

June 4, 2021

Chiquita Brooks-LaSure  
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-1748-P**

Dear Ms. Brooks-LaSure :

The Medicare Payment Advisory Commission (MedPAC) appreciates the opportunity to submit comments on the Centers for Medicare & Medicaid Services' (CMS's) proposed rule entitled "Medicare Program; Inpatient Rehabilitation Facility (IRF) Prospective Payment System (PPS) for Federal Fiscal Year 2022 and Updates to the IRF Quality Reporting Program (QRP); Proposed Rule," *Federal Register* 86, no. 68, 19086-19126 (April 12, 2021). We appreciate your staff's continuous efforts to administer and improve the Medicare payment system for IRFs, particularly given the competing demands on the agency.

We focus our comments on CMS's proposed payment update and its proposal to use fiscal year (FY) 2020 claims data to update the prospective payment rates for FY 2022.

**Proposed FY 2022 update to the Medicare payment rate for IRFs**

CMS proposes a 2.2 percent increase to the IRF payment rate, reflecting the applicable market basket increase (estimated to be 2.4 percent) less an estimated productivity adjustment of 0.2 percentage points, as required by statute. CMS also proposes to increase the high-cost outlier threshold amount to maintain estimated outlier payments at 3 percent of total estimated aggregate IRF payments for FY 2022.

*Comment*

We understand that CMS is required to implement this statutory update. However, we note that after reviewing many factors—including indicators of beneficiary access to inpatient rehabilitation services, the supply of providers, and aggregate IRF Medicare margins, which have been above 13 percent since 2015—the Commission determined that Medicare's current payment rates for IRFs

appear to be more than adequate and therefore recommended in March of this year that the Congress reduce the IRF payment rate by 5 percent for FY 2022.<sup>1</sup> We appreciate that CMS cited our recommendation, even while noting that the Secretary does not have the authority to deviate from statutorily mandated updates.

In conjunction with our March 2021 recommendation to reduce the IRF payment rate for FY 2022 by 5 percent, we reiterated our March 2016 recommendation that the IRF PPS outlier pool be expanded to redistribute payments within the IRF PPS. This action is within the Secretary's authority. Expanding the outlier pool from the current level of 3 percent to 5 percent of aggregate IRF payments would ameliorate the financial burden on IRFs that have a relatively high share of costly cases. We recognize that, by increasing payments for the costliest cases, Medicare may increase payments for providers who are less efficient, as well as for providers who care for patients whose acuity is not well captured by the case-mix system. Nevertheless, because of our concerns about the accuracy of Medicare's payments for resource-intensive cases, the Commission contends that an expanded outlier pool is warranted in the near term.

### **Using 2020 data to update prospective payment rates for FY 2022**

Each year, CMS updates the prospective payment rates using the most recently updated IRF claims and the most recent available IRF cost report data. Due to the potential effects of the coronavirus public health emergency (PHE) on the FY 2020 IRF claims data, CMS considered using FY 2019 claims data to update the IRF prospective payment rates and outlier threshold amount for FY 2022. Ultimately, CMS determined that the FY 2020 claims data are the best overall predictor of experience for the upcoming fiscal year because these data reflect recent changes to the IRF case-mix group (CMG) definitions and the data elements used to classify IRF patients into CMGs. CMS invited comments on this approach.

#### *Comment*

The Commission supports CMS's long-standing practice of using the most recent full fiscal year of data to update the IRF prospective payment rates and the outlier threshold amount. We agree that it is important to use FY 2020 data reflecting changes to the CMG definitions that were implemented in FY 2020 and will continue to be used in FY 2022. Similarly, we support the use of FY 2020 claims data to update the outlier threshold amounts.

That said, the Commission recognizes that the impact of the 2020 coronavirus PHE on providers and beneficiaries was unprecedented. We therefore suggest that, in analyzing FY 2020 claims, CMS try to isolate the effects of the PHE as much as possible. First, when analyzing the distribution of CMGs, CMS should exclude claims with a coronavirus disease 2019 (COVID-19) diagnosis or with a "waiver admission" (that is, beneficiaries who did not meet IRF admission requirements but were admitted because certain criteria were waived during the PHE). Second, when updating the outlier threshold amount, CMS should exclude claims with a COVID-19

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<sup>1</sup> Medicare Payment Advisory Commission. 2021. *Report to the Congress: Medicare payment policy*. Washington, DC: MedPAC.

Chiquita Brooks-LaSure

Administrator

Page 3

diagnosis or with a waiver admission because they may be atypical and thus not be the best predictor of FY 2022 aggregate and outlier payments.

### **Conclusion**

We appreciate the opportunity to comment on these important policy proposals. The Commission values the ongoing collaboration between CMS and MedPAC staff on technical policy issues, and we look forward to continuing this relationship.

If you have any questions, or require clarification of our comments, please do not hesitate to contact James E. Mathews, MedPAC's Executive Director, at 202-220-3700.

Sincerely,

A handwritten signature in black ink, appearing to read "m. chernew", with a long horizontal line extending to the right from the end of the signature.

Michael E. Chernew, Ph.D.  
Chair

MC/jmt