

PROPOSED RULEMAKINGS

DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CH. 1187]

Payment for Nursing Facility Services Provided by Special Rehabilitation Nursing Facilities

The Department of Public Welfare (Department), under the authority of sections 201(2), 206(2), 403(b) and 443.1 of the Public Welfare Code (62 P.S. §§ 201(2), 206(2), 403(b) and 443.1), proposes to amend § 1187.94 (relating to peer grouping for price setting) to read as set forth in Annex A.

Purpose of Proposed Rulemaking

The purpose of this proposed rulemaking is to change the Department's methods and standards for payment of Medical Assistance (MA) nursing facility services provided by special rehabilitation facilities (SRF) effective November 1, 2011. The proposed rulemaking is needed to amend the manner in which the peer group medians and peer group prices are set for facilities classified as SRFs as defined in § 1187.2 (relating to definitions).

The Department is proposing to amend § 1187.94 to provide for a distinct method of calculating peer group medians and prices between the initial four SRFs and the facilities classified as SRFs after 2000. Specifically, the Department is proposing to establish two different formulae for calculating peer group medians and prices for SRFs.

Background

Currently, the MA Program pays for nursing facility services provided to MA-eligible recipients in SRFs at per diem rates that are computed using the case-mix payment system in Chapter 1187, Subchapter G (relating to rate setting). The case-mix rates for SRFs are calculated using the same methodology as other nonpublic nursing facilities except that, for the purposes of establishing peer group medians and prices, SRFs are classified in one Statewide peer group without regard to their size or geographic location. Hospital-based nursing facilities are also classified in a Statewide peer group in § 1187.94. For a nursing facility to be classified in the SRF peer group, more than 70% of the nursing facility's residents must have a neurological/neuromuscular diagnosis and severe functional limitations. See § 1187.2.

When the case-mix system was implemented on January 1, 1996, three nursing facilities were approved as SRFs. In addition, a nursing facility related to one of the original three SRFs was approved in 2000. Between 2004 and 2008, the Department recognized and approved four other nursing facilities as SRFs because they met the existing SRF definition. These four nursing facilities tend to specialize in care for ventilator-dependent residents rather than the type of resident care provided by the SRFs initially approved. A public notice was published at 41 Pa.B. 5826 (October 29, 2011) in which the Department announced it was considering changing its methods and standards for payment of MA nursing facility services provided by SRFs.

In addition, this proposed amendment is consistent with the currently approved State Plan. State Plan Amendment 11-028 was submitted by the Department on

December 28, 2011. It was approved by the Centers for Medicare and Medicaid Services on March 13, 2012, and effective November 1, 2011.

Requirements

Peer group medians and prices will be established for facilities classified as SRFs on or before July 1, 2000, separate from other facilities meeting the definition of "SRF." The methodology used to establish peer group medians and prices for facilities classified as SRFs after July 1, 2000, will not change. The four nursing facilities classified as SRFs after July 1, 2000, as well as nursing facilities classified as an SRF in the future, will continue to have peer group medians and prices established using data from all facilities meeting the definition of SRF.

Affected Individuals and Organizations

This proposed rulemaking will primarily affect the initial SRFs enrolled in the MA Program. This change in rate methodology will provide three of the four initial SRFs an estimated additional \$0.739 million in revenue for the period November 1, 2011, through June 30, 2012. For Fiscal Year (FY) 2012-2013 and beyond, this change in rate methodology will provide an estimated decrease of \$1.684 million in revenue for the initial four SRFs. Other nonpublic nursing facilities may see a minimal positive impact estimated to be an average of 9¢ per bed day or \$2,458 per nonpublic nursing facility for FY 2012-2013. This change does not adversely impact the facilities classified as SRFs after July 1, 2000.

Accomplishments and Benefits

This proposed rulemaking will provide a distinct method of calculating peer group medians and prices between the initial four SRFs and the facilities classified as SRFs after 2000. In addition, this change will ensure that residents with chronic impairments continue to have access to medically necessary nursing facility services.

