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Health care legislative and regulatory update



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CMS Issues a Notice and a Proposed Rule Modifying FY 2010 and FY 2011 IPPS and LTCH PPS Rates to Account for Changes Mandated by the Health Care Reform Bills

The Centers for Medicare and Medicaid Services (CMS) have issued a notice modifying both the Hospital Inpatient Prospective Payment System (IPPS) and the Long-Term Care Hospital (LTCH) Prospective Payment System (PPS) for fiscal year (FY) 2010. CMS has also issued a proposed rule with a 30-day comment period modifying the May 4th, proposed FY 2011 IPPS/LTCH PPS rule.

Both items are on display at the *Federal Register* office and are scheduled for publication on June 2. Copies of both rules are available on line at the [Federal Register website](#) and on the [CMS website](#).

CMS says the changes are mandated by the *Patient Protection and Affordable Health Care Act* and the *Health Care Education Reconciliation Act of 2010* which CMS is collectively referring to as the *Affordable Care Act* (ACA). The ACA mandates several changes for hospital inpatient and long-term care PPS hospitals, including the market basket rates of increase for FY 2010 be reduced by 0.25 percent, but only for discharges occurring on and after April 1, 2010.

Final FY 2010 Wage Indices and Payment Rates Implementing the Affordable Care Act

1. Section 508 Extension

The ACA extends through the end of FY 2010 wage index reclassifications under section 508 of the *Medicare Prescription Drug Improvement and Modernization Act of 2003* (MMA). Under section 508 a qualifying hospital could appeal the wage index classification otherwise applicable to the hospital and apply for reclassification to another area of the State in which the hospital is located (or, at the discretion of the Secretary), to an area within a contiguous State. ACA also requires that the Secretary include the average hourly wage data of hospitals whose reclassification was extended but only if including such data results in a higher applicable reclassified wage index.

Section 508 providers that are receiving an extension through September 30, 2010 are shown in Table 9B of the Addendum to the notice.

2. FY 2010 Final Wage Indices

The final wage index values for FY 2010 (except those for hospitals receiving wage index adjustments under section 508) are included in Tables 4A, 4B, and 4C of the Addendum to the notice. For hospitals that are receiving a wage index adjustment under section 508 is shown in abbreviated Table 4J of the Addendum.

In addition, Table 2 of the Addendum includes the final wage index values and occupational mix adjusted average hourly wage (from the FYs 2004, 2005, and 2006 cost reporting periods) for each hospital. Table 4D-1 list the State rural floor budget neutrality factors for FY 2010. Table 4D-2 lists the urban areas with hospitals receiving the State rural floor or imputed rural floor wage index.

3. FY 2010 Inpatient Hospital Update

ACA provides for a 0.25 percentage point reduction to the IPPS FY 2010 standardized payment amounts. To comply with ACA, for discharges occurring in the second half of FY 2010 (April 1 through September 30, 2010,) the market basket update will be 1.85 percent (that is, the FY 2010 estimate of the market basket rate-of-increase of 2.1 percent minus 0.25 percentage points) for hospitals in all areas, provided the hospital submits quality data. For those hospitals that did not, the increase will be -0.15 percent (that is, the adjusted FY 2010 estimate of the market basket rate-of-increase of 1.85 percent minus 2.0 percentage points).

CMS has provided the following table to identify its calculations:

Comparison of FY 2009 Standardized Amounts to the FY 2010 Standardized Amount with Full and Reduced Update

