760 Alexander Road | PO Box 1 | Princeton, NJ 08543-0001 | 609-275-4000 | www.njha.com

June 9, 2020

The Honorable Seema Verma
Administrator
Centers for Medicare and Medicaid Services
U.S. Department of Health and Human Services
Attention: CMS-1729-P
7500 Security Boulevard
Baltimore, MD 21244-1850

Delivered Electronically

RE: CMS-1737-P - Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Updates to the Value-Based Purchasing Program for Federal Fiscal Year 2021

Dear Administrator Verma:

The New Jersey Hospital Association appreciates the opportunity to offer comments concerning the SNF PPS Proposed Rule for federal fiscal year 2021 on behalf of the more than 110 skilled nursing facilities that are members of NJHA.

New Jersey's skilled nursing facilities have been an instrumental part of our state's response to the COVID-19 public health emergency. This response has presented challenges and triumphs as the SNFs faced daunting issues related to all aspects of the emergency. Some of our SNFs transformed their facilities and teams to create COVID-dedicated facilities or units, particularly during the height of New Jersey's experience with the spread of the virus. All of our SNF teams are among the countless heroes who have been compassionate and kind while they have done all they could clinically to help people cope with the virus.

NJHA appreciates that CMS has taken a measured approach to this year's proposed rule, and generally support the direction of the proposal for FY 2021. However, we are concerned about the proposed adjustment to the area wage index, the adequacy of the market basket adjustment, the need for a payment modifier to reflect COVID-19 costs, separate payment for COVID-19 testing, and the impact of COVID-19 on data integrity and accuracy related to CMS' SNF quality reporting and value-based payment programs. Please see below for our detailed comments.

Proposed Wage Index Adjustments

Keeping wage adjustments aligned between sites of care is important because it keeps providers on a level - playing field for recruiting and retaining valuable staff. Skilled nursing facilities face the reality that working in senior care is not viewed in the same way as working in acute or other post-acute environments by nurses, therapists and other staff who are critical to the care of seniors.

In addition, given the SNFs relatively significant reliance on government payments through Medicare and Medicaid, they do not have the ability to offer compensation on par with other health care organizations. In New Jersey, SNFs are not only competing within the state, but also with two of the largest cities in the nation, New York and Philadelphia, for staff. These discrepancies, coupled with the devastating impact of COVID-19 on the field, will make recruitment and retention of staff even more daunting in the coming year. That is why we were particularly distressed to see CMS' proposed changes to the Core-Based Statistical Areas (CBSAs), via an updated bulletin from the White House Office of Management and Budget (OMB). CMS should properly examine the potential effects of the combination of these factors and address any potential deleterious effects on access to care.

NJHA appreciates CMS' attempt to lessen disruption by implementing a five percent cap on any wage index reductions for FY 2021. However, this one-year transition only delays difficulties the re-designated SNFs will have in recruiting and retaining personnel, which is particularly problematic as the entire SNF industry continues to play a role in recovery for COVID-19 survivors and prepares for the potential resurgence of COVID-19 later this year. In addition, NJHA believes it is critical to allow the 2020 Census to be completed so that CMS can see the labor market data that is most current and fully understand the impact of the change. As mentioned before, New Jersey's SNFs have provided care to thousands of COVID-19 patients. This has come at great expense not only from the significantly increased cost of personal protective equipment and agency and other staff who were needed to address the crisis, but also from the unparalleled reduction in census of other residents and patients who normally come to a SNF for a rehabilitative stay or for long term custodial care.

For all of the reasons stated above, NJHA recommends that CMS reconsider the implementation of these poorly timed changes to the CBSAs that are not supported by the normal data underpinnings supplied by updated census data.

SNF Market Basket Update

While the proposed positive market basket update of 2.3 percent, after the multifactor productivity adjustment, generally reflects the reality of increased costs associated with providing high quality care, NJHA is concerned that this proposal does not account for how COVID-19 has changed the environment. SNFs anticipate facing increased costs for new infection control measures, physical plant changes and establishment of increased supplies of personal protective equipment, among other costs.

Patient Driven Payment Model (PDPM) Mapping

NJHA supports CMS' proposal to change the patient driven payment model (PDPM) to more accurately reflect aspects of a resident's clinical history accounted for in the clinical mappings. In particular, we appreciate CMS' proposal to add "May be Eligible for the Non-Orthopedic Surgery Category" or "May be Eligible for One of the Two Orthopedic Surgery Categories" resulting from the proposed cancer codes. This appears to better reflect the plan of care for residents being admitted to the SNF following a major procedure during their acute inpatient stay.

While we appreciate that CMS has provided clinical mapping under PDPM for the ICD-10 codes related to COVID-19, we believe that the costs attributed for both direct patient care and the needed supplies, isolation procedures and cohorting of residents with COVID-19 does not reflect the lost revenue and additional expense impact of these care situations. Since CMS has the authority to ensure that the costs attributed to caring for older adults, especially as a result of this pandemic, are taken into account when setting payment policy.

