13 British American Blvd., Suite 2, Latham, New York 12110 Telephone (518) 867-8383 Web www.nyahsa.org

MEMORANDUM

TO: RHCF and Community Services Members

FROM: Patrick Cucinelli, Senior Director of Public Policy Solutions

DATE: July 18, 2011

SUBJECT: **Proposed Rule for Medicare Part B Rates**

ROUTE TO: Administrator/Director, CFO, Medical Director

ABSTRACT: CMS issues proposed rule for calendar year 2012 Medicare Part B rates.

Introduction

The Centers for Medicare and Medicaid Services (CMS) has released the proposed rule for Medicare Part B payment rate changes for calendar year 2012. These are the rates contained in the Medicare Physician Fee Schedule (MPFS) and include the payments for ancillary/therapy services billed by skilled nursing facilities and home health agencies. The CMS press release is available by clicking here. The complete proposed rule as contained in the *Federal Register* is available by clicking here.

- ***Comments***

CMS will accept comments on the proposed rule until 5:00 p.m. on August 30, 2011, with the final rule scheduled to be released by November 1, 2011. In commenting, please refer to file code CMS-1524-P. Comments may be filed electronically at http://www.regulations.gov and following the instructions for "submitting a comment."

Dramatic Rate Reduction

As anticipated, the proposed rule contains a dramatic 29.5 percent reduction in Medicare Part B rates. This was anticipated because CMS continues to use the same *sustainable growth rate* (SGR) formula as the statutorily mandated methodology for calculating the MPFS rates. The SGR ties increases/decreases in Medicare Part B rates to growth in the economy, and since 2000 has been calling for negative adjustments to the rates. Early on the adjustments were on the order of a couple of negative percentage points. However, Congress has typically overridden the formula and mandated either freezes or slight increases to the rates. The extreme 29.5 percent reduction now being called for is the result of 11 years of SGR negative adjustments being

overridden, and the difference between the formula-driven rates and the actual rates compounding over time.

NYAHSA and LeadingAge, along with other constituencies such as the American Medical Association and the therapy associations, have long advocated for abandoning the seriously flawed SGR methodology and the resulting negative rate adjustments. Congress recognizes the problems with the SGR and has mandated that CMS propose an alternative. However, CMS has yet to do so. As a result, providers are annually faced with the threat of escalating proposed negative rate adjustments.

As we have experienced in recent years, Congressional fixes often need to be implemented retroactively. For example, in 2010 three separate pieces of legislation were necessary to avert the payment cuts, followed by two additional enactments that authorized increases in the MPFS.

Need for a Permanent "Fix"

The problem with the SGR impacts providers across the spectrum since the MPFS also mandates rates paid to physicians, medical suppliers, and other professionals for the services/supplies they deliver under Part B. The Part B rates are also often used as a benchmark by other insurers to set rates. According to the CMS press release:

> *"This payment cut would have serious consequences and we cannot and will not allow it to happen," said Dr. Donald M. Berwick, CMS Administrator. "We need a permanent SGR fix to solve this problem once and for all. That's why the President's budget and his fiscal framework call for averting these cuts and why we are determined to pass and implement a permanent and sustainable fix."*

Therefore, we have some assurance that another Congressional override will likely take place. The main question is when and how it will be implemented. While NYAHSA is currently evaluating the proposed rule, it does not appear that a permanent fix is being proposed.

For conservative budgeting purposes, NYAHSA is recommending that providers project Part B revenue for calendar year 2012 level with 2011.

Additional Highlights

Following are some additional highlights of the proposed rule.

- A thorough review of the geographic data used to evaluate and adjust prices across geographic regions. The Institute of Medicine provided its first of three reports on geographic adjustment factors to CMS on June 1. CMS is continuing to evaluate IOM's recommendations.

- CMS is also proposing to expand its multiple procedure payment reduction to the professional interpretation of advance imaging services to recognize the overlapping activities that go into valuing these services.

- CMS is proposing criteria for a health risk assessment (HRA) to be used in conjunction with Annual Wellness Visits (AWVs), for which coverage began Jan. 1, 2011 under the

Affordable Care Act. This proposal is intended to support a systematic approach to patient wellness and to provide the basis for a personalized prevention plan.

- CMS is proposing to expand the list of services that can be furnished through telehealth to include smoking cessation services. CMS is also proposing to change the way additional services are added to the telehealth list that would focus on the clinical benefit of making the service available through telehealth. If adopted, this change would affect services proposed for the telehealth list in CY 2013.

- The proposed rule would update a number of physician incentive programs including the Physician Quality Reporting System, the ePrescribing Incentive Program and the Electronic Health Records Incentive Program.

- The proposed rule also includes proposed quality and cost measures that would be used in establishing a new value-based modifier that would reward physicians for providing higher quality and more efficient care. The Affordable Care Act requires CMS to begin making payment adjustments to certain physicians and physician groups on Jan. 1, 2015, and to apply the modifier to all physicians by Jan. 1, 2017. CMS intends to work closely with physicians to ensure that efforts to improve the quality, safety, and efficiency of care do not diminish patient access to care. CMS is proposing to use CY 2013 as the initial performance year for purposes of adjusting payments in CY 2015.

- The proposed rule would implement the third year of a 4-year transition to new practice expense relative value units, based on data from the Physician Practice Information Survey that was adopted in the MPFS CY 2010 final rule.

Therapy Caps Exceptions Process

Generally, Congressional action needed to extend to the therapy caps exceptions process is considered along with the overrides to the MPFS negative rate adjustments. The current exceptions process for outpatient therapy caps extends through December 31, 2011. The therapy caps are determined on a calendar year basis, so all patients begin a new cap year on January 1, 2012. Deductible and coinsurance amounts applied to therapy services count toward the amount accrued before a cap is reached. The therapy caps and the exceptions process apply to therapy services provided in both the nursing home and home health settings, along with non-hospital based clinics. The $1,870 cap on physical therapy and the combined $1,870 cap on occupational and speech therapy is being projected for 2012 as well. As in years past, NYAHSA is joining with LeadingAge on advocacy to renew the exceptions process and ultimately to eliminate or develop an alternative to the caps.

For budgeting purposes, NYAHSA recommends that providers assume that the therapy caps exceptions process will be renewed for 2012.

Join the Fight

Nursing home and home health providers are already aware of cuts being proposed in Medicare Part A rates for both sectors (please see NYAHSA Doc. ID # n00005152 and NYAHSA Doc. ID # n00005174 respectively for analyses on the nursing home and home health proposed rules.) To

avoid the additional cuts on the Part B side and to renew the therapy caps exceptions will require Congressional action.

Although Congress has always acted favorably on both these issues in the past, this is a very different year and we cannot take anything for granted!

Over the coming weeks we will be looking for members support on both these issues. Please continue to check the LeadingAge legislative center for updates and calls to action at: http://capwiz.com/leadingage/home/. NYAHSA will also be carefully analyzing the proposed rule and following developments in Congress, and advising members accordingly.

Please contact me with any questions or to share comments at pcucinelli@nyahsa.org or call 518-867-8827.

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