	Full Update (1.85 percent); Wage index is greater than 1.0000	Full Update (1.85 percent); Wage index is less than or equal to 1.0000	Reduced Update (-0.15 percent); Wage index is greater than 1.0000	Reduced Update (-0.15 percent); Wage index is less than or equal to 1.0000
FY 2009 Base Rate, after removing geographic reclassification budget neutrality, demonstration budget neutrality and outlier offset (based on the labor-related share percentage for FY 2010)	Labor: \$3,748.52 Nonlabor: \$1,699.91	Labor: \$3,378.03 Nonlabor: \$2,070.40	Labor: \$3,748.52 Nonlabor: \$1,699.91	Labor: \$3,378.03 Nonlabor: \$2,070.40
FY 2010 Update Factor	1.0185	1.0185	0.9985	0.9985
FY 2010 DRG Recalibration and Wage Index Budget Neutrality Factor	0.998352	0.998352	0.998352	0.998352
FY 2010 Reclassification Budget Neutrality Factor	0.991985	0.991985	0.991985	0.991985
FY 2010 Outlier Factor	0.948998	0.948998	0.948998	0.948998
Rural Demonstration Budget Neutrality Factor	0.999739	0.999739	0.999739	0.999739
Rate for FY 2010 (April 1-September 30, 2010)	Labor: \$3,587.24 Nonlabor: \$1,626.78	Labor: \$3,232.69 Nonlabor: \$1,981.33	Labor: \$3,516.80 Nonlabor: \$1,594.84	Labor: \$3,169.22 Nonlabor: \$1,942.42

The following rates were in effect for October 1, 2009 through March 31, 2010.

Rate for FY 2010 (October 1, 2009-March 31, 2010)	Labor: \$3,593.52 Nonlabor: \$1,629.62	Labor: \$3,238.35 Nonlabor: \$1,984.79	Labor: \$3,523.13 Nonlabor: \$1,597.70	Labor: \$3,174.91 Nonlabor: \$1,945.92
Overall Reduction in payments (April 1-September 30)	-\$9.12	\$9.12	-\$9.19	-\$9.19

4. Changes to Payment Rates for IPPS for Capital-Related Costs for FY 2010

CMS is modifying the IPPS capital rate, too. CMS says this is necessary because the operating IPPS market basket and wage index changes affect the budget neutrality adjustment factor for changes in DRG classifications and weights and the geographic adjustment factor (GAF) since the GAF values are derived from the wage index values. Capital rates will increase from \$429.26 to **\$429.56** for discharges occurring between April 1 and September 30, 2010.

**Comparison of Factors and Adjustments: FY 2010 Capital Federal Rate
 Prior to the Enactment of the Affordable Care Act and Revised FY 2010 Capital Federal Rate
 Reflecting the Effect of the Provisions of the Affordable Care Act**

	FY 2010*	Revised FY 2010**	Change	Percent Change
Update Factor	1.0120	1.0120	1.0000	0.00
GAF/DRG Adjustment Factor	0.9990	0.9994	1.0004	0.04
Outlier Adjustment Factor	0.9475	0.9478	1.0003	0.03
Exceptions Adjustment Factor	0.9998	0.9998	1.0000	0.00
MS-DRG Documentation and Coding Adjustment Factor	1.0000	1.0000	1.0000	0.00
Capital Federal Rate	\$429.26	\$429.56	1.0007	0.07

* FY 2010 capital IPPS rates and factors established in the FY 2010 IPPS/R Y 2010 LTCH PPS final rule, as revised by the FY 2010 IPPS/R Y 2010 LTCH PPS correction notice, developed prior to the enactment of the Affordable Care Act.

** Final FY 2010 capital IPPS rates and factors reflecting the effect of the provisions of the Affordable Care Act.

5. Final FY 2010 Outlier Fixed-Loss Cost Threshold

CMS is revising the FY 2010 outlier fixed-loss cost threshold. For discharges occurring on after April 1, 2010, a case qualifies as a cost outlier if the cost for the case plus the Indirect Medical Education and Disproportionate Share Hospital payments is greater than the prospective payment rate for the MS-DRG plus the fixed-loss amount of **\$23,135**. The threshold for the period October 1, 2009 – March 31, 2010 was \$23,140.

6. Changes to the Payment Rates for the LTCH PPS for RY 2010

ACA provides for a 0.25 percentage point reduction to the annual update for LTCHs RY 2010. CMS is reducing the applicable market basket update for RY 2010 by 0.25 percentage points, for discharges for April 1 through September 30, 2010. The revised Federal rate is **\$39,794.95**

For discharges occurring on or after October 1, 2009 through March 31, 2010, LTCH PPS payments are based on the standard Federal rate established in the FY 2010 IPPS/R Y 2010 LTCH PPS final rule (that is, 2.0 percent) or a standard Federal rate of \$39,896.65.

