PUBLICATION

COVID-19 Pandemic Trickles Into Some Aspects of SNF PPS FY 2021 Final Rule

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On August 5, 2020, CMS issued its final rule updating FY2021 payment rates used under the prospective payment system (PPS) for Skilled Nursing Facilities (SNFs). The FY 2021 payment rates will be implemented to reflect the use of the Patient Driven Payment Model (PDPM) case-mix classification system from October 1, 2020 through September 30, 2021. The rule also made notable updates to the payment system's wage index as a result of CMS' adoption of OMB's 2018 statistical area delineations. Additional policies made changes to the case-mix classification code mappings used under the SNF PPS, minor revisions in the regulatory text, and an update to the SNF value-based purchasing (VBP) program that affects Medicare payment to SNFs. The changes set forth in the final rule will be effective October 1, 2020.

The impacts of the COVID-19 pandemic have trickled into a lower percentage growth rate for the market basket index, causing a lower second quarter 2020 forecast, which in turn, lowered the proposed rule 2.7 percent growth rate to 2.2 percent. These changes represent an estimated increase of $750 million in aggregate payments to SNFs during FY 2021. The implementation of the SNF VBP program changes represent an estimated reduction of $199.54 million in aggregate payments to SNFs during FY 2021. Although not severe, it is unclear how steep a decline these changes may represent from what the payments would have been without the COVID-19 global pandemic.

In contrast, CMS barely acknowledged the public health emergency in the policy proposals finalized in the rule, and rejected the opportunity to make concessions because of the pandemic when requested by commenters. Specifically, commenters requested changes to policies regarding the SNF consolidated billing requirements and the implementation of changes to the wage index in deference to the impacts of the COVID-19 pandemic; neither change is included in the final rule.

SNF Payment Rates for FY 2021

CMS must update the SNF PPS payment rules annually per statute. Specifically, CMS must publish annually:

- Unadjusted federal per diem rates to be applied to days of covered SNF services furnished during the upcoming fiscal year.
- The case-mix classification system to be applied for these services during the upcoming fiscal year.
- The factors to be applied in making the area wage adjustment for these services.

IHS Global Inc. (IGI) is a nationally recognized economic forecasting firm with which CMS contracts to forecast the components of the market baskets and the multifactor productivity (MFP) adjustment. The market basket index and MFP adjustment help to determine the federal payment rate each fiscal year. Relevant here, CMS proposed the FY 2021 SNF market basket update of 2.7 percent based on IGI's first quarter 2020 forecast, with historical data through fourth quarter 2019. However, CMS also proposed that, if more recent data subsequently became available, it would use such data, if appropriate, to determine the FY 2021 SNF market basket percentage change as well as other adjustments in the final rule.

More recent data subsequently became available, and reflecting that new data, CMS finalized the use of a market basket update of 2.2 percent, instead of the proposed 2.7 percent based on the IGI's second quarter

2020 forecast with historical data through the first quarter of 2020. CMS noted specifically that the first quarter 2020 forecast used for the proposed market basket update was developed prior to the economic impacts of the COVID-19 pandemic. CMS recognized that the lower update of 2.2 percent for FY 2021 relative to the proposed rule (2.7 percent) is "primarily driven by slower than anticipated compensation growth for both health-related and other occupations as labor markets are expected to be significantly impacted during the recession that started in February 2020 and throughout the anticipated recovery."

CMS determined that there was no forecast error adjustment this year. Adjustments take into account the forecast error from the most recently available fiscal year for which there is final data, and apply the difference between the forecasted and actual change in the market basket when the difference exceeds a specified threshold. As this threshold is 0.5 percent, this year's forecast error of 0.41 percentage point would not be adjusted to account for the forecast error correction.

In its proposed rule, CMS suggested a MFP adjustment of 0.4 percentage point based on IGI's first quarter 2020 forecast (this number increased to 0.7 percentage point based on IGI's second quarter 2020 forecast). However, based on the more recent data available for this FY 2021 SNF PPS final rule, the current estimate of the 10-year moving average growth of MFP for FY 2021 would be - 0.1 percentage point.