Fiscal Impact

The estimated fiscal impact for the proposed change in payment rates related to the four special rehabilitation nursing facilities for the period of November 1, 2011, through June 30, 2012, is \$0.331 million in State funds. The estimated fiscal impact for FY 2013-2014 and beyond is \$0.770 million in State funds assuming use of a budget adjustment factor (BAF) is not reauthorized. The application of a BAF in the nursing facility rate setting process ensures that nursing facility payment rates are limited to the percentage rate of change permitted by the funds appropriated by the General Assembly. Additional funding was added to the FY 2011-2012 nursing facility appropriation so that this change in peer group methodology would not be a factor in the quarterly BAF calculations for the November 1, 2011, through June 30, 2012, period as specified in the Commonwealth's currently approved State Plan.

Paperwork Requirements

There are no new or additional paperwork requirements.

Effective Date

The proposed effective date is November 1, 2011.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed

rulemaking to Marilyn Yocum, Department of Public Welfare, Office of Long-Term Living, Bureau of Policy and Regulatory Management, P.O. Box 8025, Harrisburg, PA 17106-8025 within 30 calendar days after publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference Regulation No. 14-537 when submitting comments.

Persons with a disability who require an auxiliary aid or service may submit comments using the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

Regulatory Review Act

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on July 31, 2013, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Human Services and the Senate Committee on Public Health and Welfare. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

BEVERLY D. MACKERETH,
Secretary

Fiscal Note: 14-537. (1) General Fund; (2) Implementing Year 2011-12 is \$331,000; (3) 1st Succeeding Year 2012-13 is \$0; 2nd Succeeding Year 2013-14 is \$0; 3rd Succeeding Year 2014-15 is \$0; 4th Succeeding Year 2015-16 is \$0; 5th Succeeding Year 2016-17 is \$0. The fiscal impact for 2012-13 and beyond assumes that the budget adjustment factor provided for in section 443.1 of the Public Welfare Code, which expires June 30, 2012, is not reauthorized beyond that date. (4) 2008-09 Program—\$672,597,000; 2009-10 Program—\$540,266,000; 2010-11 Program—\$728,907,000; (7) MA—Long-Term Care; (8) recommends adoption. The 2012-13 enacted budget assumes no fiscal impact as a result of this rulemaking.

Annex A

TITLE 55. PUBLIC WELFARE

PART III. MEDICAL ASSISTANCE MANUAL

CHAPTER 1187. NURSING FACILITY SERVICES

Subchapter G. RATE SETTING

§ 1187.94. Peer grouping for price setting.

To set net operating prices under the case-mix payment system, the Department will classify the nursing facilities participating in the MA Program into 14 mutually exclusive groups as follows:

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(2) To set net operating prices under the case-mix payment system, the Department will classify the nursing facilities participating in the MA Program that meet the definition of a special rehabilitation facility into one peer group, peer group number 13. Regardless of the number of facilities in this peer group, the Department will not collapse the peer group of special rehabilitation facilities.

(i) **Effective November 1, 2011, the Department will establish peer group medians and prices for facilities classified as special rehabilitation facilities on or before July 1, 2000, by using data from only the nursing facilities classified as special rehabilitation facilities on or before July 1, 2000.**

(ii) **Effective November 1, 2011, the Department will establish peer group medians and prices for facilities classified as special rehabilitation facilities after July 1, 2000, by using data from all nursing facilities classified as special rehabilitation facilities.**

(3) To set net operating prices under the case-mix payment system, the Department will classify the nursing facilities participating in the MA Program that meet the definition of a hospital-based nursing facility into one peer group, peer group number 14. Regardless of the number of facilities in this peer group, the Department will not collapse the peer group of hospital-based nursing facilities.

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[Pa.B. Doc. No. 13-1477. Filed for public inspection August 9, 2013, 9:00 a.m.]