CMS is revising the HCO fixed-loss amount for RY 2010 from \$18,425 to **\$18,615** for RY 2010 discharges occurring on or after April 1, 2010

7. Tables

The Notice's addendum contains the following table:

Table 1A – National Adjusted Operating Standardized Amounts, Labor/Nonlabor (69.7 Percent Labor Share/30.3 Percent Nonlabor Share if Wage Index is Greater Than 1);

Table 1B – National Adjusted Operating Standardized Amounts, Labor/Nonlabor (62 Percent Labor Share/38 Percent Nonlabor Share if Wage Index is Less Than or Equal to 1);

Table 1D – Capital Standard Federal Payment Rate;

Table 1E – LTCH Standard Federal Prospective Payment Rate;

Table 2 – Hospital Case-Mix Indexes for Discharges Occurring In Federal Fiscal Year 2008; Hospital Wage Indexes For Federal Fiscal Year 2010 (April 1, 2010 through September 30, 2010); Hospital Average Hourly Wages for Federal Fiscal Years 2008 (2004 Wage Data), 2009 (2005 Wage Data), and 2010 (2006 Wage Data); and 3-Year Average of Hospital Average Hourly Wages

Table 4A – Wage Index and Capital Geographic Adjustment Factor (GAF) for Urban Areas by CBSA--FY 2010 (April 1, 2010 through September 30, 2010)

Table 4B – Wage Index and Capital Geographic Adjustment Factor (GAF) for Rural Areas by CBSA--FY 2010 (April 1, 2010 through September 30, 2010)

Table 4C – Wage Index and Capital Geographic Adjustment Factor (GAF) for Hospitals that Are Reclassified by CBSA--FY 2010 (April 1, 2010 through September 30, 2010)

Table 4D-1 – State Specific Rural Floor Budget Neutrality Factors--FY 2010 (April 1, 2010 through September 30, 2010)

Table 4D-2 – Urban Areas with Hospitals Receiving the Statewide Rural Floor or Imputed Wage Index-- FY 2010 (April 1, 2010 through September 30, 2010)

Table 4J – Out-Migration Adjustment--FY 2010 (April 1, 2010 through September 30, 2010)

Table 9B – Hospital Reclassifications and Redesignations by Individual Hospital under Section 508 for FY 2010 (Revised as of April 1, 2010 and Effective October 1, 2009 through September 30, 2010)

Table 10 – Geometric Mean Plus the Lesser of 0.75 of the National Adjusted Operating Standardized Payment Amount (Increased to Reflect the Difference Between Costs and Charges) or 0.75 of One Standard Deviation of Mean Charges by Diagnosis-Related Group (DRG)--April 2010 (Applicable to Applications for FY 2011 New Technology Add-On Payments)

Comment

While it should be simple to change one factor – in this instance the market basket rate-of-increase – the changes are much more complex and involve numerous other changes in many PPS calculations.

The changes to FY 2010 (discharges occurring April 1-September 30, 2010) do not appear to modify any of the MS-DRG weights.

CMS notes that the changes in this notice are already in effect with changes made to PRICER programs and announced through a *Joint-Signature Memorandum*. CMS has been using joint-signature memorandums for some time, but they are not publicly available and are not on the CMS website.

CMS' regulatory analysis concludes that the cumulative operating and capital payments should result in a net increase of \$94.7 million to IPPS providers. Operating payments will increase by approximately \$75.7 million and the increase in capital payments will be approximately \$19 million higher.

Hospitals should not think these changes are infusing additional monies. Only some will benefit while most should see some declines in payments.

With respect to LTCHs, CMS projects an increase in estimated aggregate payments of approximately \$142 million or about 0.1 percent less than previously estimated.

Supplemental Proposed Changes to the Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Supplemental Proposed Fiscal Year 2011 Rates

This proposed rule is a supplement to the FY 2011 hospital IPPS/LTCH PPS proposed rule published in the May 4th 2010 *Federal Register* (displayed on April 19).

