



HEALTHCARE REGULATORY ROUND-UP

# Highlights From the Federal FY2023 Proposed Rules

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WE ARE AN INDEPENDENT MEMBER OF HLB—THE GLOBAL ADVISORY AND ACCOUNTING NETWORK

# Introductions

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# Agenda

1. Sequestration
2. FFY2023 Inpatient Hospital PPS and LTCH PPS NPRM (April 18)
3. FFY2023 Hospice NPRM (March 30)
4. FFY2023 Inpatient Rehab NPRM (March 31)
5. FFY2023 Inpatient Psych NPRM (March 31)
6. FFY2023 Skilled Nursing Facility NPRM (April 11)
7. CY2023 Medicare Advantage Rate Announcement (April 4)

# 1. Sequestration

- April Fools!
  - 1% sequester cut to Medicare payments
  - Increases to 2% on July 1
- Potential 4% additional cut in January 2023 (PAYGO)

## 2. FFY2023 Inpatient Hospital PPS

- 3.2% increase in operating payment rates for IPPS
  - Market basket update of 3.1% reduced by 0.4 percentage point productivity adjustment and increased by 0.5 percentage point adjustment required by statute
  - Increase in operating and capital payment rates will increase hospital payments by \$1.6 billion
- Medicare DSH and UCC payments will decrease by \$0.8 billion
  - Uses FY2018 and FY2019 Worksheet S-10 data for UCC for 2023; three-average for future years
  - Again proposes revision of Medicaid fraction to include only those patients receiving health insurance under section 1115 waiver
- New medical technology payments will decrease by \$0.8 billion;
- Expiration of add'l payments for Medicare Dependent Hospitals and low-volume hospitals will reduce payments to these hospitals by \$0.6 billion (absent Congressional action)
- Permanent 5% cap on any decrease to hospital's wage index from prior year - implemented in budget neutral manner through national adjustment to standardized amount
  - Maintains low wage index hospital policy

## 2. FFY2023 Inpatient Hospital PPS, Con't



**TABLE 1A.— PROPOSED NATIONAL ADJUSTED OPERATING STANDARDIZED AMOUNTS, LABOR/NONLABOR (67.6 PERCENT LABOR SHARE/32.4 PERCENT NONLABOR SHARE IF WAGE INDEX IS GREATER THAN 1)--FY 2023**

<b>Hospital Submitted Quality Data and is a Meaningful EHR User (Update = 2.7 Percent)</b>		<b>Hospital Submitted Quality Data and is NOT a Meaningful EHR User (Update = 0.375 Percent)</b>		<b>Hospital Did NOT Submit Quality Data and is a Meaningful EHR User (Update = 1.925 Percent)</b>		<b>Hospital Did NOT Submit Quality Data and is NOT a Meaningful EHR User (Update = -0.4 Percent)</b>	
<b>Labor</b>	<b>Nonlabor</b>	<b>Labor</b>	<b>Nonlabor</b>	<b>Labor</b>	<b>Nonlabor</b>	<b>Labor</b>	<b>Nonlabor</b>
\$4,269.46	\$2,046.31	\$4,172.80	\$1,999.98	\$4,237.24	\$2,030.87	\$4,140.59	\$1,984.54

## 2. FFY2023 Inpatient Hospital PPS, Con't



**TABLE 1B.— PROPOSED 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)—FY 2023**

<b>Hospital Submitted Quality Data and is a Meaningful EHR User (Update = 2.7 Percent)</b>		<b>Hospital Submitted Quality Data and is NOT a Meaningful EHR User (Update = 0.375 Percent)</b>		<b>Hospital Did NOT Submit Quality Data and is a Meaningful EHR User (Update = 1.925 Percent)</b>		<b>Hospital Did NOT Submit Quality Data and is NOT a Meaningful EHR User (Update = -0.4 Percent)</b>	
<b>Labor</b>	<b>Nonlabor</b>	<b>Labor</b>	<b>Nonlabor</b>	<b>Labor</b>	<b>Nonlabor</b>	<b>Labor</b>	<b>Nonlabor</b>
\$3,915.78	\$2,399.99	\$3,827.12	\$2,345.66	\$3,886.23	\$2,381.88	\$3,797.58	\$2,327.55

## 2. FFY2023 Inpatient Hospital PPS, Con't

- No payment adjustments in FFY2023 for Hospital Readmission Reduction Program, Hospital Acquired Condition Reduction Program, or Hospital Value-Based Purchasing Program
- Inclusion of several new measures in the Hospital Inpatient Quality Reporting Program (including hospital commitment to health equity beginning in FFY2023)
- Establish by Fall 2023 publicly-reported hospital designation for maternity care for hospitals that report “Yes” to 2 questions in Maternal Morbidity Structural Measure
- Numerous refinements to Promoting Interoperability Program
- Changes to Infection Control CoPS to impose new reporting requirements



