262.36	0.8858	\$232.40	\$116.16	\$348.56	N/A	\$348.56	16	\$5,577
Clinically Complex 2 Category (CC2)	\$232.95	0.8858	\$206.35	\$103.14	\$309.49	128%*	\$705.63	10	\$7,056
Nursing Rehabilitation Impaired Cognition (IA2)	\$149.81	0.8858	\$132.70	\$66.33	\$199.03	N/A	\$199.03	30	\$5,971
TOTAL								100	\$36,517

* Represents 128% add-on for AIDS residents as mandated by Section 511 of MMA.

A complete listing of the Hybrid RUG-53 and RUG-IV case-mix adjusted federal rates and associated indexes for urban and rural providers are available in the *Federal Register* on pages 42894 - 42900.

IV. CONSOLIDATED BILLING

Federal Register pages 42912 - 42913

Background: The BBA, which implemented the SNF PPS, required SNFs to submit consolidated Medicare bills to their fiscal intermediaries for nearly all of the services residents received during the course of a covered Part A stay. Subsequent to the BBA, modifications were enacted by legislation and implemented. Specifically, the BBRA identified service codes within four specified categories (chemotherapy items, chemotherapy administration services, radioisotope services, and customized prosthetic devices) as exclusions from consolidated billing. In addition, the MMA excluded certain practitioners and other services furnished to SNF residents by rural health clinics and federally qualified health centers.

CMS' Final Rule: For FFY 2011, CMS has not adopted any changes to the consolidated billing provision.

V. FFY 2011 CHANGES

Minimum Data Set (MDS) 3.0

Resource Utilization Groups

Federal Register pages 42889 - 42893

Background: The current SNF PPS employs the 53-group RUG-III (RUG-53) case-mix classification system. Studies were used to establish resource use, patient characteristics, and case-mix indexes. Subsequently, CMS became concerned that changes in provider practices, technology, and population mix had affected the nursing resources required to treat different types of patients. In 2005, CMS sponsored a national nursing home time study called the Staff Time and Resource Intensity Verification (STRIVE) Project. Information collected via STRIVE includes the amount of time staff members spend on residents, information on residents' physical and clinical status derived from MDS assessment, and an accounting of the resources used to deliver services to residents. The STRIVE analyses indicated that the RUG-III model is still effective in determining relative nursing resource use across a broad range of conditions. However, the resources and staff times associated with specific conditions and treatments, such as diabetes, the use of intravenous fluids or medications, and the increased use of concurrent therapy, have changed significantly.

The RUG-IV system was developed to reflect the data collected in 2006-2007 during the STRIVE project. The RUG-IV system increases the number of case-mix groups from 53 to 66. CMS finalized the RUG-IV system in the FFY 2010 final rule with an effective date of October 1, 2010. The ACA postpones implementation of the RUG-IV case-mix classification system until October 1, 2011 at the earliest. However, implementation of MDS 3.0, and changes related to concurrent therapy and the look-back period (described below) that were components of the RUG-IV, will still take effect on October 1, 2010 (FFY 2011).

MDS 3.0

CMS' Final Rule: The ACA specifies that the MDS 3.0 will be implemented as planned on October 1,

2010.

RUG-IV System

CMS' Final Rule: As mandated by the ACA, the implementation of RUG-IV has been postponed to no earlier than October 1, 2011.

Hybrid RUG-III (HR-III)

CMS' Final Rule: Currently, CMS does not have a grouper "...which incorporates RUG-IV's specific revisions on concurrent therapy and the look-back period within the framework of the existing RUG-53 system, along with the use of MDS 3.0." Therefore, on an interim basis CMS is working to create a hybrid RUG-III (HR-III) system necessary to support this system. For FFY 2011, CMS will apply "...interim payment rates that reflect not only the use of MDS 3.0 but also the new RUG-IV system in its entirety as finalized in the FY 2010 SNF PPS final rule...." Once the HR-III system has been developed, CMS will "...retroactively adjust claims to reflect a hybrid RUG-III (HR-III) system which incorporates RUG-IV's specific revisions on concurrent therapy and the look-back period within the framework of the existing RUG-53 system, along with the use of MDS 3.0." "... the only grouper that currently exists that utilizes MDS 3.0 is the RUG-IV grouper."

