Illinois Health and Hospital Association

June 6, 2022

Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Avenue SW
Washington, D.C. 20201

Re: FY 2023 Skilled Nursing Facility PPS Proposed Rule (CMS-1765-P)

Dear Administrator Brooks-LaSure:

On behalf of our 25 member skilled nursing facilities, the Illinois Health and Hospital Association (IHA) appreciates the opportunity to comment on the fiscal year (FY) 2023 Skilled Nursing Facility (SNF) Prospective Payment System (PPS) proposed rule. IHA appreciates the Centers for Medicare & Medicaid Services' (CMS) streamlined approach in developing this rule, and the myriad proposals that balance the realities of the ongoing pandemic's affect on providers, with the needs of patients. Our comments focus on the proposed FY 2023 rate update, the 5% wage index cap policy, the Patient-Driven Payment Model (PDPM) parity adjustment, and the request for information on minimum staffing ratios.

Proposed FY 2023 Rate Update

We are disappointed with CMS' proposed FY 2023 SNF PPS rate update. After accounting for the productivity adjustment and sequestration, we estimate CMS' proposed rate update for Illinois SNFs to be 1.6% compared to FY 2022. This rate update is woefully inadequate given the fiscal realities of healthcare at present.

CMS relies on IHS Global Inc.'s fourth quarter 2021 forecast, which is based on historical data through the third quarter of 2021. While this methodology accounts for some of the economic realities of the COVID-19 pandemic, it clearly does not track with the realized increased cost of providing healthcare.

Consider a January 2022 analysis by Kaufmann Hall which found a 20.1% increase in hospital expenses per patient from 2019 to 2021.[1] This includes a 36.9% increase in per patient cost on drugs, a 19.1% increase in per patient cost on labor, and a 20.6% increase in per patient cost on supplies compared to pre-pandemic levels. All of these estimates vastly outpace the proposed FY 2023 rate update from CMS.

[1] https://www.aha.org/system/files/media/file/2022/04/2022-Hospital-Expenses-Increase-Report-Final-Final.pdf

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Further, as of May 11 the annual inflation rate for the United States is 8.3%.[2] Thus, CMS' proposed FY 2023 rate update does not even keep pace with inflation. Even without inflation and COVID-related price hikes, the Medicare program only reimburses hospitals about 88% of costs in Illinois. Without a more adequate rate increase, the margin between cost and reimbursement will only widen.

Finally, a recent analysis from McKinsey & Company indicates that by 2025, the U.S. will face three challenges to effectively meeting patient care needs. These include a decreased supply of the registered nurse workforce, an increased inpatient demand from or related to COVID-19, and increased demand/work setting shifts due to a growing and aging population.[3] This is our new reality, and considering the Medicare fee-for-service population is driving the third concern, now is the time for CMS to enhance healthcare resources, not limit them.

To that end, IHA strongly urges CMS to do everything within its statutory authority to increase payment rates to SNFs and other healthcare providers. We suggest CMS reassess the data and methodology used for the annual market basket update, and formulate a rate update that better reflects the fiscal reality hospitals currently face.

Proposed Permanent 5% Cap on Wage Index Decreases

IHA supports CMS' proposal to make permanent the 5% cap on wage index decreases. However, we question CMS' belief that this policy must be budget neutral. The financial stability of SNFs continues to be impacted by the COVID-19 pandemic, and SNFs will continue to face uncertainty moving forward as the healthcare landscape shifts. Therefore, we urge CMS to finalize this policy in a non-budget neutral manner. Doing so not only reflects the current financial reality of SNFs and other healthcare providers, but also aligns with the purpose of the 5% cap, which is to increase predictability of SNF PPS payments and mitigate instability and significant negative impacts to providers resulting from large wage index changes.