According to CMS, the use of - 0.1 percentage point is based on the most recent macroeconomic outlook from IGI at the time of the rulemaking in order to reflect more current historical economic data. While IGI produces monthly macroeconomic forecasts, IGI only produces forecasts of the more detailed price proxies on a quarterly basis, and CMS has typically based its projection of the market basket price proxies and MFP in the final rule on the second quarter IGI forecast. However, for this FY 2021 SNF final rule, CMS is using the IGI June 2020 macroeconomic forecast for MFP because it is a more recent forecast, and CMS is using more recent data during this period when economic trends, particularly employment and labor productivity, are notably uncertain because of the COVID-19 pandemic. The use of this macroeconomic forecast helped determine the SNF market basket update for FY 2021 as 2.2 percent.

CMS expressly declined to consider reweighting the cost categories used in calculating the SNF market basket based on changes in SNF costs resulting from COVID-19 since it does not believe sufficient data exists to perform this type of analysis.

In its economic analysis of the final rule, CMS estimated that the overall payments for SNFs under the SNF PPS in FY 2021 are projected to increase by approximately $750 million, or 2.2 percent, compared with those in FY 2020. CMS also estimated that in FY 2021, SNFs in urban and rural areas will experience, on average, a 2.2 percent increase and 2.4 percent increase, respectively, in estimated payments compared with FY 2020; this will mostly affect providers in the urban Middle Atlantic region that will experience the largest estimated increase in payments of approximately 3.2 percent, with the smallest estimated increase in payments of 1.0 percent affecting providers in the urban New England region.

The Wage Index, Consolidated Billing, and Additional Operational Policies of the SNF PPS

A. Updates to the Wage Index

Of note and related to the new PDPM, CMS will continue to monitor the impact of PDPM implementation on resident outcomes and program outlays, though it believes "it would be premature to release any information related to those issues based on the amount of data currently available." CMS will use the revised OMB delineations identified in OMB Bulletin No. 18-04 to identify a facility's urban or rural status for the purpose of determining which set of rate tables would apply to the facility. In addition, CMS will continue to use the practice of using hospital inpatient wage data in developing a wage index to be applied to SNFs for FY 2021.

CMS made two significant changes to the wage index in the final rule. First, the agency issued its decision regarding the treatment of Micropolitan Statistical Areas in calculating an area's wage index. Micropolitan Statistical Areas are core-based statistical areas (CBSAs) that are associated with at least one urban cluster and have a population between 10,000 and 50,000 people. In the final rule, CMS elected to treat Micropolitan Statistical Areas as "rural" and include them in the calculation of each state's rural wage index, instead of treating the areas as separate labor markets. The agency is concerned that because Micropolitan Areas tend be smaller population centers and contain fewer hospitals than Metropolitan Statistical Areas, a single hospital or group of hospitals may have a disproportionate effect on the wage index of that area, increasing the potential for "dramatic shifts" in year-to-year wage index values.

Second, CMS applied the revised OMB delineations to reclassify certain urban counties as rural and certain rural counties as urban. Specifically, 34 counties that are currently considered part of an urban CBSA will be considered to be located in a rural area beginning in FY 2021, potentially decreasing the area wage index values for 42 percent of SNFs. Conversely, 47 currently rural counties will be reclassified as urban areas, potentially increasing the area wage index for 54 percent of SNFs. CMS estimates that, as a result of this proposal, just over two percent of providers would experience a decrease of greater than five percent in their area wage index value. To ease the transition, CMS will apply a one-year, five percent cap on any decrease in a SNF's wage index from the wage index from the prior fiscal year so that the impact of the rule on most SNFs seeing a decrease in payments is initially diminished.

By statute, CMS must apply the wage index adjustment in a budget neutral manner so that aggregate SNF PPS payments will neither be greater nor less than aggregate SNF PPS payments without the wage index adjustment. To accomplish this in FY 2021, CMS will apply a single budget neutrality factor. Several commenters requested that CMS consider waiving the portion of the wage index budget neutrality adjustment calculation that accounts for changes in the wage index in light of the COVID-19 pandemic, but the agency maintained that the adjustment is a statutory requirement that must be enacted notwithstanding the public health emergency.

B. Consolidated Billing

CMS generally requires a SNF to submit to its Medicare Administrative Contractor a consolidated Medicare bill that includes almost all services that a resident receives during a Part A covered stay. However, there are exceptions for certain individual, high-cost services that are infrequently provided in SNFs and that remain separately billable under Part B when furnished to a SNF's Part A resident. These certain services fall within four congressionally defined broader categories: chemotherapy items, chemotherapy administration services, radioisotope services, and customized prosthetic devices. CMS makes these allowances to exclude from the PPS certain services whose costs far exceed the payment SNFs receive under the PPS.