The proposed rule addresses the following provisions of the ACA legislation that impacts the following:

- Revisions of certain market basket updates;
- Hospital wage index improvement related to geographic reclassification criteria for FY 2011;
- National budget neutrality in the calculation of the rural floor for hospital wage index;
- Protections for frontier States;
- Temporary improvements to the low-volume hospital adjustment;
- Extension of Medicare-dependent hospitals (MDHs);
- Additional payments in FYs 2011 and 2012 for qualifying hospitals in the lowest quartile of per capita Medicare spending;
- Extension of the rural community hospital demonstration;
- Technical correction related to critical access hospital (CAH) services;
- Extension of certain payment rules for long-term care hospital services and a moratorium on the establishment of certain hospitals and facilities.

1. Revisions to Certain Market Basket Updates and Revised Proposed Standardized Payment Rates for FY 2011

CMS is revising the market basket update for IPPS hospitals to 2.15 percent (that is, the FY 2011 estimate of the market basket rate-of-increase of 2.4 percent minus 0.25 percentage points) for hospitals in all areas, provided the hospital submits quality data. For hospitals that do not submit quality data, the estimated update to the operating standardized amount is 0.15 percent (that is, the adjusted FY 2011 estimate of the market basket rate-of-increase of 2.15 percent minus 2.0 percentage points).

The applicable percentage increase in the hospital-specific rates for SCHs and MDHs equals the applicable percentage increases above. **Note:** the proposed negative documentation and coding factor (-2.9 percent) is still applicable. The rates would be as follows:

Comparison of FY 2010 Standardized Amounts to the Proposed FY 2011 Standardized Amount with Full and Reduced Update

	Full Adjusted Update (2.15 percent); Wage index is greater than 1.0000	Full Adjusted Update (2.15 percent); Wage index is less than or equal to 1.0000	Reduced Update (0.15 percent); Wage index is greater than 1.0000	Reduced Update (0.15 percent); Wage index is less than or equal to 1.0000
FY 2010 Base Rate, after removing geographic reclassification budget neutrality, demonstration budget neutrality, cumulative FY 2008 and FY 2009 documentation and coding adjustment and outlier offset (based on the labor-related share percentage for FY 2010)	Labor: \$3,869.61 Nonlabor:\$1,754.83	Labor: \$3,487.15 Nonlabor: \$2,137.29	Labor: \$3,869.61 Nonlabor:\$1,754.83	Labor: \$3,487.15 Nonlabor:\$2,137.29
Proposed FY 2011 Update Factor	1.0215	1.0215	1.0015	1.0015
Proposed FY 2011 DRG Recalibration and Wage Index Budget Neutrality Factor	0.996937	0.996937	0.996937	0.996937
Proposed FY 2011 Reclassification Budget Neutrality Factor	0.991476	0.991476	0.991476	0.991476
Proposed FY 2011 Outlier Factor	0.948995	0.948995	0.948995	0.948995

	Full Adjusted Update (2.15 percent); Wage index is greater than 1.0000	Full Adjusted Update (2.15 percent); Wage index is less than or equal to 1.0000	Reduced Update (0.15 percent); Wage index is greater than 1.0000	Reduced Update (0.15 percent); Wage index is less than or equal to 1.0000
Proposed FY 2011 Rural Demonstration Budget Neutrality Factor	0.999313	0.999313	0.999313	0.999313
Proposed Cumulative Documentation and Coding Adjustment	0.957	0.957	0.957	0.957
Revised Proposed Rate for FY 2011	Labor: \$3,545.96 Nonlabor:\$1,608.05	Labor: \$3,195.49 Nonlabor:\$1,958.52	Labor: \$3,476.53 Nonlabor:\$1,576.57	Labor: \$3,132.92 Nonlabor:\$1,920.18

The following table compares the proposed FY 2011 rates issued on May 4th with the revised rates above.

