



MASSACHUSETTS EXTENDED
CARE FEDERATION

May 23, 2007

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-1545-P
P. O. Box 8016
Baltimore, MD 21244-8016

Dear Colleagues:

The Massachusetts Extended Care Federation (MECF) appreciates greatly the opportunity to provide written comments on the Centers for Medicare & Medicaid Services' (CMS) proposed rule for the **Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 2008 (CMS-1545-P)**. The MECF is the oldest and largest trade association of facility-based long term care providers in the state of Massachusetts. Our 500+ members care for and employ more than 100,000 citizens of the Commonwealth. We represent freestanding nursing facilities as well as hospital-based transitional care facilities.

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Representing Massachusetts' Nursing Facilities, Assisted Living Residences & Retirement Communities

Our comments are directed to the following four areas of your proposal:

- The Wage Index Adjustment to Federal Rates;
- The Market Basket Forecast Error Adjustment;
- The Proposed Market Basket Estimate for the FY 2008 SNF Update; and
- Consolidated Billing.

Annual Update: Wage Index Adjustment to Federal Rates (II-C)

The MECF represents one nursing facility located on Martha's Vineyard island, which is officially classified as a rural area (Dukes County) and lacks hospital wage data.

Martha's Vineyard is a high cost area of the state and suffered greatly last year with a rural wage index (1.0216) used to adjust the labor component of its Medicare PPS rates. For situations such as this, your proposal calls for using an average wage index from all contiguous Core Based Statistical Areas (CBSAs) to represent a reasonable proxy for the rural area. Your proposal uses this area as an example by noting that its imputed wage index would be 1.1665, or the average of the two contiguous CBSAs (Barnstable and Bristol counties). While we would have preferred that Barnstable county be used solely as the proxy for the rural area since that is the labor market with which Martha's Vineyard (Dukes county) actually competes, the average of the two contiguous counties is a fair compromise and one that the MECF supports.

Market Basket Index: Market Basket Forecast Error Adjustment (III-B)

The MECF does not agree with CMS's proposal to raise the 0.25 percentage point threshold for forecast error adjustments under the SNF PPS system to 0.50 percentage point effective with FY 2008. Forecasting inflation in health care costs is an inexact science, even with the best of data. A 0.50 percentage point threshold is too high. In this year's proposal, CMS estimates the market basket adjustment to be 3.50 percent. 0.5 percent is one-seventh of that figure. We believe that 0.25 percent is a fairer threshold and should be maintained.

Revising and Rebasing: Proposed Market Basket Estimate for the FY 2008 SNF Update (IV-D)

We support CMS's proposal to revise and rebase (to 2004) the SNF market basket. The accuracy and integrity of any reimbursement system is in great measure determined by the currency of its cost base and validity of its inflation updates. While slightly below the average wage and benefits increases Massachusetts' SNFs have given their direct care staff over the past few years, CMS's proposed 3.3 percent market basket adjustment is a reasonable compromise that should guarantee access to quality care for Medicare recipients in need of facility-based skilled nursing services.

Consolidated Billing (V)

Skilled nursing facilities (SNFs) in Massachusetts continue to have a problem with MRIs and CAT scans performed in acute care hospital outpatient departments under contract with independent MRI/CAT Scan companies. Even though these tests are in the acute hospital outpatient department and would appear to be an excludable item under Medicare PPS consolidated billing, the fact that the services are not being billed by the hospital has caused Medicare Part B to reject the claims as submitted by the contractor. We believe it was the intent of Congress to exclude these services **regardless of whether they were provided by hospital staff or under contract with an outside vendor**. The important consideration should be the site of service, not whether it was contracted or not. Many of our members who sent their patients out for what they believed were radiological tests in an acute hospital outpatient department and therefore excludable from consolidated billing are getting large bills for these services. This is not fair, not consistent with the wishes of Congress, and should be changed.

We also believe that the inclusion in consolidated billing of MRIs and CAT scans done in freestanding clinics, not in acute hospital outpatient departments, is similarly unfair and should be changed. In many regions of Massachusetts, there are no acute care hospitals

that provide MRIs and CAT scans. Here, independent clinics are the only providers. SNFs are faced with the dilemma of sending their patients to the nearest provider and absorbing the significant cost or using a hospital outpatient department at a distance from the facility. Given patients' frailty, the choice providers make in virtually every instance is to use the closest provider. This exposes them to significant financial risk, as the claims are not billable under Medicare Part B.

MRIs and CAT scans are "high cost, low probability" items and should be excluded from the consolidated billing requirement (and therefore billable under Part B) regardless of where and by whom they are provided. As you noted in your proposal, the Secretary has "the authority to designate additional, individual services for exclusion within each of the specified service categories." We urge you to reconsider your position on this issue and allow MRIs and CAT scans done on nursing facility patients in a Medicare Part A coverable stay to be excluded from the consolidated billing requirement.

This completes our comments on CMS's proposal. We appreciate greatly the opportunity to provide input and urge you to consider our views in your final determination. If you have any questions regarding these comments, please feel free to call my office at 617-558-0202.

Sincerely,



W. Scott Plumb

Senior Vice President

Cc: Elise Smith, American Health Care Association
Kenneth Chisholm, Windemere Nursing and Rehab Center of Martha's Vineyard
Eva Flaherty, Office of Congressman William D. Delahunt, Hyannis Office