CMS Releases FY 2023 SNF PPS Proposed Rule

Dear NASL Members:

This afternoon, the Centers for Medicare and Medicaid Services (CMS) issued the fiscal year (*FY) 2023 Skilled Nursing Facility Prospective Payment System (SNF PPS) Proposed Rule*, which, when finalized, will take effect on October 1, 2023.

In this *Proposed Rule*, CMS is updating the payment rates used under the SNF PPS for FY 2023. In addition, this *Proposed Rule* also includes a proposed forecast error adjustment for FY 2023; a proposed recalibration of the Patient-Driven Payment Model (PDPM); and updates to the diagnosis code mappings used under PDPM. The *Proposed Rule* also provides for proposed updates to the SNF Quality Reporting Program (QRP) Program and SNF Value-Based Purchasing (VBP) Program; a proposal to establish a permanent cap policy; and requests for information related to long-term care facilities.

- Read the pre-publication version of the *Proposed Rule*, entitled, *Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Updates to the Quality Reporting Program and Value-Based Purchasing Program for Federal Fiscal Year 2023; Request for Information on Revising the Requirements for Long-Term Care Facilities to Establish Mandatory Minimum Staffing Levels (CMS-1765-P)*
- Read CMS' Press Release
- Read CMS' Fact Sheet

The *FY 2023 SNF PPS Proposed Rule* will be published in the April 15th edition of the *Federal Register*.

Major provisions of the *Proposed Rule* include:

SNF Proposed Payment Updates

CMS proposes that the SNF PPS payment update equates to a decrease in aggregate payments of $320 million, according to CMS. This update is the net result of a proposed 3.9% payment increase (from the market basket update) and a proposed 4.6% payment decrease (from the PDPM parity adjustment, which CMS applies only in FY 2023).

This net update incorporates the regular annual update with the effects of the PDPM parity adjustment. This estimated decrease is attributable to a market basket update of 2.8%, plus a 1.5 percentage point market basket forecast error adjustment, minus a 0.4 percentage point productivity adjustment, resulting in a proposed payment update of 3.9%, which equates to $1.4 billion in additional payments. However, CMS also proposes to implement a parity adjustment to restore budget neutrality to overall spending in the SNF PPS from the transition between RUG-IV and PDPM (which is discussed in additional detail later in this summary). CMS is proposing a 4.6% payment decrease for the parity adjustment, equating to $1.7 billion in decreased payments. When the payment update and decrease are combined, NASL believes the adjustment to SNF payment rates is approximately 0.7%, but further confirmation is needed.

Additionally, the market basket update uses data from the fourth quarter of 2021; CMS states that should additional data become available, CMS will use that data. As a result, it is possible that the market basket update could change slightly, upward or downward in the Final Rule; it typically does change slightly, but it is worth noting given the significant challenges posed by a proposed payment decrease.

Updated Base Rates for PDPM Components

For FY 2023, CMS proposes that the unadjusted federal rate per diem for urban and rural will be as follows, prior to adjustment for case-mix:

Table 4: FY 2023 Unadjusted Federal Rate Per Diem – URBAN

Rate Component	PT	OT	SLP	Nursing	NTA	Non-Case-Mix
Per Diem Amount	$65.34	$60.83	$24.39	$113.91	$85.94	$102.01

Table 5: FY 2023 Unadjusted Federal Rate Per Diem – RURAL

Rate Component	PT	OT	SLP	Nursing	NTA	Non-Case-Mix
Per Diem Amount	$74.48	$68.41	$30.74	$108.83	$82.10	$103.89

Changes in SNF Wage Index

Consistent with past years, CMS proposes to continue its existing policies around using hospital inpatient wage data in developing a wage index to be applied to SNFs.

Additionally, CMS proposes a permanent policy with regard to changes in the wage index. For FY 2023 and subsequent years, CMS would apply a permanent 5 percent cap on any decreases to a provider's wage index from its wage index in the prior year, regardless of the circumstances causing the decline.

Furthermore, CMS would adopt the latest OMB Bulletin (which delineates areas). There are no changes in areas from when CMS last adopted the previous OMB Bulletin.

