MEDPAC Medicare Payment Advisory Commission

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May 30, 2014

Marilyn Tavenner, Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Hubert H. Humphrey Building, Room 445-G
200 Independence Avenue, SW
Washington, DC 20201

Re: File code CMS-1605-P

Dear Ms. Tavenner:

The Medicare Payment Advisory Commission (MedPAC) welcomes the opportunity to comment on the Centers for Medicare & Medicaid Services' (CMS) proposed rule entitled Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 2015, *Federal Register*, Vol. 79, No. 87, p. 25767 (May 6, 2014). We appreciate your staff's ongoing efforts to administer and improve the payment system for skilled nursing facilities, particularly given the agency's competing demands.

The proposed rule increases Medicare's payment rates for skilled nursing facilities (SNF) by 2.0 percent, reflecting a market basket increase of 2.4 percent and a 0.4 percent reduction for productivity adjustment as required by the Patient Protection and Affordable Care Act (PPACA). On net, Medicare's payments to the SNF sector are estimated to increase $750 million in FY 2014. We understand that CMS is required by law to update the SNF prospective payment system (PPS) rates. However, after reviewing many factors—including indicators of beneficiary access, the volume of services, the supply of providers, and access to capital— the Commission believes no update is warranted. In March 2014, the Commission reiterated its previous recommendation that the Congress eliminate the market basket update, revise the prospective payment system, and rebase payments beginning with a 4 percent reduction to the base rate. Medicare's current level of payments appears more than adequate to accommodate cost growth, even before any update. The aggregate Medicare margin for freestanding skilled nursing facilities (SNF) in 2012 was 13.8 percent, the thirteenth year in a row that it exceeded ten percent.

In the proposed rule, CMS invited comments on the trends in therapy use and its therapy payment research. CMS notes that days are increasingly classified into the highest payment rehabilitation case-mix groups (the ultra-high groups) and the amount of therapy furnished to patients in a group is just enough to qualify the patients into the group. These trends are consistent with those

documented by the Commission and the Department of Health and Human Services' Office of Inspector General (OIG). The Commission and the OIG concluded that changes in the patients treated in SNFs did not explain the intensification of the provision of therapy and both have recommended that CMS change the way it pays for therapy. Further, research conducted by the Commission and others have long-documented the poor targeting of payments for nontherapy ancillary (NTA) services, such as drugs, and the need to revise the way these services are paid for under the PPS.

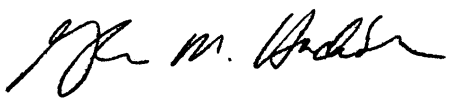
Regarding the therapy research project, the Commission is disappointed that long-standing shortcomings of the PPS continue to be studied but not corrected. Research spanning more than 13 years has identified the design features that result in patient selection, payment-driven patterns of care, and unnecessary program expenditures. Despite CMS's many refinements to the PPS, the core problems still exist. Our most recent analysis of current SNF payment policies show continued distortions in payments for therapy and NTA care. The Commission first outlined an alternative design in 2008 and has refined this design to accommodate concerns raised by CMS, reflect more current SNF practices, and incorporate changes to the patient assessment instrument. The Commission believes a better way to pay for SNF care has been within reach for years.

The Commission urges CMS to move forward now with a revised PPS design. At this point, the flaws of the current SNF PPS are well known, the trends in therapy use indicate that the refinements implemented to date have not corrected them, and solutions are at hand. Once the deficiencies in the current PPS are corrected to eliminate inappropriate payment incentives that favor some types of patients and practice patterns over others, policymakers will have a more accurate assessment of the sector's financial performance under Medicare. CMS can then proceed with the much-needed rebasing of the payment system signaled by the sector's extremely high Medicare profit margins. Given the acute financial pressures facing the Medicare program, the Commission asserts there is an urgent need to revise the SNF PPS and rebase payments.

MedPAC appreciates the opportunity to comment on the important policy proposals crafted by the Secretary and CMS. The Commission also values the ongoing cooperation and collaboration between CMS and MedPAC staff on technical policy issues. We look forward to continuing this productive relationship.

If you have any questions, or require clarification of our comments, please feel free to contact Mark E. Miller, MedPAC's Executive Director at (202) 220-3700.

Sincerely,



Glenn M. Hackbarth, J.D.
Chairman