

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS-1473-NC]

RIN 0938-AL94

Medicare Program; Home Health Prospective Payment System Rate Update for FY 2004

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

ACTION: Notice with comment period.

SUMMARY: This notice with comment period sets forth an update to the 60-day national episode rates and the national per-visit amounts under the Medicare prospective payment system for home health agencies. It also responds to public comments received on the June 28, 2002 notice with comment period, which set forth the home health prospective payment system rate update for FY 2003.

EFFECTIVE DATE: Effective Date: The rate updates in this notice with comment period are effective on October 1, 2003.

Comment Period: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on August 29, 2003.

ADDRESSES: In commenting, please refer to file code CMS-1473-NC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. Mail written comments (one original and three copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-1473-NC, P.O. Box 8016, Baltimore, MD 21244-8016.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and three copies) to one of the following addresses: Room 443-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5-14-03, 7500 Security Boulevard, Baltimore, MD 21244-1850.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Chester Robinson, (410) 786-6959 or Susan Levy, (410) 786-9364.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone (410) 786-7195.

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512-1800 or by faxing to (202) 512-2250. The cost for each copy is \$10. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

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I. Background

Legislation on Payment to Home Health Agencies

A. Balanced Budget Act of 1997

The Balanced Budget Act of 1997 (BBA), Pub. L. 105-33, enacted on August 5, 1997, significantly changed the way Medicare pays for Medicare home health services. Until the implementation of a home health prospective payment system (HH PPS) on October 1, 2000, home health agencies (HHAs) received payment under a cost-based reimbursement system. Section 4603 of the BBA governed the development of the HH PPS by adding section 1895 to the Social Security Act (the Act).

Section 1895(b)(3)(B) of the Act requires the standard prospective payment amounts to be increased by a factor equal to the applicable home health market basket increase for FY 2004.

B. System for Payment of Home Health Services

Generally, Medicare makes payment under the HH PPS on the basis of a national standardized 60-day episode payment, adjusted for case mix and wage index. For episodes with four or fewer visits, Medicare pays on the basis of a national per-visit amount by discipline, referred to as a low utilization payment adjustment (LUPA). Medicare also adjusts the 60-day episode payment for certain intervening events that give rise to a partial episode payment adjustment or a significant change in condition adjustment. For certain cases that exceed a specific cost threshold, an outlier adjustment may also be available. For a complete and full description of the HH PPS as required by the BBA and as refined by the Omnibus Consolidated and Emergency Supplemental Appropriations Act (OCESAA) for FY 1999, Pub. L. 105-277, enacted on October 21, 1998, and the Medicare, Medicaid and SCHIP Balanced Budget Refinement Act of 1999, Pub. L. 106-113, enacted on November 29, 1999, see the July 3, 2000 HH PPS final rule (65 FR 41128).

II. Analysis of and Responses To Comments on the Home Health Prospective Payment System June 28, 2002 Notice With Comment Period

On June 28, 2002, we published a notice with comment period in the **Federal Register** (67 FR 43616) that set forth an update to the 60-day national episode rates and the national per-visit amounts under the Medicare prospective payment system for HHA for FY 2003. In this section, we respond to the 10 public comments that we received on the FY 2003 HH PPS update notice:

Comment: Commenters disagreed with the statutory elimination of the 10 percent rural add-on set forth in section 508 of the Medicare, Medicaid, and SCHIP Benefits and Improvement Protection Act of 2000 (BIPA).

Response: Section 508 of BIPA explicitly prescribes the time period (home health services furnished in a rural area ending on or after April 1, 2001, and before April 1, 2003) governing the 10 percent rural add-on. To conform to the statutory timeframe governing the rural add-on, the FY 2003 update notice published on June 28, 2002 included the expiration of the 10 percent rural add-on mid FY 2003.

Comment: Commenters believe the actuarial assumptions of the behavior under the interim payment system (IPS) were flawed and inadequate data were