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CMS'S INTERIM FINAL RULE ABANDONS LOW WAGE INDEX HOSPITAL POLICY

On October 3, 2024, the Centers for Medicare & Medicaid Services ("CMS") published an interim final rule that eliminated the low wage index hospital policy and related budget neutrality adjustments. This action was prompted by the D.C. Circuit Court of Appeals' decision to vacate the policy in *Bridgeport Hospital v Becerra* ("*Bridgeport*") concluding that the Secretary lacked the authority under SSA 1886(d)(3)(E) to adopt the original policy effective in 2020 through 2024. The goal of this policy was to increase the wage index for low-wage hospitals to help them improve their employee wage rates but came at the expense of higher-wage hospitals under budget neutrality requirements.

This interim final rule surprised many providers because it followed the publication of the FY 2025 IPPS Final Rule which continued the policy for another four years beginning in FY 2025, noting that the time period for appeal of the *Bridgeport* decision had not yet expired and the agency was considering its options in light of the decision.

In the interim final rule, CMS, acknowledging that low-wage hospitals would experience a downward adjustment in their wage index, established a one-time transitional adjustment using its statutory exception and adjustment authority. CMS instructs that for the lowest quartile of low wage index hospitals, which includes 113 hospitals, whose FY 2025 wage index will decrease by more than 5% from their FY 2024 wage index, CMS will limit the FY 2025 wage index decrease so that affected hospitals will receive 95% of their FY 2024 wage index.

Hospitals that are eligible for this transition policy are excepted from the application of the wage index cap policy at 42 CFR §412.64(h)(7). CMS also stated that it would not impose budget neutrality during the transition period. This new policy was effective as of September 30, 2024.

In addition, in the interim final rule, CMS removed the budget neutrality adjustment of 0.997156 for the low wage index hospital policy that was applied to the standardized amount. This means that the standardized amount will increase by about 0.29% or $18.75 for all hospitals.

CAPITAL IPPS

The interim final rule projects capital outlier reconciliation payments to decrease by .03% which will then reduce the percentage of the outlier adjustment payment for capital-related payments to 4.23% in FY 2025 and is not affected by the removal of the low wage index hospital policy. The interim final rule also states that the geographic adjustment factors are unchanged by the removal of the low wage index hospital policy and will increase from 0.9884 to 0.9992 for a capital IPPS rate of $512.14 for FY 2025.

PRACTICAL TAKEAWAYS

- Low wage index hospitals will see a decrease in their wage index, but CMS will provide a one-time transition so that hospitals in FY 2025 receive 95% of their FY 2024 wage index.
- All hospitals will see their standardized amount increase due to the removal of the low wage index budget neutrality adjustment.
- CMS will waive budget neutrality requirements imposed by the low wage index hospital policy during this transition.
- CMS has established the capital IPPS rate at $512.14 for FY 2025.

If you have any questions or would like additional information on this topic, please contact:

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