May 4th Proposed Rates for FY 2011	Labor: \$3,566.91 Nonlabor:\$1,617.55	Labor: \$3,214.37 Nonlabor:\$1,970.09	Labor: \$3,497.24 Nonlabor:\$1,585.96	Labor: \$3,151.58 Nonlabor:\$1,931.62
Revised FY 2011 Rates from above	Labor: \$3,545.96 Nonlabor:\$1,608.05	Labor: \$3,195.49 Nonlabor:\$1,958.52	Labor: \$3,476.53 Nonlabor:\$1,576.57	Labor: \$3,132.92 Nonlabor:\$1,920.18
Difference	-\$30.45	-\$30.45	-\$30.10	-\$30.10

2. Changes to the Hospital Wage Index and Related Items

Restored Hourly Thresholds for Reclassifications

In the FY 2009 IPPS final rule, CMS adopted a policy to adjust the reclassification average hourly wage standard, comparing a reclassifying hospital's (or county hospital group's) average hourly wage relative to the average hourly wage of the area to which it seeks reclassification. For applications for reclassification for FY 2011 (for which the application deadline was September 1, 2009) and for subsequent fiscal years, the average hourly wage standards were increased to 88 percent for urban and group reclassifications and 86 percent for rural hospitals.

ACA section 3137(c) restores the average hourly wage standards that were in place for FY 2008 (that is, 84 percent for urban hospitals, 85 percent for group reclassifications, and 82 percent for rural hospitals) for applications for reclassification for FY 2011 and for each subsequent fiscal year until the first fiscal year beginning on or after the date that is one year after the Secretary of Health and Human Services submits a report to Congress on a plan for reforming the wage index.

CMS states that the ACA section 3137(c) does not provide for the revised average hourly wage standards to be applied retroactively, nor does it change the statutory deadline for applications for reclassification for FY 2011. Therefore, CMS says it will not allow hospitals to seek reclassifications that could meet the lowered/restored

thresholds, it will, however, grant reclassifications to 23 hospitals that sought reclassification last September but were denied under the higher threshold values.

The wage index in the Addendum to this supplemental FY 2011 IPPS/LTCH proposed rule reflects these changes in hospital reclassifications.

Budget Neutrality Adjustment for the Rural and Imputed Floors

ACA section 3141 rescinds CMS' policy establishing a statewide budget neutrality adjustment for the rural and imputed floor area wage indexes and, instead, restores it to a uniform, national adjustment, beginning with the FY 2011 wage index.

Again, the wage index in the Addendum reflects a uniform, national budget neutrality adjustment for the rural and imputed floors.

Frontier States Floor

ACA section 10324(a) provides for establishing an adjustment to create a wage index floor of 1.00 for all hospitals located in States determined to be Frontier States. The statute defines any State as a Frontier State if at least 50 percent of the State's counties are determined to be Frontier Counties. The statute defines such counties as those that have a population density of less than 6 persons per square mile.

All PPS hospitals located within that State will receive either the higher of its post-reclassification wage index rate, or a minimum value of 1.0000.

For the proposed FY 2011 IPPS wage index, the Frontier States are the following:

Frontier States under Section 10324(a)

State	Total Counties	Frontier Counties	Percent Frontier Counties
Montana	56	45	80%
Wyoming	23	17	74%
North Dakota	53	36	68%
Nevada	17	11	65%
South Dakota	66	34	52%

Revised FY 2011 IPPS Proposed Rule Wage Index Tables

The revised IPPS proposed wage index values for FY 2011, reflecting the provisions of ACA sections 3137(c), 3141, and 10324 are included in Tables 2, 4A, 4B, 4C, and 4D-2 of the Addendum .

Table 4D-1, which listed the statewide rural and imputed floor budget neutrality factors, is eliminated from the Addendum and is no longer applicable for the wage index because ACA section 3141 requires the application of a national adjustment.

Table 4J, lists the out-migration adjustment for a qualifying county, and is revised due to the above provisions of the ACA.

Table 9A lists the hospitals that are reclassified or redesignated for FY 2011.

Tables 3A and 3B, lists the 3-year average hourly wage for each labor market area before the redesignation or reclassification of hospitals.

Table 4E, lists urban CBSAs and constituent counties.