CMS invites public comment on the implementation of HR-III.

Administrative Presumption of Skilled Level of Care

CMS' Final Rule: All residents classified into one of the upper 52 groups in the following RUGs IV categories, by completion of the required Medicare five-day MDS assessment, will be presumed to meet SNF coverage requirements at the beginning of their stay. The categories include Rehabilitation Plus Extensive Services, Ultra High Rehabilitation, Very High Rehabilitation, High Rehabilitation, Medium Rehabilitation, Low Rehabilitation, Extensive Services, Special Care High, Special Care Low, and Clinically Complex.

Concurrent Therapy

Concurrent therapy is the practice of one professional therapist treating multiple patients at the same time while the patients are performing different activities.

CMS' Final Rule: For FFY 2011, CMS will begin using allocated concurrent therapy minutes in the development of the RUG-IV therapy model. This requires a therapist treating patients concurrently to allocate total minutes among the patients based on their clinical judgment as to how much time was actually provided to each patient. A therapist will be required to track and report the three different delivery modes of therapy (individual, concurrent, and group) on the MDS 3.0.

Look-Back Period

CMS' Final Rule: As finalized in the FFY 2010 SNF PPS final rule, the look-back to the hospital stay for P1a services will be eliminated effective October 1, 2010.

Parity Adjustment

Federal Register pages 42892 - 42893

Background: In the FFY 2010 SNF PPS final rule CMS projected future utilization patterns under RUG-IV would produce lower overall payments than it would under the RUG-III model. To maintain budget neutrality, CMS calculated an upward adjustment of 59.4% to be applied to the RUG-IV nursing CMI.

CMS' Final Rule: To maintain budget neutrality for FFY 2011, with the development of HR-III, CMS is implementing a parity adjustment to maintain budget neutrality for the change from RUG-III to HR-III. For FFY 2011, CMS states, *“the adjustment to the nursing CMI's under the HR-III model necessary to achieve “parity” is an upward adjustment of 34.2 percent.”* CMS also notes, *“As actual HR-III utilization becomes available, we intend to assess the effectiveness of the parity adjustment in maintaining budget neutrality and, if necessary, to recalibrate the adjustment in the future.”*

CMS has also recalculated/recalibrated the adjustment needed to maintain parity between RUG-III and RUG-IV, using more recent FFY 2009 claims data *“...the adjustment necessary to achieve parity between the RUG-53 model and the RUG-IV model...is an upward adjustment of 61.0%.”*

VI. Other Provisions

Application of SNF PPS and Quality Monitoring to Swing Bed Units

Federal Register pages 42913

Background: Under the BBA, effective with cost reporting periods beginning on or after July 1, 2002, swing bed services in rural, non-CAHs were paid based on the SNF PPS. As finalized in the FFY 2010 SNF PPS final rule *“effective October 1, 2010, non-CAH swing bed rural hospitals will be required to complete an MDS 3.0 swing bed assessment which is limited to the required demographic, payment, and quality items.”* In addition, non-CAH swing bed rural hospitals are required to complete other MDS 3.0 Item Sets as designated by the FFY 2010 SNF PPS final rule.

SNF PPS covers all non-CAH swing bed costs (ancillary, routine, and capital) related to covered services furnished to beneficiaries under Medicare Part A and relies on a subset of MDS 3.0 information to classify residents into a RUGs category for payment purposes.

All MDS 3.0 Item Set instructions for nursing homes and non-CAH swing-bed rural hospitals are included in CMS' *Long Term Care Facility Resident Assessment Instrument User's Manual*. This *Manual* and other MDS 3.0 resources are located at http://www.cms.gov/NursingHomeQualityInits/25_NHQIMDS30.asp.

CMS' Final Rule: CMS is implementing the MDS 3.0 assessment requirements for non-CAH swing-bed rural hospitals on October 1, 2010 as finalized in the FFY 2010 SNF PPS final rule.