PDPM Parity Adjustment

In the FY 2021 SNF PPS proposed rule, CMS solicited comments on how to recalibrate the PDPM parity adjustment. The need for recalibration stems from a review of FY 2020 data, in which CMS found it may have inadvertently triggered a significant increase in overall payment levels under the SNF PPS when the system migrated from the Resource Utilization Groups, Version IV (RUG-IV) to the PDPM.

In last year's comment letter, IHA agreed with CMS' assessment that changes to the average therapy Case-Mix Index (CMI) appeared to be due to the transition from RUG-IV to PDPM. In those comments, IHA urged CMS to avoid immediate recoupment of the resulting overpayment, and instead consider a combined approach of delay and phase-in to recoup parity adjustment overpayments. Our rationale was that the extraordinary circumstances

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[2] https://www.usinflationcalculator.com/inflation/current-inflation-rates/#:~:text=The%20annual%20inflation%20rate%20for,10%20at%208%3A30%20a.m.

[3] https://www.mckinsey.com/industries/healthcare-systems-and-services/our-insights/assessing-the-lingering-impact-of-covid-19-on-the-nursing-workforce

presented by COVID-19 warranted a recoupment delay, and we appreciated CMS' final decision to delay recoupment for one year.

In this year's SNF PPS proposed rule, CMS proposed implementing the parity adjustment in FY 2023 with no delayed implementation or phase-in period, stating it already granted a one-year implementation delay by not finalizing the parity adjustment in FY 2022. The parity adjustment will be applied across PDPM CMIs in equal measure, resulting in a 4.6%, or $1.7 billion, decrease in SNF spending in FY 2023.

IHA appreciates the one-year delay CMS afforded by not finalizing the parity adjustment in FY 2023. We continue to urge CMS to phase-in the parity adjustment over a few years instead of implementing a one-time cut which would result in a net negative payment update for FY 2023. Proposing a negative rate update during a time when hospitals continue to serve on the front lines of COVID-19 and face rising costs and steep inflation is inappropriate, particularly when the end of the pandemic continues to elude the country.

Request for Information on Mandatory Minimum Staffing Levels

IHA appreciates the actions CMS and the Biden Administration are taking to improve the country's public health infrastructure and better ensure preparedness for future public health emergencies. To that end, we are happy to submit comments on CMS' request for information on mandatory minimum staffing levels for long-term care facilities, including skilled nursing facilities.

While not without its challenges, the move to the PDPM payment model better reflects patient acuity and healthcare needs. As SNFs and other post-acute care facilities continue to acclimate to this new payment methodology, it makes sense that CMS would look to other facets of healthcare provision to ensure that the way providers furnish care is patient-centric.

With patient-centric care in mind, we strongly urge CMS to forgo a static minimum staffing ratio. Instituting a one size fits all minimum staffing ratio will surely result in access issues for patients, which will be exacerbated in the short-run as the country continues to face a significant nursing shortage. Long-term care facilities acting in compliance with such a mandate will have to turn patients away, meaning such patients will see longer lengths of stay in acute care hospitals because there will not be enough staff at the long-term care facility to admit additional patients. Further, static staffing ratios may lead to decreased quality of care, and move away from the overarching goal hospitals and providers share which is providing the right care, at the right time, in the right location.

Instead, we recommend CMS institute a staffing process that is nimble and facility-specific, with a focus on the needs of residents at a specific point in time. Illinois nursing facilities are already engaged in such a staffing process, which leverages among other things the methodology employed under Staff Time and Resource Intensity Verification (STRIVE), a concept CMS is already familiar with.[4] While initially interacting with the RUG payment system, STRIVE lends

[4] https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/TimeStudy

itself to the PDPM as well. Combining these two concepts will result in pay for providers that is based on staffing, quality outcomes and resident needs. The flexibility of this approach is optimal for patients, providers, and CMS, and we would be happy to connect CMS with our in-state experts on this topic moving forward.

Administrator Brooks-LaSure, thank you again for the opportunity to comment on this proposed rule.

Sincerely,

A.J. Wilhelmi
President & CEO
Illinois Health and Hospital Association