Table 9C, lists hospitals redesignated under section 1886(d)(8)(E) of the Act, and are unaffected by the above provisions of the Affordable Care Act. Therefore, these tables are unchanged from the May 4th initial FY 2011 IPPS/LTCH PPS proposed rule and are not included in the Addendum.

Procedures for Withdrawing Reclassifications in FY 2011

CMS says all requests for withdrawal of an application for reclassification or termination of an existing 3-year reclassification that would be effective in FY 2011 must be received by the MGCRB by June 18, 2010.

3. Payment Adjustment for Low-Volume Hospitals

ACA sections 3215 and 10314 amend the definition of a low-volume hospital. It also revises the methodology for calculating the payment adjustment for low-volume hospitals. These changes are effective only for FYs 2011 and 2012. Beginning with FY 2013, the pre-existing low-volume hospital payment adjustment and qualifying criteria, as implemented in FY 2005, will resume.

The revised provision specifies that for FYs 2011 and 2012, a hospital qualifies as a low-volume hospital if it is "more than 15 road miles from another subsection (d) [PPS] hospital and has less than 1,600 discharges of individuals entitled to, or enrolled for, benefits under Part A during the fiscal year."

In addition, the payment adjustment (the applicable percentage increase) is to be determined "using a continuous linear sliding scale ranging from 25 percent for low-volume hospitals with 200 or fewer discharges of individuals entitled to, or enrolled for, benefits under Part A in the fiscal year to 0 percent for low-volume hospitals with greater than 1,600 discharges of such individuals in the fiscal year.

CMS is proposing the payment adjustment would be as follows:

Medicare Discharge Range	Payment Adjustment (Percent Add-On)
1 - 200	25.0000
201 - 301	23.3333
301 -400	21.6667
401 - 500	20.0000
501 - 600	18.3333
601 -700	16.6667
701 - 800	15.0000
801 - 900	13.3333
901 - 1000	11.6667
1001 - 1100	10.0000
1101 - 1200	8.3333
1201 - 1300	6.6667
1301 - 1400	5.0000
1401 - 1500	3.3333
1501 - 1599	1.6667
1600 or more	0.0000

CMS is also proposing that a hospital must continue to qualify as a low-volume hospital in order to receive the payment adjustment in that year; that is, it is not based on a one-time qualification.

4. Medicare-Dependent, Small Rural Hospitals (MDHs)

ACA Section 3124 extends the MDH program, from the end of FY 2011 (that is, for discharges before October 1, 2011) to the end of FY 2012 (that is, for discharges before October 1, 2012).

5. Additional Payments for Qualifying Hospitals with Lowest Per Capita Medicare Spending

ACA section 1109 provides for additional payments for FY 2011 and 2012 for "qualifying hospitals." Section 1109(d) defines a "qualifying hospital" as a "subsection (d) hospital.....that is located in a county that ranks, based upon its ranking in age, sex and race adjusted spending for benefits under Parts A and B.....per enrollee within the lowest quartile of such counties in the United States." ACA section 1109(b) makes available \$400 million to qualifying hospitals for FY 2011 and FY 2012.

CMS is proposing two models to determine eligible counties and seeks comments.

CMS is proposing to distribute \$150 million for FY 2011 and \$250 million for FY 2012. CMS notes that "this is a new policy, [and] we are proposing to distribute a smaller amount of money for the first year so that the public will have an opportunity to review our proposal and finalized policy in the FY 2011 IPPS/LTCH PPS final rule, and notify us of any possible revisions to the list of qualifying hospitals, so that we can adjust payments for FY 2012."

CMS says that there are 786 counties that rank in the lowest quartile of counties with regards to adjusted Medicare Part A and Part B spending per beneficiary, and has listed the 786 eligible counties in the proposal's Table 2. Of those 786 eligible counties, CMS has identified 415 IPPS hospitals that are currently located in those eligible counties.

6. Rural Community Hospital Demonstration Program

Section 410A (a) of the *Medicare Prescription Drug, Improvement, and Modernization Act of 2003* (MMA), required the Secretary to establish a demonstration program to test the feasibility and advisability of establishing "rural community hospitals" to furnish covered inpatient hospital services to Medicare beneficiaries. The demonstration pays rural community hospitals for such services under cost based methodology for Medicare payment purposes for covered inpatient hospital services furnished to Medicare beneficiaries.

