

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BPD-896-PN]

RIN 0938-AL14

Medicare Program; Adjustments to Cost Limits for Skilled Nursing Facility Inpatient Routine Service Costs

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed notice.

SUMMARY: This notice proposes to eliminate an adjustment that we make to the Medicare cost limits for skilled nursing facility (SNF) routine services if the final rate of change in the market basket index for a calendar year that we use to set the limits differs from the estimated rate of change in the index by at least 0.3 percentage points. Elsewhere in this issue of the **Federal Register** is a separate final notice with comment period that explains the methodology we use to develop the cost limits and sets forth the cost limits applicable to cost reporting periods occurring on or after October 1, 1997.

COMMENT PERIOD: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on December 1, 1997.

ADDRESSES: Mail written comments (one original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD-896-PN, P.O. Box 7517, Baltimore, MD 21244-0517.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses: Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201, or Room C5-09-26, 7500 Security Boulevard, Baltimore, MD 21244-1850.

Comments may also be submitted electronically to the following E-mail address: BPD-896-PN@hcfa.gov. E-mail comments must include the full name and address of the sender and must be submitted to the referenced address in order to be considered. All comments must be incorporated in the E-mail message because we may not be able to access attachments. Electronically submitted comments will be available for public inspection at the Independence Avenue address, below.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code

BPD-896-PN. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Avenue, SW, Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690-7890).

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512-1800 or by faxing to (202) 512-2250. The cost for each copy is \$8.00. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Robert Kuhl, (410) 786-4597.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 1861(v)(1)(A) and 1888 of the Act authorize the Secretary to set limits on allowable costs incurred by a provider of services for which payment may be made under Medicare. These limits are based on estimates of the costs necessary for the efficient delivery of needed health services. Section 1888(a) of the Act directs the Secretary to set limits on per diem inpatient routine service costs for hospital-based and freestanding SNFs by urban or rural area. Implementing regulations appear at 42 CFR 413.30.

Elsewhere in this issue of the **Federal Register**, we are issuing a final notice with comment period that announces, for cost reporting periods beginning in FY 1998 (1) an updated schedule of limits on SNF routine service costs for which payment may be made under the Medicare program; and (2) an updated schedule of prospectively determined payment rates for low Medicare volume SNFs that have elected to receive prospective payments for routine service costs, as required under section 1888(a) of the Act. The cost limits have been updated to reflect changes to the wage data, the Metropolitan Statistical Area (MSA) designations, and inflation data since the limits were last issued.

The cost limits set forth in the separate notice are based on the FY 1997 cost limits, trended to cost reporting periods beginning in FY 1998, using the most recent projections of the rates of inflation or increase in the costs included in the SNF market basket index. The market basket index is used to adjust the SNF cost data to reflect cost increases occurring between the cost reporting periods represented in the data collection and the midpoints of the cost reporting periods to which the cost limits and rates apply. The market basket index is comprised of the most commonly used categories of SNF routine service expenses. The categories are based primarily on those used by the National Center for Health Statistics in its National Nursing Home Surveys.

The categories of expenses are weighted according to the estimated proportion of SNF routine service costs attributable to each category. A detailed description of the market basket index is described in the October 7, 1992 **Federal Register** notice for cost limits (57 FR 46177).

II. Provisions of the Proposed Notice

In developing the market basket index, we obtain historical and projected (estimated) rates of change in the price of goods and services in each category. For cost limit purposes only, estimated rates of change may be revised, retroactively, based on actual (final) rates of change.

As described in all previous schedules of cost limits, if the final rate of change in the market basket index for a calendar year differs from the estimated rate of change by at least 0.3 percentage points, we adjust the limits. We are proposing to eliminate this provision to adjust the limits based on the following justification:

In the past, our determination to make this adjustment was made 6 months after the end of last calendar year where an estimate of change was used. Since 1984, we have made several adjustments to the cost limits because our estimates differed from the actual rates of change by at least 0.3 percentage points. In some cases, the retroactive adjustment was made to cost reports that had been settled for Medicare reimbursement purposes for more than 2 years. We believe that the original intent behind setting cost limits was to help providers determine their cost limits prior to the beginning of the affected cost reporting period. In addition, for the most part, these adjustments have not been significant in relation to the financial insecurity placed on providers and the administrative burden placed on the Medicare fiscal intermediaries to

implement the adjustments. We believe that this retroactive adjustment has not served a useful purpose based on past experience. Accordingly, we believe it is administratively feasible to propose the elimination of this provision. If, based on our analysis of public comments we receive, we finalize the elimination of the adjustment, the effect of that elimination will be made on a prospective basis.

III. Impact Statement

For proposed notices such as this, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless we certify that a proposed notice would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all SNFs are considered to be small entities. Individuals and States are not included in the definition of a small entity.

We have determined, and we certify, that a regulatory flexibility analysis under the RFA is not required. As stated earlier in this notice, we believe it is administratively feasible to propose elimination of the adjustment provision to the cost limits. For the most part,

these adjustments have not been significant in relation to the financial insecurity placed on providers and the administrative burden placed on the Medicare fiscal intermediaries to implement the adjustments. In addition, based on past experience, the retroactive adjustments have not served a useful purpose.

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a notice such as this may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

We have not prepared a rural impact statement since we have determined that this proposed notice would not have a significant economic impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this notice, and, if we proceed with a subsequent document, we will respond to the comments in that document.

Authority: (Secs. 1102, 1814(b), 1861(v)(1), 1866(a), 1871, and 1888 of the Social Security Act (42 U.S.C. 1302, 1395f(b), 1395x(v)(1), 1395cc(a), 1395hh, and 1395yy); section 13503 of Pub. L. 103-66 (42 U.S.C. 1395x(v)(1)(B) and 1395yy (note)) and 42 CFR 413.1, 413.24, 413.300 through 413.321). (Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: September 25, 1997.

Nancy-Ann Min DeParle,

Deputy Administrator, Health Care Financing Administration.

Dated: September 25, 1997.

Donna E. Shalala,

Secretary.

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