## 2. FFY2023 Inpatient Hospital PPS, Con't

- Solicitation of comments on –
  - Impact of climate change (provider preparedness plans)
  - Health equity (CMS measurement and stratification)
  - Response to maternal health crisis
  - Digital quality measurement/use of FHIR<sup>®</sup> standard for eCQMs

### 3. FFY2023 Hospice NPRM

- Proposes 2.7% payment update
  - Based on 3.1% inpatient hospital market basket update less 0.4 percentage point productivity adjustment
  - Hospices failing to meet quality reporting requirements receive 2-percentage point reduction to the annual market basket update
- Proposed cap for FY2023 is \$32,142.54 (compared to \$31,297.61 for FY2022)
- Wage index – smoothing year-to-year changes
  - Proposes a permanent cap on negative wage index changes greater than a 5% decrease from prior year
- Quality reporting program
  - Considering potential future quality measures using HOPE patient assessment instrument and administrative data

### 3. FFY2023 Hospice NPRM, Con't

**TABLE 1: Proposed FY 2023 Hospice RHC Payment Rates**

<b>Code</b>	<b>Description</b>	<b>FY 2022 Payment Rates</b>	<b>SIA Budget Neutrality Factor</b>	<b>Wage Index Standardization Factor</b>	<b>Proposed FY 2023 Hospice Payment Update</b>	<b>Proposed FY 2023 Payment Rates</b>
651	Routine Home Care (days 1-60)	\$203.40	1.0004	1.0008	1.027	\$209.14
651	Routine Home Care (days 61+)	\$160.74	1.0003	1.0007	1.027	\$165.25

### 3. FFY2023 Hospice NPRM, Con't

**TABLE 2: Proposed FY 2023 Hospice CHC, IRC, and GIP Payment Rates**

<b>Code</b>	<b>Description</b>	<b>FY 2022 Payment Rates</b>	<b>Wage Index Standardization Factor</b>	<b>Proposed FY 2023 Hospice Payment Update</b>	<b>Proposed FY 2023 Payment Rates</b>
652	Continuous Home Care Full Rate = 24 hours of care	\$1,462.52 (\$60.94 per hour)	1.0024	1.027	\$1,505.61
655	Inpatient Respite Care	\$473.75	1.0007	1.027	\$486.88
656	General Inpatient Care	\$1,068.28	1.0016	1.027	\$1,098.88

## 4. FFY2023 Inpatient Rehab NPRM

- Proposes 2.8% payment update
  - Based on 3.2% inpatient hospital market basket update less 0.4 percentage point productivity adjustment
  - IRFs failing to meet quality reporting requirements receive 2-percentage point reduction to update
  - Proposed FY2023 standard payment conversion factor of \$17,698
  - Aggregate payments expected to increase 2% after factoring in updates to the outlier threshold
    - Maintains outlier payments at 3% of total payments
- Proposes a permanent cap on negative wage index changes greater than a 5% decrease from prior year
  - Proposed labor-share of 73.2% (currently 72.9%)

## 4. FFY2023 Inpatient Rehab NPRM, Con't

- Displaced medical residents/interns
  - Proposed rule would address status of a relocating resident based on the date the originating IRF announces closure publicly (rather than actual closure date)
    - Receiving IRF could increase its FTE resident cap by submitting letter to MAC within 60 days after displaced resident begins training
- Quality reporting program
  - Proposes to expand IRF QRP to include all patients regardless of payer starting in FY2025
    - Would require data collection beginning 10/1/23
- Request for comments
  - Including home health in the IRF transfer policy (OIG recommendation)
  - How to update facility-level adjustments (rural, low-income, teaching status)
  - Inclusion of c-diff in IRF QRP
  - Principles for measuring equity and healthcare quality disparities

## 5. FFY2023 Inpatient Psych NPRM

- Proposes 2.7% payment update
  - Based on 3.1% inpatient hospital market basket update less 0.4 percentage point productivity adjustment
  - IRFs failing to meet quality reporting requirements receive 2-percentage point reduction to update
  - Maintains outlier payments at 2% of total payments
- Proposes federal per diem base rate of \$856.80 (currently \$832.94)
  - ECT payment proposed at \$368.87 (currently \$358.60)
- Proposes a permanent cap on negative wage index changes greater than a 5 percent decrease from prior year
  - Labor component of the base rate = 77.4% (currently 77.2%)

## 5. FFY2023 Inpatient Psych NPRM, Con't

- Quality reporting program
  - No proposed changes
- Request for comments
  - Results of data analysis on IPF PPS adjustments
  - Approaches for measuring equity and health care quality



## 6. FFY2023 Skilled Nursing NPRM - Payment

- Proposes 3.9% payment update
  - Based on 2.8% inpatient hospital market basket update plus 1.5 percentage point market forecast error and less 0.4 percentage point productivity adjustment
  - **BUT** PDPM implementation shows unintended increase in payments
    - **PDPM parity adjustment**
  - **SO** actual proposal is an adjustment of rates **downward by 4.6%** to achieve budget neutrality with pre-PDPM payment system
    - **Decreases overall payments by \$320 million**
  - SNFs failing to meet QRP requirements receive 2-percentage point reduction to update
- Proposes a permanent cap on negative wage index changes greater than 5% decrease from prior year
  - Proposed labor-share 70.7% (currently 70.4%)

