

CMS RELEASES FFY 2023 PROPOSED RULE; PROPOSED CAP ON WAGE INDEX DECREASES & WAGE INDEX DEADLINES

The FFY 2023 IPPS Proposed Rule ("Proposed Rule") was released on April 18, 2022, and CMS published the associated tables on its website. In addition, the Proposed Rule is expected to be published in the Federal Register on May 10. This year, CMS is proposing to implement a cap on the decreases in wage index that a hospital can experience from year to year.

The release of the Proposed Rule and the accompanying tables also triggers the start to several deadlines for hospitals, including the unofficial start of the Medicare Geographic Classification Review Board ("MGCRB") application process. Hospitals should conduct a preliminary review of the Proposed Rule tables to assess whether they qualify for MGCRB reclassification this year. In addition, hospitals should assess whether they should file an MGCRB withdrawal or termination based on the Proposed Rule data.

BACKGROUND

The Medicare Hospital Inpatient Prospective Payment System ("IPPS") is designed to pay hospitals for services provided to Medicare beneficiaries based on a national standardized amount adjusted for the patient's condition and related treatment. Further, Social Security Act Section 1886(d)(3)(E) requires that the standardized amount be adjusted for differences in hospital wage levels, which CMS implemented through the wage index system. CMS also uses the hospital wage index for the Outpatient Prospective Payment System ("OPPS").

In computing the wage index, CMS calculates an average hourly wage for each urban and rural area (total wage costs divided by total hours for all hospitals in the geographic area) and a national average hourly wage (total wage costs divided by total hours for all hospitals in the nation). A labor market area's wage index value is the ratio of the area's average hourly wage to the national average hourly wage.

CMS defines hospital labor market areas based on the definitions of Core-Based Statistical Areas ("CBSAs") established by the Office of Management and Budget. A Metropolitan Statistical Area ("MSA") is a CBSA associated with at least one urbanized area that has a population of at least 50,000 that comprises the central county or counties containing the core, plus adjacent outlying counties that have a high degree of social and economic integration with the central county measured through commuting. Medicare payment programs classify hospitals into rural and urban status for a variety of purposes. An "urban area" is defined as an area within an MSA. A "rural area" is defined as any area outside an urban area.

The Medicare program also has an "in between" status called "Lugar status." Generally, these "Lugar counties" would otherwise be rural, but because of their proximity and commuting patterns to one or more MSAs, they are treated as urban for some purposes and rural for others. Finally, CMS provides an out-migration adjustment for hospitals located in certain counties that have a relatively high percentage of hospital employees who reside in the county but work in a different county (or counties) with a higher wage index. It is important to note that a hospital cannot receive the out-migration adjustment if it has an MGCRB reclassification or has Lugar status in effect.

PROPOSED CAP ON WAGE INDEX DECREASES

This year, CMS is proposing to apply a 5% cap on any decrease to a hospital's wage index from its final wage index in the prior Federal Fiscal Year. CMS has had similar caps in the past that only applied to certain fiscal years. This change would implement the 5% cap decrease permanently going forward. The purported aim of this proposal is to protect against variations in wage index values as a means to reduce overall volatility for hospitals. So under the proposed policy, a hospital's wage index would not be less than 95% of its final wage index for the prior Federal Fiscal Year. Importantly, this proposed wage index cap policy would be applied in a budget-neutral manner through a national adjustment to the standardized amount. This cap would apply regardless of the circumstances causing the decline. So, for example, hospital initiated declines through deemed rural reclassification to acquire special rural designations, such as sole community or rural referral status would be afforded this protection.

WAGE INDEX RECLASSIFICATION

One of the ways hospitals can improve the wage index for their IPPS and OPPS payments is to apply for MGCRB wage index reclassification if it meets specified requirements. The MGCRB is an independent board organized under the Department of Health & Human Services that

reviews applications submitted by hospitals seeking a higher wage index to a nearby MSA or a statewide rural area based on meeting certain published criteria. MGCRB applications may be submitted on an individual or group basis.

This year, MGCRB applications must be submitted by September 1, 2022 (the first business day in September) and are acted on by the MGCRB no later than the end of February 2023. If approved, reclassifications are effective for three years beginning October 1, 2023 (13 months after the submission deadline) for IPPS services. The new wage index is effective for OPSS services January 1, 2024, or three months after the October effective date for IPPS. The regulations allow for withdrawals, terminations and reinstatements each year of the reclassification.

It is also important to note that CMS published an Interim Final Rule in 2016 that allows hospitals to have both an MGCRB reclassification and an urban to rural reclassification, which opens up additional options for some hospitals. This is sometimes referred to as dual reclassification, reclassification stacking or “Rurban” reclassification.

The Proposed Rule also triggers several important filing deadlines related to hospital wage indices:

- Lugar hospitals that also qualify for an out-migration adjustment can waive their Lugar status and accept the outmigration adjustment by notifying CMS within 45 days from the release of the public display copy of the Proposed Rule (*i.e.*, until June 2, 2022);
- Similarly, a hospital that previously waived Lugar status has 45 days from the release of the public display copy of the Proposed Rule (*i.e.*, until June 2, 2022) to notify CMS that they no longer wish to accept the outmigration adjustment and elect instead to return to Lugar (deemed urban) status;
- Hospitals have 45 days from the publication of the Proposed Rule in the Federal Register to request the withdrawal or termination of an MGCRB reclassification. Since the Proposed Rule is expected to be published in the Federal Register on May 10, the deadline for withdrawals and terminations will likely be June 24, 2021.

Hall Render and Hall Render Advisory Services provide geographic reclassification services to hundreds of hospitals each year using fixed-rate fee arrangements. Last year, we assisted over 300 hospitals to assess their reclassification opportunities based on the IPPS Proposed and Final Rules and filed MGCRB applications on behalf of over 100 hospitals.

If your hospital needs assistance assessing geographic reclassification opportunities or has questions regarding the wage index and reclassification process, please contact one of the following professionals:

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