In the proposed rule, CMS invited public comment identifying Healthcare Common Procedures Coding System (HCPCS) codes representing new technology and advances that might meet the criteria to be excluded from SNF consolidated billing. Several commenters proposed excluding various services in light of the COVID-19 public health emergency, but CMS held fast in the final rule, stating that by statute only services in the four categories specified by Congress could be considered regardless of the pandemic.

C. Other SNF PPS Operational Policies Not Affected by the Public Health Emergency

The remaining policies that CMS adopted did not generate any discussion of the COVID-19 pandemic. In fact, several proposed policies are adopted without any requested changes from commenters. For example, the final rule adopted the proposed rule's interpretation of the administrative level of care presumption. The administrative level of care presumption utilizes a beneficiary's correct assignment of one of the case-mix

classifiers designated for this purpose, determined at the outset of the SNF stay, to assist in making certain SNF level of care determinations. The agency also declined to change several policies included from previous proposed and final rules that were not discussed by commenters, such as the automatic adoption of the performance period and baseline period for a SNF VBP program year; the policy to correct numerical values for performance standards for a program year only one time, even if a second error is identified; and policies regarding SNF value-based incentive payments.

Additional policies impact public reporting on the Nursing Home Compare website or a successor website. The final rule codifies a data suppression policy for low volume SNFs that have fewer than 25 eligible stays during the baseline period or during the performance period for a program year. Nursing Home Compare will not display the baseline risk-standardized readmission rate (RSSR) or improvement score for SNFs that have fewer than 25 eligible stays during the baseline period of a program year, although it will still report the performance period RSSR, achievement score, and total performance score for SNFs with sufficient data during the performance period. Similarly, the website will not display the performance period RSSR, the achievement score, or the improvement score for SNFs that have fewer than 25 eligible stays during the performance period for a program year, although CMS will report the SNF's assigned performance score, if available. Lastly, CMS will not display any information for a SNF that has zero eligible cases during the performance period for a program year.

CMS did receive some comments on the merits of the proposals. The agency noted a comment regarding the exemption of critical access hospitals' swing-bed services from the SNF PPS but did not alter its interpretation from the proposed rule in response because of statutory constraints. In addition, the agency finalized its proposed changes to the ICD-10 code mappings and lists discussed, and included modifications to the proposed changes requested by several commenters. CMS also finalized after comments its proposal to make updates to the Phase One Review and Correction deadline.

Lastly, the final rule includes several technical changes discussed in the proposed rule that were either not commented upon or were wholly accepted by commenters. This list includes, but is not limited to, changing the name of the SNF VBP Skilled Nursing Facility 30-Day Potentially Preventable Readmission Measure (SNFPPR) to the Skilled Nursing Facility Potentially Preventable Readmissions after Hospital Discharge and making accompanying changes to the regulations to more clearly differentiate it from a similar measure specified for use in the SNF QRP.

Takeaway

Although at first glance, the changes from the SNF PPS payment rule from FY 2020 are not so far-reaching as to suggest that the COVID-19 pandemic has negatively affected the payment rates in an extreme manner, it is fair to say that these numbers may have been higher (or perhaps lower) in a year not fraught with a global pandemic and rippling effects on the economic market.

	Final Rule 2019	Final Rule 2020	Final Rule 2021
Aggregate Payments to SNFs	Estimated increase of $820 million	Estimated increase of $851 million	Estimated increase of $750 million
Overall Impact of SNF VBP	Estimated reduction of $211 million	Estimated reduction of $213.6 million	Estimated reduction of $199.54 million

Market basket update	2.4 percent	2.4 percent	2.2 percent
Unadjusted federal rate per diem – urban (for Nursing) under PDPM	n/a	$105.92	$108.16
Unadjusted federal rate per diem – rural (for Nursing) under PDPM	n/a	$101.20	$103.34

The above data indicates a somewhat downward trend for FY 2021 from FY 2019 and FY 2020 in the estimated increase to aggregate payments to SNFs. Further, the economic effects on SNF payments for the relatively new PDPM case-mix classification model also remain to be seen, and it is entirely unclear what these numbers may have been without the pandemic. Further, the majority of the operational policies that CMS adopted are not affected by the public health emergency. However, as the COVID-19 pandemic continues to play a role in impacting larger economic factors at play, we likely will continue to see an influence on reimbursement approaches such as the SNF PDPM and other CMS payment systems.

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