# 6. FFY2023 Skilled Nursing NPRM – Payment, Con't



**TABLE 3: 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 4: 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

# 6. FY2023 Skilled Nursing NPRM - Quality



- SNF Quality Reporting Program
  - Addition of influenza vaccination coverage among healthcare personnel (FY2025)
    - Percentage of personnel who receive an influenza vaccine any time from when it first becomes available through March 31 of following year.
    - Initial data submission period from October 1, 2022, through March 31, 2023
  - Request for comment on two new measures
    - Functional outcome measure that includes both self-care and mobility items,
    - COVID-19 Vaccination Coverage measure to assess whether residents current on COVID-19 vaccination
- SNF Value Based Purchasing Program
  - Suppress single measure for FFY2023 (all-cause readmission) due to COVID-19 impact
    - 2% withhold with 60% re-distributed to SNFs (effective 1.2% withhold)
  - New measures
    - Healthcare associated infections requiring hospitalization (FFY 2026) (claims-based measure)
    - Total nursing hours per resident day (FFY 2026) (payroll-based journal staffing measure)
    - Discharge to Community (FFY 2027) (claims-based measure)
  - Changes to scoring methodology to account for additional measures
- Request for comments on measuring equity and healthcare quality disparities

## 6. FY2023 Skilled Nursing NPRM - Staffing

- Since 2018, CMS has used provider-reported Payroll Based Journal data to calculate staffing measures posted on Care Compare website (decrease in star rating for failure to submit data or meet specified thresholds)
- In January 2022, CMS began posting nursing home staff turnover rates and weekend staff levels on Care Compare website and will include this information in the star rating system starting in July 2022
- CMS requests stakeholder input on new value-based purchasing measure based on staff turnover levels
- CMS requests stakeholder input to inform future rulemaking on mandatory minimum staffing requirements
  - Successful staff recruitment and retention strategies
  - How to account for number of residents, resident acuity, range of diagnoses, and content of care plans in establishing minimum requirements
  - Experience with state-imposed minimum requirements
  - Costs and benefits of requiring RN presence at facility on 24/7 basis
  - Accommodations for facilities located in rural and underserved areas
  - Mitigation of unintended consequences

# Related: Ending PHE Waivers

- Ending May 7

- Participation in Resident Groups - 42 CFR §483.10(f)(5)
- Prohibition on Physician Delegation of Tasks in SNFs - 42 CFR §483.30(e)(4)
- Personally Performed Physician Visits - 42 CFR §483.30(c)(3)
- In-Person Physician Visits - 42 CFR §483.30
- Quality Assurance and Performance Improvement – 42 CFR §483.75(b)–(d) and (e)(3)
- Detailed Information Sharing for Discharge Planning - 42 CFR §483.21(c)(1)(viii)
- Provision of Clinical Records to Patient Upon Request - 42 CFR §483.10(g)(2)(ii)

- Ending June 6

- Physical Environment - 42 CFR §483.90
- Training for Paid Feeding Assistants - 42 CFR §§483.60(h)(1)(i) and 483.160(a)
- Nurse Aide In-Service Training (12 hours annually) – 42 CFR §483.95(g)(1)
- Training and Certification of Nurse Aides - 42 CFR §483.35(d)

## 7. CY 2023 Medicare Advantage - Payment

- Rate announcement issued April 4
  - Includes 8.5% increase in payment (initial rate announcement in February reflected 7.98% increase)
  - Coding pattern adjustment of 5.9% (minimum adjustment required by statute)
  - Effective growth rate of 4.88% (vs. 4.75% from initial rate announcement)
- Continued concerns about MA program costs
  - CMS states MA reflects the agency's goals which are to “advance health equity; drive comprehensive, person-centered care; and promote affordability and the sustainability of the Medicare program”
  - OIG report
  - MedPAC March Report to Congress
  - Future of the Medicare Trust Fund

## 7. CY 2023 Medicare Advantage – Star Ratings

- Report stratified Part C and D Star Ratings measures by social risk factors (SRFs)(dual eligibility/low-income subsidy, disability status)
- Development of Health Equity Index
  - Summarize measure-level performance by SRFs into single score used in developing contract’s Star Rating
- Development of measure to assess whether plans are screening enrollees for health-related social needs (e.g., food, housing, transportation)
  - New NCQA measure to assess screening for unmet food, housing and transportation needs, and referral to intervention for those who screened positive
- Development of measure to assess plans’ value-based contracts with providers



# **Our Next Health Care Regulatory Round-Up:**

## **FFY2023 Inpatient Hospital PPS/LTCH PPS Proposed Rule**

**May 4, 2022**



# How can we HELP?

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