CMS is proposing a budget neutral adjustment that would incorporate the following 4 components: (1) the estimated costs that would be incurred in FY 2011 for the 10 currently participating hospitals as a result of the demonstration's continuation in FY 2011; (2) the estimated cost incurred in FY 2010 for the 7 "originally participating hospitals" that were not accounted for in the FY 2010 IPPS final rule but that now must be accounted for as a result of the demonstration being continued by the Affordable Care Act's 5-year extension for such hospitals; (3) the estimated FY 2011 demonstration costs associated with the participation of up to 20 new hospitals; and (4) a factor by which the cost of the demonstration program in 2007, as indicated by settled cost reports beginning in FY 2007, exceeded the amount that was identified in the FY IPPS 2007 final rule as the budget neutrality offset for FY 2007.

CMS says the estimated amount for this adjustment is \$69,279,673

7. Payment for Critical Access Hospital Outpatient Services and Ambulance Services

CMS hospitals are paid 101 percent of Medicare allowable costs or can select an optional method to be paid 101 percent of costs and 115 percent of the amount otherwise paid for professional services under Medicare – the option II method.

ACA Section 3128(a) increases payment for outpatient facility services under the optional method and payment for ambulance services furnished by a CAH or an entity owned and operated by a CAH, to 101 percent of reasonable costs.

CMS is proposing to amend its regulations accordingly.

8. Supplemental Proposed FY 2011 Prospective Payment Systems Payment Rates for Hospital Inpatient Operating and Capital Related Costs

CMS says that the changes to the applicable market basket percentage increases, wage index, and rural community hospital demonstration mandated by the ACA necessitate the recalculation of the FY 2011 proposed budget neutrality factors, outlier threshold and standardized amounts.

Proposed Budget Neutrality Adjustment Factors

CMS is now proposing the following budget neutrality adjustment factors:

- DRG reclassification and recalibration factor – 0.996867;
- Changes to the wage index – 1.000070;
- Rural community hospital demonstration program adjustment – 0.999313.

FY 2011 Proposed Outlier Adjustment Factors

CMS is proposing an outlier fixed-loss cost threshold for FY 2011 equal to the prospective payment rate for the DRG, plus any IME and DSH payments, and any add-on payments for new technology, plus **\$24,165**. The proposed May 4th amount was \$23,970.

FY 2011 Proposed Capital Standard Federal Rate Update

CMS is proposing to establish a national capital Federal rate of **\$422.18** for FY 2011. The May 4th proposed amount was \$420.99.

Comparison of Factors and Adjustments: FY 2010 Capital Federal Rate and Proposed FY 2011 Capital Federal Rate

	FY 2010*	Proposed FY 2011	Change	Percent Change
Update Factor ¹	1.0120	1.0150	1.0150	1.50
GAF/DRG Adjustment Factor ¹	0.9994	1.0015	1.0015	0.15
Outlier Adjustment Factor ²	0.9478	0.9432	0.9951	-0.49
Exceptions Adjustment Factor ²	0.9998	0.9997	0.9999	-0.01
MS-DRG Documentation and Coding Adjustment Factor	0.9850 ³	0.9570 ⁴	0.9716 ⁵	-2.84
Capital Federal Rate	\$429.56	\$422.18	0.9828	-1.72

¹The update factor and the GAF/DRG budget neutrality factors are built permanently into the capital rates. Thus, for example, the incremental change from FY 2010 to FY 2011 resulting from the application of the proposed 1.0015 GAF/DRG budget neutrality factor for FY 2011 is a net change of 1.0015.

²The outlier reduction factor and the exceptions adjustment factor are not built permanently into the capital rates; that is, these factors are not applied cumulatively in determining the capital rates. Thus, for example, the proposed net change resulting from the application of the proposed FY 2011 outlier adjustment factor is 0.9432/0.9478, or 0.9951.

³The documentation and coding adjustment factor includes the -0.6 percent in FY 2008, -0.9 percent in FY 2009, and no additional reduction in FY 2010.