NJHA recommends CMS implement an increased payment modifier for ICD-10 diagnoses that can be attributed to COVID-19 and its symptomology through the use of PDPM groupings that reflect the extraordinary costs to provide care during the pandemic.

The actions required to provide necessary care are essential, and the reimbursement system needs to address these unanticipated costs. NJHA recommends that CMS establish a permanent payment modifier that would be applied for COVID-19, as well as potential future pandemics and outbreaks.

Consolidated Billing Exclusions

NJHA asks CMS to establish reimbursement policy that specifically excludes SNF resident testing for COVID-19 from consolidated billing and establishes it as a separately billable expense. While COVID-19 testing is not a low probability service under the current public health emergency, the requirements for testing and rate of infections within SNFs can vary greatly by state, region, etc. In addition, these expenses were not contemplated by the consolidated billing requirement or the setting of rates. These necessary but unanticipated costs can add up to significant dollars that can negatively impact a SNF's overall viability.

Quality Program Implications for SNF Payments

Overall, the proposed CMS rules for FY2021 related to the Value-Based Payment and Quality Reporting Programs make sense and are consistent with current practices. However, NJHA has some concerns regarding how CMS approaches utilization and public reporting of SNF quality and performance data from the COVID-19 time period and the implications for future SNF rate
adjustments.

Under the SNF Value Based Payment (VBP) program, CMS uses claims data to determine the 30-day all cause hospital readmission rate for SNFs (known as SNFRM). We appreciate that CMS in its March 27memo said it would exclude qualifying claims data for the period January 1 – June 30, 2020 but we are still concerned about CMS potentially using and comparing a partial data set to a complete baseline year in determining a SNFs performance and associated value-based incentive payment (VBIP) in future years.

SNF VBIPs are determined by comparing a provider's performance from a baseline year to a performance year. SNFRM performance from calendar year 2020 will first impact SNF PPS rates in FY2022 when a SNF's VBIP will be determined by comparing each SNF's performance for a portion of FY2020 (October 1, 2019 December 31, 2019 and July 1 – September 30, 2020 unless CMS further extends the claims data exclusion from its March 27 memo) performance to a complete year of performance in FY2018, the baseline year.

It is unclear whether comparing a partial year of data to complete year of data will accurately reflect a SNF's performance on hospital readmissions. First, the number of qualifying admissions is likely to be down from prior years resulting in a lower denominator. With fewer qualifying stays, the readmission data can more easily be skewed by just a few additional readmissions. Second, comparing data from a pre-COVID-19 environment to a COVID-19 or post-COVID-19 environment where 3-day stays are waived, treating in place is encouraged, and cases of COVID-19 can require hospitalizations is problematic. Third, it would be unfair to compare nursing homes across the country or even across a state because the number of COVID-19 cases and the timing of the COVID-19outbreaks are so variable. In addition, each state developed and deployed its own set of policies to combat the spread of the virus and as such, a SNFs performance on readmissions and other quality measures has likely been affected by state policies and the infection timeline. Therefore, some SNFs will look like they have

extraordinarily low readmission rates (as they are encouraged to treat in place) while other SNFs rates may have stayed comparable or seen significant spikes in readmissions in comparison to prior years.

Therefore, NJHA asks CMS to consider and address in future rulemaking how it will approach adjusting SNF PPS rates as part of the SNF Prelate to SNFRM performance in years where performance or baseline are impacted by COVID-19.

For the SNF Quality Reporting Program (QRP), CMS waived the requirement for providers to report data between October 1, 2019 and June 30, 2020. The SNF QRP annually adjusts SNF PPS rates based upon whether or not a SNF completed 100 percent of the required MDS fields for calculating QRP measures at least 80 percent of the time. SNFs will first be at-risk of having their rates reduced by 2 percent based on their CY2020 reporting performance in FY2022. NJHA encourages CMS to hold all SNFs harmless from this rate cut in FY2022 and beyond if future rate years are impacted by QRP reporting during the COVID-19 emergency.

Given that the data during the COVID-19 months will be skewed, NJHA asks CMS to forgo reporting the limited data collected for the VBP and QRP programs for the dates impacted by the emergency. These data cannot be compared across SNFs with COVID-19 cases to those without, nor across states or regions where some were more heavily impacted than others. Therefore, the data would not be instructive but merely confusing to consumers. In addition, with significant variance in the quantity of testing available and state reporting of data, it would be difficult to determine accurately the number of COVID-19 cases per SNF in order to compare outcomes in similarly situated SNFs.

Overall, we are concerned about the impact of incomplete or limited quality data on SNFs quality measure star rating. Therefore, we would also like CMS to consider applying neutral rate adjustments for SNFs in years using FY2020 data for either the performance period or baseline period.

NJHA appreciates the opportunity to offer comments; please feel free to contact me with any questions at Neicher@njha.com or 609-275-4088.

Sincerely,

Neil Eicher, MPP
Vice President, Government Relations & Policy
New Jersey Hospital Association
Work: 609-275-4088
Cell: 732-221-2544
NEicher@njha.com