The wage index applicable to FY 2023 is set forth in Tables A and B available on the CMS website at https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/WageIndex.html.

Finally, in Table 7, CMS reports that the proposed Labor-Related Share for FY 2023, is 70.7, up from 70.4 in FY 2022.

Patient-Driven Payment Model (PDPM)

Recalibrating the PDPM Parity Adjustment

As part of the transition from payment under RUG-IV to PDPM, CMS is required to maintain overall budget neutrality between the two payment methodologies. CMS believes that under PDPM, payments are exceeding what they would have been under RUG-IV for a comparable patient population. As a result, to restore neutrality (or parity) between the old RUG-IV system and the new PDPM system, CMS proposes a "parity adjustment" of -4.6% to payments under PDPM, which would equate to a decrease in aggregate payments of $1.7 billion. **(Note that this proposed -4.6% payment adjustment is combined with the SNF market basket update of 3.9% – resulting in the proposed payment decrease of <u>0.7%</u> for FY 2023).**

This 4.6% decrease is a slight improvement from CMS' projection in the FY 2022 SNF PPS proposed rule, which projected a 5.0% decrease, would be needed. CMS notes that this change in projections is a result of improving their methodology.

Additionally, CMS believes it would be appropriate to apply the recalibrated parity adjustment across all PDPM CMIs equally.

Finally, CMS also proposes to implement the entire -4.6% decrease at once, without delay or phase-in. CMS notes that it has already granted a 1-year delayed implementation by not proposing or finalizing the parity adjustment in the

FY 2022 SNF PPS proposed and final rules. CMS also explains that this proposal would lead to a prospective reduction in Medicare Part A SNF payments of approximately 4.6 percent (-$1.7 billion) in FY 2023; however, CMS notes that this reduction would be "substantially mitigated" by the proposed FY 2023 net SNF market basket update factor of 3.9 percent, which reflects a market basket increase factor of 2.8 percent, adjusted upward to account for the 1.5 percentage point forecast error correction and adjusted downward to account for the 0.4 percentage point productivity adjustment. CMS notes that the net effect of the parity adjustment and market basket update would be an estimated decrease of $320 million in aggregate payment to SNFs if the parity adjustment is implemented in one year. CMS further explains its justification for not having a delay or phase-in by citing research by MedPAC on aggregate Medicare margins being sufficient.

PDPM ICD-10 Coding Update

 In response to stakeholder feedback and to improve consistency between the ICD-10 code mappings and current ICD-10 coding guidelines, CMS proposes several changes to the PDPM ICD-10 code mappings and lists. The ICD-10 code mappings and lists used under PDPM are available on the PDPM Website at https://www.cms.gov/Medicare/MedicareFee-for-Service-Payment/SNFPPS/PDPM.

Requests for Information (RFIs)

RFI on Revising Staffing Requirements for Long-Term Care Facilities

In the *Proposed Rule*, and in line with the President's proposal from the State of the Union Address in March, CMS is seeking input on the effects of direct care staffing requirements. Specifically, CMS is seeking this input to improve the LTC requirements for participation and promote thoughtful, informed staffing plans and decisions within facilities to meet residents' needs, including maintaining or improving resident function and quality of life. Specifically, CMS is seeking input on establishing minimum staffing requirements for LTC facilities.

RFI on Coding Infection Isolation

Under the SNF PPS, various patient characteristics are used to classify patients in Medicare-covered SNF stays into payment groups. One of these characteristics is if the patient is being isolated alone in a separate room due to an active infection. In order to be classified for infection isolation, a SNF resident must meet specific clinical criteria. In response to stakeholder feedback requesting to change some of the criteria to code infection isolation, CMS is soliciting comments on the degree to which the current criteria for coding infection isolation should be expanded to allow cohorted patients to be included and to ensure that the payment rate impact of infection isolation is consistent with the increase in relative costliness associated with these patients.

Payments Related to SNF Quality Reporting Program (SNF QRP)

The SNF QRP is a pay-for-reporting program. SNFs that do not meet reporting requirements may be subject to a two-percentage point (2%) reduction in their annual update. For FY 2023, CMS is proposing to adopt one new measure for the SNF QRP. In addition, CMS is also proposing to revise the compliance date for certain SNF QRP requirements. CMS is also proposing to revise regulation text that pertains to data submission requirements for the SNF QRP.