⁴The documentation and coding adjustment factor includes the -0.6 percent in FY 2008, -0.9 percent in FY 2009, no additional reduction in FY 2010 and the proposed -2.9 percent reduction in FY 2011.

⁵The change is measured from the FY 2009 cumulative factor of 0.9850.

9. LTCHs

Short Stay Outliers (SSO)

SSO cases are cases with a covered LOS that is less than or equal to five-sixths of the geometric average LOS for each LTC-DRG.

For RY 2008 CMS added another payment methodology for a SSO case with a covered length of stay (LOS) that is less than or equal to one standard deviation from the geometric ALOS of the same DRG under the IPPS as the LTC-DRG to which the case had been assigned (referred to as the "IPPS comparable threshold"). This provision was subsequently delayed by legislation for three years. ACA is delaying further the original three year delay to a total of five years.

Modification of Certain Payment Adjustments to Certain LTCHs and LTCH Satellite Discharges

ACA section 10312(a) increases from 3 years to 5 years, thereby extending for an additional 2 years the delay in application of the 25 percent patient threshold amount for certain LTCHS and LTCH satellite facilities. CMS is proposing to adjust its regulations accordingly.

Moratorium on the Increase in Number of Beds in Existing Long-Term Care Hospitals or Long-Term Care Hospital Satellite Facilities

ACA sections 3106(b) and 10312(b) adds an additional 2 years to the 3-year moratorium on the development of new LTCHs and LTCH satellite facilities and on the increase in the number of beds in existing LTCHs and LTCH satellites. Therefore, the moratorium will be in effect until December 28, 2012. CMS is proposing to revise §412.23(e)(6)(i) and (e)(7)(ii) by changing the ending date of the moratorium provisions from December 28, 2010 to December 28, 2012 to reflect these changes.

Proposed Medicare Severity Long-Term Care Diagnosis-Related Group (MS-LTC-DRG) Relative Weights

CMS says that it needs to revise the May 4th proposed relative weights for the LTC-DRGs for FY 2011. The Addendum's Table 11 lists the proposed MS-LTC-DRGs and their respective proposed relative weights, geometric mean length of stay, and five-sixths of the geometric mean length of stay.

10. Supplemental Proposed Changes to the Payment Rates for the LTCH PPS for FY 2011

FY 2011 Federal Rate

The LTCH PPS standard Federal rate for FY 2011 is based on the full proposed LTCH PPS market basket increase estimate of 2.4 percent, adjusted by the 0.50 percentage point reduction required by ACA [0.25 percent for FY 2010 and 0.25 percent for FY 2011] and an adjustment to account for the increase in case-mix in a prior periods (FYs 2008 and 2009) that resulted from changes in documentation and coding practices of -2.5 percent. Consequently, the proposed update factor to the standard Federal rate for FY 2011 is -0.59 percent, calculated as 1.019×1 divided by $1.025 = 0.9941$ or -0.59 percent (0.9941 minus 1 equals 0.59 percent)).

In determining the proposed standard Federal rate for FY 2011, CMS is applying the proposed 0.9941 update factor to the revised RY 2010 Federal rate of \$39,794.95. The proposed standard Federal rate for FY 2011 is **\$39,560.16**.

LTCH PPS High-Cost Outlier (HCO) Cases

The proposed fixed-loss amount for FY 2011 is **\$19,254**.

Comment

CMS projects that its changes will redistribute in excess of \$100 million among different types of inpatient cases. The proposed applicable percentage increase to the IPPS rates required by the statute, in conjunction with other proposed payment changes, would result in an estimated \$929 million decrease in FY 2011 operating payments (or -0.9 percent increase), and an estimated \$20 million decrease in FY 2011 capital payments (or -0.2 percent change).

The ACA rate-of-increase reductions to both IPPS and LTCH PPS are cumulative. Coupled with the documentation and coding adjustments, rates of increase are negative (the 2.15 update less the -2.9 percent coding adjustment).

The use of budget neutrality adjustments continues to be an enigma as to how the adjustments are calculated.

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