

Small Entity Compliance Guide

Medicare Program; Calendar Year (CY) 2023 Home Health Prospective Payment System Rate Update; Home Health Quality Reporting Program Requirements; Home Health Value-Based Purchasing Expanded Model Requirements; and Home Infusion Therapy Services Requirements

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The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA, Pub. L. 104-121, as amended by Pub. L. 110-28, May 25, 2007) contains requirements for issuance of “small entity compliance guides.” Guides are to explain what actions affected entities must take to comply with agency rules. Such guides must be prepared when agencies issue final rules for which agencies were required to prepare a Final Regulatory Flexibility Analysis under the Regulatory Flexibility Act.

This final rule is estimated to have a significant economic impact on a substantial number of small entities. The complete text of this final rule can be found on the CMS website by clicking on the link to “CMS-1766-F” at <https://www.cms.gov/Center/Provider-Type/Home-Health-Agency-HHA-Center.html>.

The overall impact of the Calendar Year (CY) 2023 Home Health Prospective Payment System (HH PPS) final rule, as detailed in the Regulatory Flexibility Analysis (RFA) section of the final rule and discussed below, reflects an estimated increase in payments to home health agencies (HHAs).

We have prepared this guide to address the following provisions of the final rule:

Home Health Prospective Payment System (HH PPS)

This final rule updates the payment rates for HHAs for CY 2023, as required under section 1895(b) of the Social Security Act (the Act), effective January 1, 2023. This rule sets forth the case-mix weights under section 1895(b)(4)(A)(i) and (b)(4)(B) of the Act for 30-day periods of care in CY 2023; updates the LUPA thresholds, functional impairment levels, comorbidity adjustment subgroups for CY 2023, and the fixed-dollar loss ratio (FDL) used for outlier payments.

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of less than \$7.5 million to \$38.5 million in any one year. For the purposes of the RFA, we consider all HHAs small entities as that term is used in the RFA. Individuals and states are not included in the

definition of a small entity. The economic impact assessment is based on estimated Medicare payments (revenues) and HHS's practice in interpreting the RFA is to consider effects economically "significant" only if greater than 5 percent of providers reach a threshold of 3 to 5 percent or more of total revenue or total costs. The majority of HHAs' visits are Medicare-paid visits and therefore the majority of HHAs' revenue consists of Medicare payments. The Secretary has determined that this final rule will have a significant economic impact on a substantial number of small entities.

The overall impact of the CY 2023 Home Health Prospective Payment System (HH PPS) final rule, as detailed in the Regulatory Flexibility Analysis (RFA) section of that rule and discussed below, reflects an estimated increase in payments to HHAs.

The overall impact in estimated total home health payments in CY 2023 is an increase of 0.7 percent. A substantial amount of the variation in the estimated impacts of the policies finalized in this rule in different areas of the country could be attributed to changes in the CY 2023 wage index methodology, which is used to adjust payments under the HH PPS. This final rule finalizes a methodology for determining the impact of the difference between assumed versus actual behavior change on estimated aggregate expenditures for home health payments as result of the change in the unit of payment to 30 days and the implementation of the PDGM case-mix adjustment methodology and finalizes a corresponding permanent prospective adjustment to the CY 2023 home health payment rate. This rule also finalizes recalibration of the Patient-Driven Groupings Model (PDGM) case-mix weights and updates the low-utilization payment adjustment (LUPA) thresholds, functional impairment levels, comorbidity adjustment subgroups for CY 2023, and the FDL used for outlier payments. This rule also finalizes the reassignment of certain diagnosis codes under the PDGM case-mix groups.

Free-standing non-profit HHAs are estimated to see a 0.7 percent increase and facility-based non-profit HHAs are estimated to see a 1.1 percent increase in payments in CY 2023. Free-standing proprietary HHAs and facility-based proprietary HHAs are estimated to see a 0.7 percent increase in payments in CY 2023. Urban HHAs are estimated to see a 0.7 percent increase in payments while rural HHAs are estimated to see a 0.6 percent increase in payments for CY 2023. Based on the number of first periods of care, smaller HHAs (with less than 100 home health periods of care) are estimated to experience a 1.0 percent increase in payments for CY 2023. In contrast, larger HHAs (with 1,000 or more home health periods of care) are estimated to experience a 0.7 percent increase in payments for CY 2023. HHAs in outlying regions are estimated to see a 1.6 percent increase in payments whereas HHAs in East North Central regions are estimated to receive a 0.1 percent increase in payments in CY 2023.

We provide the following online manuals that present compliance information regarding our home health regulations. The manuals are frequently updated to reflect the latest changes in Medicare home health policy. These manuals serve, in part, as a system of small entity compliance guides that meet the letter and spirit of SBREFA.

Medicare Benefit Policy Manual; Chapter 7- Home Health Services:
<https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/bp102c07.pdf>.

Medicare Claims Processing Manual; Chapter 10- Home Health Agency Billing:
<https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/clm104c10.pdf>.