Finally, CMS is seeking comment on four additional RFIs:

RFI on Influenza Vaccination Coverage Among Healthcare Personnel Measure

CMS is proposing the adoption of a new process measure, the Influenza Vaccination Coverage among Healthcare Personnel (HCP) measure for the SNF QRP, beginning with the FY 2025 SNF QRP. Given the fact that influenza vaccination coverage among HCP is typically lower in long-term care settings, such as SNFs, when compared to other care settings, CMS believes the proposed measure has the potential to increase influenza vaccination coverage in SNFs, promote patient safety, and increase the transparency of quality of care in the SNF setting.

The proposed Influenza Vaccination Coverage among HCP measure is a National Quality Forum-endorsed process measure (NQF#0431) developed by the Centers for Disease Control and Prevention (CDC) to track influenza

vaccination coverage among HCP in facilities such as SNFs. The measure reports on the percentage of HCP who receive an influenza vaccine any time from when it first became available through March 31 of the following year. If adopted as proposed, SNFs will submit the measure data through the CDC National Healthcare Safety Network with an initial data submission period from October 1, 2022, through March 31, 2023.

RFI on Revised Compliance Date for Certain SNF QRP Requirements

The agency also discusses its rationale for its proposed revision of the compliance date for the collection of the Transfer of Health (TOH) Information to the Provider-PAC measure, the TOH Information to the Patient-PAC measure and certain standardized patient assessment data elements. NASL expected such a change may be proposed based on the compliance deadline for parallel measures for HH QRP in the latest *Home Health Final Rule*. Rather than establishing October 1 following at least two full fiscal years after the end of the COVID-19 PHE as the compliance date for the TOH measures, CMS plans to change the TOH measure compliance date to October 1, 2023.

RFI on SNF QRP Quality Measures under Consideration for Future Years

CMS is seeking input on two future measure concepts including: (1) a functional outcome measure that includes both self-care and mobility items, and (2) a COVID-19 Vaccination Coverage measure that would assess whether SNF residents were up to date on their COVID-19 vaccine.

RFI on Inclusion of the CoreQ: Short Stay Discharge Measure in a Future SNF QRP Program Year

CMS is requesting stakeholder feedback on the inclusion of the CoreQ: Short Stay Discharge measure in the SNF QRP in future program years, including whether there are any challenges or impacts CMS should consider for a potential future proposal. The CoreQ survey instrument is used to assess the level of satisfaction among SNF patients.

SNF Value-Based Purchasing (SNF VBP) Program

The SNF VBP Program rewards SNFs with incentive payments based on the quality of care they provide to Medicare beneficiaries, as measured by performance on a single measure of hospital readmissions. All SNFs paid under Medicare's SNF PPS are included in the SNF VBP Program.

Proposed Measure Suppression and Special Scoring Policies for the SNF VBP

CMS is proposing to suppress the Skilled Nursing Facility 30-Day All-Cause Readmission Measure (SNFRM) for the FY 2023 SNF VBP Program Year because circumstances caused by the PHE have significantly affected the measure and the ability to make fair, national comparisons of SNFs' performance scores. As part of a proposed special scoring policy for FY 2023, CMS is proposing to assign a performance score of zero to all participating SNFs, irrespective of how they perform using the previously finalized scoring methodology, to mitigate the effect that PHE-impacted measure results would otherwise have on SNF performance scores and incentive payment multipliers. CMS proposes to reduce the otherwise applicable federal per diem rate for each SNF by 2% and award SNFs 60% of that withhold, resulting in a 1.2% payback to those SNFs. Finally, CMS is also proposing that those SNFs that do not meet the proposed case minimum for FY 2023 will be excluded from the Program for FY 2023.

The proposed special scoring policy would maintain compliance with the previously finalized payback percentage policy (per statute, the SNF VBP Program must withhold 2% of SNF Medicare Part A FFS payment and redistribute 50-70% of the withhold to SNFs in the form of incentive payments). CMS finalized a 60% payback percentage in prior rulemaking.

