

On August 2, 2016, CMS released its final rule to update the fiscal year (FY) 2017 Medicare payment rates under the Inpatient Prospective Payment System (IPPS) and the Long-Term Care Hospital Prospective Payment System (Final Rule). By law, CMS is required to update payment rates for IPPS hospitals annually, and to account for changes in the costs of goods and services used by these hospitals in treating Medicare patients, as well as other factors (Market Baskets). For 2017, inpatient hospital payment rates will increase by 0.95% for those hospitals that successfully participate in the Hospital Inpatient Quality Reporting Program (IQR) and are meaningful electronic health record users (EHR).

While the Final Rule consists of more than 2,000 pages, the following is a summary of a few of the key points for hospitals to consider for FY 2017.

The Final Rule “permanently” removes the controversial -0.2% payment cut related to the “two-midnight” payment policy established in 2014, representing approximately US\$220 million in payments, and makes various changes to quality initiatives. CMS also finalized an increase of about 0.8% for inpatient payment rates to offset the estimated costs of the two-midnight rule and its financial impact over the past three years. However, the Final Rule has garnered some negative feedback for nearly doubling the reduction in payments related to documentation and coding overpayments, from -0.8% to -1.5%, in an attempt to recoup US\$11 billion by 2017 as required by the American Taxpayer Relief Act.

Under the Final Rule, hospitals choosing not to submit quality data will be subject to losing one quarter of the Market Basket update (2.7%), and hospitals that are not meaningful users of EHR can potentially lose three-fourths of the Market Basket update.

Starting in calendar year 2017, CMS will require hospitals to select and submit four quarters of data on eight of 15 electronic clinical quality measures (eCQM) as part of the IQR program, such as breast and cervical cancer screening statistics. CMS will begin to validate eCQM data reported during calendar year 2018, which will affect payment in FY 2020.

Additionally, CMS delayed the implementation of the Notice of Observation Treatment and Implication for Care Eligibility (NOTICE) Act such that it will not take effect until late October of 2016 at the earliest. As part of the NOTICE Act, CMS developed the Medicare Outpatient Observation Notice (MOON) requirement for hospitals to provide written notice to Medicare patients receiving observation services as an outpatient for more than 24 hours, no later than 36 hours after observation services are initiated. Hospitals must give patients a verbal explanation of the MOON and obtain a signature to acknowledge receipt and understanding of the notice.

The Final Rule also revises and rebases the Long-Term Care Hospital (LTCH) Prospective Payment System’s (PPS) market basket to 2.8%, along with a 0.3% cut for productivity and an additional 0.75% cut as mandated by the Affordable Care Act. CMS is also continuing to implement the two different types of LTCH PPS payment rates depending on whether the patient meets certain clinical criteria. Due to these changes, CMS estimates that LTCH PPS payments will decrease by 7.1%, or US\$363 million, compared to FY 2016 payment levels. This overall impact includes a 0.7% net increase in payments for cases paid a standard LTCH PPS rate, and a 23% drop in payments for LTCH site-neutral cases.

CMS projects that total Medicare spending on inpatient hospital services, including capital, will increase by about US\$746 million in FY 2017. Under the Final Rule, CMS will distribute almost US\$6 billion in uncompensated care payments in FY 2017, reflecting a decrease of approximately US\$400 million from the FY 2016 amount. CMS distributes a prospectively determined payment amount to Medicare disproportionate share hospitals based on their relative share of uncompensated care nationally.

The Final Rule is [available online](#) and is expected to officially be published in the Federal Register on August 22, 2016. The final rule will affect discharges occurring on or after October 1, 2016.

If you would like to discuss the implications of this Final Rule for your business, please speak to one of the individuals listed in this publication or your usual contact at Squire Patton Boggs.

Contacts

Peter A. Pavarini

T +1 614 365 2712

E peter.pavarini@squirepb.com

Stephen P. Nash

T +1 303 894 6173

E stephen.nash@squirepb.com

Sven C. Collins

T +1 303 894 6370

E sven.collins@squirepb.com

Robert D. Nauman

T +1 614 365 2721

E robert.nauman@squirepb.com

Adam D. Colvin

T +1 513 361 1216

E adam.colvin@squirepb.com