We also conduct Open Door Forums (ODFs) to improve transparency in our policies. These forums provide small entities with an opportunity to obtain information, ask questions, and express their views to senior CMS officials on nearly all major regulatory issues, especially those that might affect providers in a new or burdensome way. As such, information on Home Health, Hospice, and Durable Medical Equipment and the Rural Health ODFs can be found at <https://www.cms.gov/Outreach-and-Education/Outreach/OpenDoorForums>.

Home Health Quality Reporting Program (HH QRP)

This final rule finalizes the end of the suspension of the collection of Outcome and Assessment Information Set (OASIS) data from non-Medicare/non-Medicaid patients pursuant to section 704 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 and requires HHAs to report all-payer OASIS data for purposes of the HH QRP. In response to concerns raised by commenters on the burden associated with the proposed new data collection, we are finalizing that the new OASIS data reporting for the HH QRP will begin with a phase-in period starting January 1, 2025 and be fully implemented in the CY 2026 program year starting July 1, 2025. We are finalizing as proposed regulatory text change that consolidates the statutory references to data submission. We are also finalizing as proposed the codification of the measure removal factors we adopted in the CY 2019 HH PPS final rule.

To support HHAs in implementing this final rule, there are several resources that are available to remain in compliance with new and current HH QRP requirements. An OASIS Guidance manual is available to support coding guidance related to OASIS-E implementation found at:
Guidance Manual for the Outcome Assessment Information Set Version E (OASIS-E) of the OASIS data set, effective January 1, 2023:
<https://www.cms.gov/files/document/oasis-e-guidance-manual51622.pdf>

To support the appropriate submission of assessment data, users may reference the most up to date information available at: <https://www.cms.gov/medicare/quality-initiatives-patient-assessment-instruments/homehealthqualityinits/dataspecifications>

To assist users in outlining current quality measures and the most updated calculation of measures, users can reference information at: <https://www.cms.gov/medicare/quality-initiatives-patient-assessment-instruments/homehealthqualityinits/home-health-quality-measures>

To help providers address a range of questions, troubleshoot problems, and request guidance and support, the following website outlines contact information for Help Desks related to the HH QRP: <https://www.cms.gov/medicare/quality-initiatives-patient-assessment-instruments/homehealthqualityinits/help-desk>

We also conduct Open Door Forums (ODFs) to improve transparency in our policies. These forums provide small entities with an opportunity to obtain information, ask questions, and express their views to senior CMS officials on nearly all major HH QRP regulatory issues, especially those that might affect providers in a new or burdensome way. As such, information on Home Health, Hospice, and Durable Medical Equipment ODFs can be found at https://www.cms.gov/Outreach-and-Education/Outreach/OpenDoorForums/ODF_HHHDME.html.

Home Health Value Based Purchasing (HHVBP Model)

In January 2021, CMS announced that the original HHVBP Model had met the statutory requirements for model expansion described in section 1115A(c)(1) through (3) of the Act. We also announced that the Model would be expanded no earlier than January 1, 2022.

The CY 2022 final rule finalized a pre-implementation year for HHAs starting in CY 2022, pushing the first performance year to CY 2023 and the first payment year to CY 2025 to provide HHAs not in the original Model time to learn and prepare for expansion. That rule finalized national cohorts, a 5 percent payment adjustment and the quality measure set, as proposed. That rule finalized use of the CY 2019 baseline year.

This rule finalized that the Model baseline will be CY 2022 starting in the CY 2023 performance year and the HHA baseline year will be CY 2022 for HHAs certified prior to January 1, 2022.

In order to assist HHAs in understanding and adapting to changes due to the expanded HHVBP Model, we have developed a Web page for the expanded HHVBP Model. <https://innovation.cms.gov/innovation-models/expanded-home-health-value-based-purchasing-model>

Information on the original HHVBP model can be found at: <https://innovation.cms.gov/innovation-models/home-health-value-based-purchasing-model>.

Medicare Coverage of Home Infusion Therapy Services

This final rule updates the home infusion therapy services payment rates for CY 2023, as required by section 1834(u)(3) of the Act. The impact due to the updated payment amounts for furnishing home infusion therapy services is determined by increasing the single payment amount from the prior year (that is, CY 2022) by the percentage increase

in the Consumer Price Index for all Urban Consumers (CPI-U) for the 12-month period ending with June of the preceding year, reduced by a productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act as the 10-year moving average of changes in annual economy-wide private nonfarm business multifactor productivity. The CPI-U for the 12-month period ending in June of 2022 is 9.1 percent and the corresponding productivity adjustment is a reduction of 0.4 percent. Therefore, the final home infusion therapy payment rate update for CY 2023 is 8.7 percent. The single payment amounts are also adjusted in a budget neutral manner using standardization factors for geographic area wage differences using the geographic adjustment factors (GAF).

We inform the public about changes we are proposing to home infusion therapy services, including links and downloads to relevant legislation, reports, and the annual national home infusion therapy payment rates, and locality-adjusted home infusion therapy payment rates at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/Home-Infusion-Therapy/Overview.html>.