

# News Currents

## In Brief

# SNF Cuts Rationale Flawed, Industry Says

## SNFs Now Treating Higher-Acuity Patients

An effort by the Centers for Medicare & Medicaid Services (CMS) to recoup money from what it considers to be an adjustment error that resulted in higher Medicare expenditures than anticipated is “fundamentally flawed and inconsistent with the basic premise of a prospective payment system,” the American Health Care Association (AHCA) said recently in comments to CMS on the proposal.

CMS has proposed a \$1.05 billion “recalibration” of case-mix indexes under the prospective payment system for skilled nursing facilities (SNFs) by cutting SNF reimbursement by 3.3 percent, or about \$16 per patient day.

In fiscal year 2006, CMS refined the payment categories under the resource utilization groups, version 3 (RUG-III), but this “resulted in a significant increase in Medicare expenditures because actual utilization under the refined case-mix system differed significantly from the projections on which the adjustment was based,” according to CMS.

In other words, facilities were putting patients into higher-paying RUG categories more than 30 percent of the time, instead of 19 percent as CMS had predicted. The agency claims that it proposed to “recalibrate the case-mix weights in order to restore overall

payments to their intended levels on a prospective basis.”

“In this manner, payments beginning in 2010 would reflect the intent of the refinements, and payments to providers would more accurately reflect the service needs of Medicare beneficiaries,” CMS said in the proposed rule.

Part of the recalibration cost would be made up through the annual market basket update, which for fiscal year 2010 would be at 2.1 percent, or \$660 million, making the cut \$390 million, according to CMS’ proposal.

But the cut is not appropriate, according to AHCA. “Most

of the increase in SNF expenditures through 2006 was a result of Medicare policy changes and the powerful incentives unleashed by RUG refinement that led SNFs to invest and provide services to Medicare beneficiaries with higher acuity.

“In essence, the agency appears to be confusing case-mix change with something called ‘projection’ error,” AHCA said in comments to the rule sent to Acting CMS Administrator Charlene Frizzera.

According to AHCA, what the agency thinks is a projection error “is primarily the result of a significant increase in the real acuity of SNF residents.”

“SNF acuity has been increasing over

‘Facilities were putting patients into higher-paying RUGs more than 30 percent of the time.’

## NHI Expands Texas Holdings

In a \$55.5 million deal, National Health Investors (NHI), Murfreesboro, Tenn., recently closed on the purchase/leaseback of four Texas skilled nursing facilities with 595 beds owned by affiliates of San Antonio-based Legend Healthcare.

Legend is currently a lease customer of NHI.

Three of the four facilities were purchased by NHI on June 30, 2009, for a total of \$39.7 million. The fourth facility is expected to be purchased by NHI for \$15.8 million no later than Aug. 1, 2009.

NHI used its accumulated cash liquidity to purchase the facilities, which are being leased to Legend over 15 years at an initial lease rate of 10 percent plus annual increases. Legend has the option after seven years to purchase the facilities.

“This transaction is representative of the execution of our business strategy, which is focused on investing in high-quality real estate assets with a solid return to NHI shareholders,” said Andy Adams, NHI chairman and chief executive officer.

The average age of the facilities is five years.

— Meg LaPorte

time—an increase bolstered by changes in the flow and acuity mix of patients to SNFs encouraged by incentives related to CMS’ own changes in Medicare policy,” according to AHCA’s 178-page comments. “With its proposed recalibration, CMS dismisses the increase in acuity and real case-mix change that occurred between 2001 and 2006 and, consequently, proposes to ‘take back’ payments from providers who care for higher-acuity patients. We believe that most of this case-mix change is real.” ▶

AHCA also pointed out that treating patients in SNFs is less expensive than getting treatment in an inpatient rehabilitation facility (IRF).

“Research by Avalere Health shows that Medicare post-acute care payment policies that have contributed to the shifting of patients from IRFs to SNFs

and home health agencies, such as the 75 percent rule and RUG refinement, generated about \$780 million in savings to the Medicare program in 2006 alone and approximately \$1.7 billion between 2006 and 2007,” AHCA said.

“The cuts are especially troubling since 70 percent of nursing home costs

are labor related,” said Bruce Yarwood, AHCA president and chief executive officer. “AHCA estimates that Medicare cuts of this magnitude would put more than 30,000 nursing home-specific jobs at risk next year if the rule is finalized as CMS has proposed.”

—Suzanne Struglinski

## Health Reform Targets Facilities

### Proposals Include Disclosure Requirements, Payment Cuts

**F**or skilled nursing facilities, the health care reform debate in Congress thus far has seen an increase in transparency rules but a reduction in payments, based on early drafts of legislation under consideration in the House and Senate.

While the exact date that Congress will finish health care reform is unknown, the president is confident legislation will get done this year.

In the House, Ways and Means, Energy and Commerce, and Education and Labor committees released a joint draft bill involving provisions from all the committees’ jurisdictions.

In the Senate, the Health, Education, Labor, and Pensions Committee has released a bill, but specific legislation from the Senate Finance Committee is still in the works. While the Finance

Committee released three white papers earlier this year outlining major health care issues and ways to tackle them, actual legislative language had yet to be released at press time.

In the 800-page House draft, lawmakers have included a \$1.05 billion cut to skilled nursing facility Medicare payments proposed by the Centers for Medicare & Medicaid Services (CMS).

The cut is designed to make up for what CMS believes is an error in estimating what new resource utilization group changes would cost in 2005. CMS says the cut will be absorbed partially by the skilled nursing facility market basket update.

But the House bill would also eliminate the market basket update for the last nine months of fiscal year 2010.

Bruce Yarwood, president and chief

executive officer of the American Health Care Association (AHCA), said in recent testimony before the House Energy and Commerce Health subcommittee that this measure would be taking back payments “that are a result of an increase in acuity and real case-mix change.”

The transparency provisions of the bill would require nursing facilities to disclose information on ownership and facility organization as well as operating compliance and ethics programs. Facilities would also need to report expenditures for direct care and indirect care services, capital assets, and administrative costs for cost-reporting periods beginning on or after two years after date of enactment.

“New calls for increased disclosure on details such as minimal ownership of a nursing facility will not contribute to this effort to help consumers, nor drive improvement of care or services in facilities nationwide,” Yarwood said. “The disclosure of more information, rather than the right information, simply for disclosure’s sake will only add confusion and greater misunderstanding of the quality and services available.”

Yarwood said that “we must ensure that available reported data are in the best interest of consumer needs and fair to those facilities dedicated to meeting their needs.”

—Suzanne Struglinski



AHCA's Bruce Yarwood (fifth from left) joins panel testifying before House committee.