

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 413

[CMS-1469-P2]

RIN 0938-AL20

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: In this proposed rule, we are considering an adjustment to the annual update for skilled nursing facilities (SNFs) that would account for forecast errors. In addition, we are proposing to make a technical correction to correct a misspelling in existing regulation text. This proposed rule supplements the proposed rule that we published previously in the *Federal Register* on May 16, 2003 (68 FR 26758), which included proposed updates to the payment rates used under the prospective payment system (PPS) for SNFs, for fiscal year (FY) 2004, as required by section 1888(e) of the Social Security Act (the Act), as amended by the Medicare, Medicaid, and State Children's Health Insurance Program (SCHIP) Balanced Budget Refinement Act of 1999 (BBRA) and the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), relating to Medicare payments and consolidated billing for SNFs.

DATES: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on July 7, 2003 (*see* section VI of this proposed rule for a discussion of the comment period).

ADDRESSES: Mail written comments (one original and three copies) to the following address:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-1469-P2, P.O. Box 8013, Baltimore, MD 21244-8013.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses:

Hubert H. Humphrey Building, Room 443-G, 200 Independence Avenue, SW., Washington, DC 20201, or
Centers for Medicare & Medicaid

Services, Room C5-14-03, 7500 Security Boulevard, Baltimore, MD 21244-8013.

Comments mailed to those addresses designated for courier delivery may be delayed and could be considered late. Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. Please refer to file code CMS-1469-P2 on each comment. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of this document, in Room C5-12-08 of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland, Monday through Friday of each week from 8:30 a.m. to 4 p.m. Please call (410) 786-7197 to make an appointment to view comments.

FOR FURTHER INFORMATION CONTACT: Stephen Heffler, (410) 786-1211 (for information related to the SNF Market Basket Index and forecast error adjustments). Bill Ullman, (410) 786-5667, and Sheila Lambowitz, (410) 786-7605 (for general information).

SUPPLEMENTARY INFORMATION: To assist readers in referencing sections contained in this document, we are providing the following Table of Contents.

Table of Contents

- I. Background and Purpose of this Proposed Rule
- II. Proposed Adjustment to the Annual Update to Account for Forecast Error in the SNF Market Basket
 - A. Background
 - B. Possible Approaches
 - C. SNF Market Basket Forecast Error for FYs 2000 through 2002
 - D. Process for Adjusting for SNF Market Basket Forecast Error
- III. Solicitation of Comments on Quality of Care Efforts under SNF PPS
- IV. Provisions of the Proposed Rule
- V. Collection of Information Requirements
- VI. Response to Public Comments
- VII. Regulatory Impact Analysis

Regulation Text

I. Background and Purpose of this Proposed Rule

Annual updates to the prospective payment system (PPS) rates are required by section 1888(e) of the Social Security Act (the Act), as amended by the Medicare, Medicaid, and State Children's Health Insurance Program (SCHIP) Balanced Budget Refinement Act of 1999 (BBRA, Pub. L. 106-113), and the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA, Pub. L. 106-554), relating to Medicare payments and consolidated billing for SNFs.

On May 16, 2003, we published in the *Federal Register* a proposed rule (68 FR 26758) in connection with the Medicare PPS for skilled nursing facilities (SNFs). The proposed rule included updated payment rates for fiscal year (FY) 2004, as well as a number of proposed revisions and technical corrections to the associated regulations. We are now publishing this supplemental proposed rule in order to propose an additional possible change, concerning the regulations in 42 CFR 413.337(d)(2) for determining the annual update to the SNF payment rates. Specifically, we are considering an adjustment that would account for forecast error. In addition, we propose to make a technical correction to correct a misspelling in the existing regulation text at § 413.345.

We note that the issue of establishing an adjustment to account for forecast error is one that we have considered previously. To date, we have not implemented such an adjustment, because we were concerned that it might tend to detract from the prospective nature of the SNF payment system. Additionally, we note that, in the past, our evaluation of a possible adjustment to account for forecast error has not taken place in isolation, but rather, within the broader context of considering the possibility of developing a SNF-specific update framework, which would keep track of the various factors that affect costs and payment per case. This would include not only the market basket, but also other factors as well, such as productivity changes, intensity changes, and adjustment for case-mix creep. For example, the May 12, 1998 interim final rule on the SNF PPS (63 FR 26293) discussed the possibility of adopting a forecast error adjustment, similar to the one employed in the existing update framework for the inpatient hospital PPS:

We are considering a mechanism to adjust future SNF PPS rates for forecast errors.
* * * In any given year, there may be unanticipated price fluctuations that may result in differences between the actual increases in prices faced by SNFs and the forecast used in calculating the update factors.

We further noted that if such a mechanism were adopted,

* * * an adjustment would be made only if the forecasted market basket percentage change for any year differs from the actual percentage change by 0.25 percentage points or more. There would be a 2-year lag between the forecast and the measurement of the forecast error. Thus, for example, we would adjust for an error in forecasting the 1997 market basket percentage used to compute the PPS rates effective with this interim final