SNF VBP Program Expansion

The *Consolidated Appropriations Act of 2021* allows the HHS Secretary to expand the SNF VBP Program beyond its current use of a single, all-cause hospital readmission measure and apply up to an additional 9 measures with respect to payments beginning in FY 2023, which may include measures of functional status, patient safety, care coordination, or patient experience.

Under this authority, CMS proposes the adoption of 3 new measures into the SNF VBP Program (2 claims-based measures and 1 payroll-based journal staffing measure). The measure proposals include the adoption of 3 new measures beginning with FY 2026 and FY 2027 SNF VBP Program expansion years:

- **FY 2026 Program year**: Adoption of the Skilled Nursing Facility Healthcare Associated Infections Requiring Hospitalization (SNF HAI) and Total Nursing Hours per Resident Day measures. SNF HAI is an outcome measure that assesses SNF performance on infection prevention and management. The Total Nursing Hours per Resident Day is a structural measure that uses auditable electronic data to calculate total nursing hours per resident day
- **FY 2027 Program year:** Adoption of the Discharge to Community – Post Acute Care Measure for SNFs (DTC). The DTC is an outcome measure that assesses the rate of successful discharges to community from a SNF setting.

Nursing Home Staff Turnover Measure

CMS is also seeking stakeholder input on implementation of a Nursing Home Staff Turnover measure in the SNF VBP Program. This measure consists of the percent of total nurse staff that have left the SNF over the last year. Developed using data from CMS' Payroll-Based Journal (PBJ) System, the Nursing Home Staff Turnover measure includes annual turnover for total nurses (RNs, licensed practical/licensed vocational nurses (LPNs), and nurse aides).

SNF VBP Payment RFIs in the FY 2023 Proposed Rule

CMS is seeking stakeholder input on the following items:

1. **SNF VBP Exchange Function:** CMS is seeking input on whether to propose either a new functional form or a modified logistic exchange function since the agency is recommending the adoption of new quality measures, as well as numerous updates to the Program's scoring methodology. The exchange function converts performance scores into value-based incentive payments, and each one determines whether payments increase or decrease for the highest or lowest performers, respectively.

2. **Validation:** Seeking input on the design of validation procedures, as well as a potential implementation timeline.

3. **Health Equity:** CMS is seeking input on whether to incorporate adjustments related to health equity and how to best tie health equity outcomes to SNF payments. Health equity adjustments could occur at the measure level, such as stratification or including measures of social determinants of health, or they could be incorporated at the scoring and incentive payment level, such as weighting and points adjustments.

Proposed Policies to Accommodate the Additional Proposed Measures

CMS proposes to adjust the SNF VBP scoring methodology to accommodate the additional measures by:

- Updating the SNF VBP Program measure-level scoring normalization policy beginning with the FY 2026 program year. CMS proposes updating the achievement and improvement scoring formulas such that SNFs could earn up to 10 points per measure for achievement and up to 9 points per measure for improvement to accomplish our goal of continuing to award SNF performance scores that range between 0 and 100 points. Under this proposal, all measures in the expanded SNF VBP Program would be weighted equally.
- Adopting a case minimum policy beginning with the FY 2023 SNF VBP program year that replaces the Low-Volume Adjustment policy for the SNFRM. CMS proposes to adopt a minimum of 25 eligible stays during the applicable 1-year performance period for the SNFRM beginning with the FY 2023 program year, and beginning with the FY 2026 Program Year, a minimum of 25 residents for the SNF HAI measure and a minimum of 25 residents, on average, across all available quarters during the applicable 1-year performance period for the Total Staff Nursing measure. Beginning with the FY 2027 Program year, CMS proposes to adopt a minimum of 25 eligible stays during the applicable 2-year performance period for the DTC measure.
- Updating the scoring policy for SNFs without sufficient baseline period data beginning with the FY 2026 SNF VBP program year. CMS proposes to update this policy to accommodate additional quality measures, such

that if a SNF does not meet the case minimum threshold for a given measure during the applicable baseline period, the SNF would not receive an improvement score for that measure.

