
**SUMMARY OF THE MEDICARE
LONG-TERM CARE HOSPITALS
PROSPECTIVE PAYMENT SYSTEM'S
PROPOSED FFY 2010 AND INTERIM
FINAL 2009 RULES**

June 2009

SUBMISSION OF COMMENTS

This document provides an overview of the Medicare proposed rule for the Long Term Care Hospital Prospective Payment System (LTCH PPS) for federal fiscal year (FFY) 2010 and the Interim Final Rule with Comment Period for 2009. Additional information regarding the LTCH PPS is available on the Centers for Medicare and Medicaid Services (CMS) Web site at <http://www.cms.hhs.gov/LongTermCareHospitalPPS/>.

CMS must receive comments on the proposed rule by June 30 at 5 p.m. CMS requests that comments reference the file code CMS-1410-P or CMS-1410-P2 for comments related to the MS-LTC-DRG weights or High-Cost Outlier fixed loss amount.

Comments on the interim final rule for 2009 must be received by CMS by June 29 at 5 p.m. Comments must reference the file code CMS-1337-IFC

Comments on the proposed rule can be submitted electronically at <http://www.regulations.gov>. Follow the instructions under the “More Search Options” tab.

-OR-

Regular Mail (an original and two copies):

Centers for Medicare and Medicaid Services
Department of Health and Human Services
Attention: CMS-1410-P
P.O. Box 8016
Baltimore, MD 21244-8016

Express/Overnight Mail (an original and two copies):

Centers for Medicare and Medicaid Services
Department of Health and Human Services
Attention: CMS-1410-P
Mail Stop C4-26-05
7500 Security Boulevard
Baltimore, MD 21244-1850

-OR-

Hand-delivered to (an original and two copies):

Room 445-G
Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

OR

7500 Security Boulevard
Baltimore, MD 21244 -1850
Note: Call (410) 786-7195 to
schedule the delivery if you
use the Baltimore address.

I. OVERVIEW

The Centers for Medicare and Medicaid Services (CMS) published its proposed FFY 2010 LTCH PPS rule in the May 22, 2009 *Federal Register* with a supplement to the proposed rule published in the June 3, 2009 *Federal Register*. All changes would be effective for discharges beginning on or after October 1, 2009 unless noted otherwise.

CMS has also published an [Interim Final Rule](#) with Comment Period for the RY 2009 LTCH PPS. The changes in this rule are effective for the remainder of the 2009 Rate Year (i.e. June 3, 2009 through September 30, 2009).

Note: Text in italics is extracted from either the May 22, 2009 or the June 3, 2009 *Federal Register*.

II. PAYMENT RATE

Marketbasket Update (*Federal Register* page 24261)

The most recent estimate for the Rehabilitation, Psychiatric and Long-Term Care (RPL) marketbasket for FFY 2010 is 2.4 percent. CMS is proposing to update the LTCH PPS standard federal rate by the full marketbasket update.

Documentation and Coding Adjustment (*Federal Register* page 24261)

CMS proposes to update the LTCH PPS standard federal rate by only 0.6 percent to incorporate a negative adjustment for coding increases in the 2007 and 2008 rate years. 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 true increases in patient severity. The net 0.6 percent update reflects the 2.4 percent marketbasket reduced by 1.8 percent for the coding adjustment.

Standard Federal Rate (*Federal Register* page 24261)

CMS proposes a standard federal rate for FFY 2010 of \$39,349.05, which reflects the RY 2009 standard federal rate (\$39,114.36) increased by the 0.6 percent update factor described above.

Wage Indexes and Labor Share (*Federal Register* pages 24262 - 24265)

This is the first year that the LTCH PPS rate year will coincide with the federal fiscal year and inpatient PPS rate year. CMS is proposing to use the same data collected from cost reports submitted by IPPS hospitals for periods beginning during FFY 2006 that are being used to compute the proposed FFY 2010 acute care hospital inpatient wage indexes, without taking into account 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. These wage indexes are published in the Addendum, Tables 12A and 12B of the *Federal Register* (pages 24609 - 24650).

The area wage index is applied to the labor-related portion of the standard federal rate to adjust for differences in area wage levels. Based on the most recent data, but retaining the same methodology for calculating the labor-related share, CMS proposes to increase the labor-related portion of the federal rate from 75.662 percent to 75.904 percent for FFY 2010.

III. MS-LTC-DRGs

MS-LTC-DRG Classifications (*Federal Register* page 26602)

The MS-LTC-DRGs are structurally identical to the Inpatient MS-DRGs and, hence, patients are classified into these DRGs using the same methodology and the relative weights are recalibrated for both IPPS and LTCHs 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. The proposed FFY 2010 MS-LTC-DRG weights were recalibrated using FFY 2008 LTCH claims data.

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.

The proposed MS-LTC-DRG relative weights were normalized by a factor of 1.07264, which was applied to each MS-LTC-DRG relative weight, after which a budget neutrality factor of 0.993343 was applied.

Table 11 (Amended) of the supplement to the proposed FFY 2010 rule (*Federal Register* pages 26613 – 26635) lists the MS-LTC-DRGs, FFY 2008 cases, proposed weights, proposed geometric LOS, and proposed short-stay outlier threshold.

IV. OTHER ISSUES

High Cost Outliers (*Federal Register* pages 24266 – 24269 and pages 26602 - 26603)

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 has revised its proposed FFY 2010 fixed loss amount to reflect the change to the MS-LTC-DRG weights published in the amended proposed rule on June 3rd. The proposed high cost outlier fixed loss amount for FFY 2010 is \$18,868, which is 18 percent lower than the 2009 rate year amount of \$22,960. CMS states that the decrease in the fixed loss amount as 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
- 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).

CMS does not propose any changes to its SSO policy for FFY 2010.

V. INTERIM FINAL RY 2009 RULE

Comments on this rule must be received by CMS no later than 5 p.m. on June 29, 2009.

The interim final rule with comment period (June 3, 2009 *Federal Register*, pages 26546 – 26569) corrects 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 will be applied in all LTCH PPS payments for the remainder of the 2009 rate year (i.e. June 3, 2009 through September 30, 2009).