CMS ISSUES FINAL RULE FOR THE FISCAL YEAR 2024 SKILLED NURSING FACILITIES PROSPECTIVE PAYMENT SYSTEM

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On July 31, 2023, the Centers for Medicare & Medicaid Services (CMS) issued a final rule updating Medicare payment policies and rates for skilled nursing facilities (SNF) under the SNF Prospective Payment System (PPS) for fiscal year (FY) 2024. The final rule also includes updates to the SNF Quality Reporting Program and the SNF Value-Based Purchasing Program for FY 2024 and future years. Finally, the rule streamlines a constructive waiver process to ease administrative burdens for CMS related to processing Civil Monetary Penalty (CMP) appeals.

UPDATES TO SNF PAYMENT RATES

The final rule provides for a net market basket increase for SNFs of 4% (approximately $1.4 billion) beginning October 1, 2023. This is more than was originally proposed in April. The 4% market basket update reflects the following:

- A $2.2 billion increase resulting from the 6.4% net market basket update to the payment rates, which is based on a 3% SNF market basket increase plus a 3.6% market basket forecast error adjustment and less a 0.2% productivity adjustment.
- A negative 2.3%, or approximately $789 million, decrease in the FY 2024 SNF PPS rates as a result of the second phase of the Patient Driven Payment Model parity adjustment recalibration.

CHANGES TO THE SNF QUALITY REPORTING PROGRAM

The SNF Quality Reporting Program is a pay-for-reporting program. SNFs that do not meet reporting requirements are subject to a two-percentage-point reduction in their Annual Payment Update. In the FY 2024 SNF PPS final rule, CMS adopts two new measures, removes three measures, and modifies an existing measure in the SNF Quality Reporting Program.

The following measures are **new:**

- The **Discharge Function Score (DC Function) measure** assesses functional status by assessing the percentage of SNF residents who meet or exceed an expected discharge function score and uses mobility and self-care items already collected on the Minimum Data Set (MDS). This begins with the FY 2025 SNF Quality Reporting System.

- The **COVID-19 Vaccine: Percent of Patients/Residents Who Are Up to Date measure** reports the percentage of stays in which residents in an SNF are up to date with recommended COVID-19 vaccinations. This will be a new data item collected on the MDS and begins with the FY 2026 SNF Quality Reporting System.

The following measures are **removed**:

- The **Application of Percent of Long-Term Care Hospital Patients with an Admission and Discharge Functional Assessment and a Care Plan That Addresses Function measure** is removed beginning with the FY 2025 SNF Quality Reporting System.
- The **Application of the IRF Functional Outcome Measures: Change in Self-Care Score for Medical Rehabilitation Patients measure** will be removed beginning with the FY 2025 SNF Quality Reporting Program.
- The **Application of the IRF Functional Outcome Measures: Change in Mobility Score for Medical Rehabilitation Patients measure** will be removed beginning with the FY 2025 SNF Quality Reporting Program.

The following measure was **modified**:

- The **COVID-19 Vaccination Coverage Among Healthcare Personnel measure** now requires SNFs to report the cumulative number of healthcare personnel who are up to date with recommended COVID-19 vaccinations. This begins with the FY 2025 SNF Quality Reporting Program.

CHANGES TO THE SNF VALUE-BASED PURCHASING PROGRAM

The SNF Value-Based Purchasing Program rewards SNFs with incentive payments based on the quality of care they provide. All SNFs paid under Medicare's SNF PPS are included in the SNF Value-Based Purchasing Program. In this final rule, CMS is adopting four new quality measures, replacing one quality measure, and finalizing several policy changes in the SNF Value-Based Purchasing Program.

The following are the **new quality measures**:

- The **Nursing Staff Turnover Measure** is a structural measure that has been collected and publicly reported on Care Compare and assesses the stability of the staffing within an SNF using nursing staff turnover. Facilities would begin reporting for this measure in FY 2024.
- The **Discharge Function Score Measure** assesses functional status by assessing the percentage of SNF residents who meet or exceed an expected discharge function score and uses mobility and self-care items already collected on the MDS. This measure begins with the FY 2027 program year.
- The **Long Stay Hospitalization Measure per 1,000 Resident Days** will begin with the FY 2027 program year.
- The **Percent of Residents Experiencing One or More Falls with Major Injury** Measure will begin with the FY 2027 program year.

The following is the quality measure being replaced:

- The **Skilled Nursing Facility 30-Day All-Cause Readmission Measure** is being replaced with the **Skilled Nursing Facility Within-Stay Potentially Preventable Readmissions Measure** beginning with the FY 2028 program year.

CHANGES TO CMP APPEALS

Currently, under 42 C.F.R. § 488.436, Medicare-participating facilities issued a CMP due to non-compliance with Medicare Requirements of Participation (RoPs) may obtain a 35% CMP reduction by actively submitting a waiver, in writing, of their right to appeal the subject CMP. The final rule eliminates the requirement that facilities actively waive their right to a hearing in writing to receive the 35% penalty reduction. Instead, facilities that do not file a hearing request within 60 days of the CMP notice date will be considered to have "constructively waived" their appeal rights, and the 35% CMP reduction will be made automatically. This update goes into effect on October 1, 2023.

CHANGES TO SNF CONSOLIDATED BILLING

CMS has finalized the addition of marriage and family therapists and mental health counselors to the list of practitioners whose services are **excluded** from Medicare Part A consolidated billing. Exclusion from consolidated billing allows these services to be billed separately by the performing clinician for services provided to residents whose services in a facility are covered under Medicare Part A. This update goes into effect on January 1, 2024.

WHAT THIS MEANS FOR PROVIDERS

Providers are encouraged to review these changes thoroughly to understand any financial impacts and ensure compliance with new reporting measures. In particular with respect to exclusion of marriage and family therapy from Medicare Part A consolidated billing, facilities may consider broader opportunities to engage outside practitioners to serve residents in need of mental health services within these categories of therapy. Providers should also ensure they remain mindful of the above effective dates. In particular with respect to the change to the rules relating to CMP reductions, providers should continue to file hearing waivers consistent with current requirements until the updated regulations at 42 C.F.R. § 488.436 have been officially published on or after October 1, 2023. If you have any questions or need further guidance regarding the final rule, please contact a member of Hancock Daniel's Long-Term Care & Post-Acute Care team.