- Adopting a measure minimum policy beginning with the FY 2026 SNF VBP program year. CMS proposes requiring a 2-measure minimum for a SNF to receive a SNF performance score and, for the FY 2027 Program, a 3-measure minimum for the SNF to receive a SNF performance score.
- Remove the Low-Volume Adjustment (LVA) Policy from the SNF VBP Program beginning with the FY 2023 Program Year. CMS proposes that the LVA policy be removed from the Program's scoring methodology beginning with the FY 2023 program year. CMS notes that the case minimum and measure minimum policies that CMS is recommending would replace, and achieve the same objective, as the LVA policy.

Health IT

In this *Proposed Rule*, CMS highlights a number of initiatives contributing to important health IT developments. CMS specifically cites the Post-Acute Care Interoperability (PACIO) Workgroup and its work to develop Health Level Seven International® (HL7) Fast Healthcare Interoperability Resource® (FHIR) implementation guides for functional status and cognitive status. CMS also references new PACIO use cases on advance directives, re-assessment time points and Speech, language, swallowing, cognitive communication and hearing (SPLASCH) pathology. NASL members are leading and significantly contributing to the success of all of these PACIO projects. CMS also mentions the January 2022 launch of the Trusted Exchange Framework & Common Agreement (TEFCA), which CMS calls "a significant milestone", that will establish a universal floor for interoperability across the country.

CMS' conclusion to the health IT section of the *Proposed Rule* directed "providers to learn more about these important developments and how they are likely to affect SNFs." NASL, and its members who have been leading these efforts, will share information about these initiatives with our broader membership and LTPAC providers.

The deadline for submitting comments on this *Proposed Rule* is **June 10th, 2022.**

As always, NASL will comb through this *Proposed Rule* over the next few days and will provide a more detailed summary and analysis at that time.

For any additional questions, please email Michael Barnett at michael@nasl.org.

CMS released the FY 2023 Skilled Nursing Facility (SNF) Prospective Payment System (PPS) Proposed Rule

April 13, 2022

On Monday CMS released the FY 2023 Skilled Nursing Facility (SNF) Prospective Payment System (PPS) Proposed Rule. CMS is soliciting comments on the proposed rule through June 10, 2022, and NARA will be submitting comments and encourages our members to do the same. If you would like to join the team that will develop comments on the rule, please reach out to Christie Sheets at christie.sheets@naranet.org.

Summary:

In the proposed rule CMS estimates the aggregate impact of the payment policies in this proposed rule would result in a decrease of approximately $320 million in Medicare Part A payments to SNFs in FY 2023 which reflects a $1.4 billion increase from the 3.9% update to the payment rates - this is is based on a 2.8% SNF market basket update plus a 1.5% point market basket forecast error adjustment and less a 0.4% point productivity adjustment.

The proposed rule unfortunately includes a negative 4.6% or $1.7 billion decrease in the SNF PPS rates as a result of the proposed recalibrated parity adjustment. CMS is proposing the parity adjustment to be immediate but are taking comments on a modified approach.

While it appears that the net impact may be 0.7% decrease, this may vary greatly based on your region and ownership. Please refer to table 19 on page 238 of the rule which updates the SNF PPS rates. This does not include the impacts of QRP or sequestration on individual providers.

Pertinent additional items proposed in the rule include:

- Permanent Cap on Wage Index Decreases (could enhance reimbursement stability)
- Changes in PDPM ICD-10 Code Mappings (e.g. depression, low back pain)
- Request for Input: Coding Infection Isolation - (possible update to allow co-horting)
- Request for Input: Removal of some items from consolidated billing (E.g. chemo, customized prosthetics)
- Request for Input: Revising Staffing Requirements for LTC Facilities (potential for staff turnover included in VBP)
- Request for Input on health equity and social disparities
- Skilled Nursing Facility Quality Reporting Program (SNF QRP) Update
- Skilled Nursing Facility Value-Based Purchasing (SNF VBP) Program Updates (3 new measures)

CLICK HERE to review the FY 2023 SNF PPS Proposed Rule.
CLICK HERE to review the fact sheet from CMS.

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