

NOTICES

DEPARTMENT OF HUMAN SERVICES

Payment for Nursing Facility Services Provided by County and Nonpublic Nursing Facilities; Notice of Change in Methods and Standards of Setting Payment Rates; Budget Adjustment Factor

[49 Pa.B. 3414]

[Saturday, June 29, 2019]

The Department of Human Services (Department) is announcing its intent to amend the Commonwealth's Title XIX State Plan to update the Medical Assistance (MA) payment methodology and standards for payment of MA nursing facility services in Fiscal Year (FY) 2019-2020 to authorize the continued use of a budget adjustment factor (BAF) in setting payment rates for nursing facility services.

Background

Since 1996, the Department has used a case-mix prospective payment methodology to set per diem rate payments for MA nursing facility providers. One of the reasons the Department adopted this payment methodology was that the prior retrospective cost-based payment system had proven to be "highly inflationary" and change was necessary to curb an "explosive growth of nursing facility expenditures." See 25 Pa.B. 4477 (October 14, 1995). In 2006, the Department noted that "since the case-mix payment system was implemented in 1996, MA nursing facility payment rates have risen more than 56% and, since 2000, have increased by 27.4% overall. During this same period, expenditures for MA nursing facility services have grown to nearly \$3 billion and expenditures for MA services to the elderly and people with disabilities now consume approximately 70% of the \$14 billion MA Program budget." See 36 Pa.B. 3207 (June 24, 2006).

Realizing that the MA Program could not continue to sustain the pace at which long-term care expenditures were growing, the Department amended the Commonwealth's Title XIX State Plan and issued regulations changing the case-mix payment methodology effective July 1, 2005, to include use of a BAF in annual rate-setting. See 35 Pa.B. 6232 (November 12, 2005). Application of a BAF was continued in 2007, 2008, 2011, 2013 and again in 2016. See the act of June 30, 2007 (P.L. 49, No. 16), the act of July 4, 2008 (P.L. 557, No. 44), the act of June 30, 2011 (P.L. 89, No. 22), the act of July 9, 2013 (P.L. 369, No. 55) and the act of July 8, 2016 (P.L. 480, No. 76). The BAF limits the estimated Statewide day-weighted average payment rate for MA nursing facility services

for county and nonpublic nursing facilities in effect for the fiscal year to the amount permitted by the funds appropriated by the General Appropriations Act for the fiscal year.

Since the implementation of the BAF, case-mix per diem rates have increased on an annual average basis by \$2.52 per day and in the aggregate by 21.23% overall from FY 2004-2005 through estimated payment rates for FY 2018-2019. In contrast, had the BAF not been used, rates would have increased on an annual average basis by \$5.59 per day and overall by 47.14%, well in excess of either the Consumer Price Index or the Centers for Medicare & Medicaid Services' (CMS) Nursing Home without Capital Market Basket Index.

Further, during the years that the BAF has been in place, the Department has not uncovered any evidence that the quality of care in this Commonwealth's MA nursing facilities has been adversely impacted by use of the BAF. To the contrary, MA nursing facility providers continue to deliver a high quality of care. The Department does not expect the quality of care to decline in FY 2019-2020, and will continue enforcement and monitoring activities to ensure that is the case.

In addition, although the BAF has served to moderate the overall aggregate increases in case-mix per diem rates, the adjusted case-mix per diem rate payments, together with the other supplemental payments to nursing facilities authorized under the Commonwealth's approved State Plan, have been and will continue to be sufficient to assure that MA recipients have access to medically necessary nursing facility services. The vast majority of licensed nursing facilities in this Commonwealth participate as providers in the MA Program, and the MA Program pays for more days of nursing facility care than all other payors combined. The Department does not expect this to change in FY 2019-2020.

In short, use of the BAF has served to conserve taxpayer funds while assuring, and continuing to assure, that payments to nursing facilities under the MA Program are consistent with efficiency and economy and at the same time sufficient to assure access to quality care.

The BAF is currently set to expire on June 30, 2019. 62 P.S. § 443.1(7)(iv). The Department anticipates that the General Assembly will enact legislation to continue the use of a BAF in FY 2019-2020, subject to CMS approval. The Department issues this notice in preparation of the anticipated reauthorization of the BAF.

Proposed BAF Methodology for FY 2019-2020

The Department intends to submit a State Plan Amendment (SPA) to CMS to continue use of the BAF. Under the proposed SPA, the Department will apply a BAF and make adjustments to nonpublic nursing facility and county nursing facility payment rates in FY 2019-2020. As in prior years, the BAF will limit the estimated Statewide day-weighted average payment rate for MA nursing facility services for county and nonpublic nursing facilities so that the average payment rate in effect for the fiscal year is limited to the amount permitted by the funds appropriated by the General Appropriations Act for the fiscal year.

Nonpublic Nursing Facilities

From July 1, 2005, through June 30, 2011, the Department calculated one BAF each rate-setting year and applied that BAF to the nursing facility payment rates in effect for the rate-setting year. For FY 2011-2012, the nursing facility industry requested and the Department responded by calculating a BAF each quarter of the fiscal year for nonpublic nursing facilities instead of calculating one BAF for the fiscal year. For FYs 2012-2013 through 2016-2017, the Department returned to formulas similar to the formula used in FYs 2009-2010 and 2010-2011 which allowed for an adjustment in the fourth quarter if certain conditions were met. See 39 Pa.B. 4958 (August 15, 2009). For FYs 2017-2018 and 2018-2019 the Department calculated a quarterly BAF for nonpublic nursing facilities using a formula similar to the formula used in FY 2011-2012. The Department is proposing to calculate a quarterly BAF in FY 2019-2020 for nonpublic nursing facilities using the same formula used in FYs 2017-2018 and 2018-2019. Since nursing facilities are currently being phased into managed care in three phases according to geographic location beginning January 1, 2018, a quarterly BAF allows for a more uniform Statewide average rate. The formula is as follows.

Nonpublic Nursing Facilities' BAF Determination

Quarterly BAF Formula—Prior to establishing the MA nonpublic nursing facility quarterly rates for the 2019-2020 rate year, the Department will use the following formula to determine the Quarterly BAF:

Annual target rate divided by the weighted average quarterly rate at 100% equals the Quarterly BAF.

If the Quarterly BAF as calculated is greater than 1.0, the Quarterly BAF will equal 1.0.

Terms Related to the BAF Determination

The following words and terms, when used in the 2019-2020 BAF determinations, have the following meaning, unless the context clearly indicates otherwise:

Annual target rate—The base rate multiplied by one plus the percentage rate of change permitted by the funds appropriated by the General Appropriations Act for the applicable rate year.

Base days—The source of days for the day-weighted calculation used in determining the base rate and the weighted-average quarterly rates at 100%. The base days are the sum of each nonpublic nursing facility's paid facility days, therapeutic leave days and 1/3 of the hospital bed reserve days for dates of service for the quarter beginning 6 months prior to the quarterly rate for which the BAF is being calculated.

Base rate—The base rate is the prior year's target rate in effect as of January 1, 2019.

Quarterly BAF—The BAF applied to each nonpublic nursing facility's quarterly rate, as calculated for the quarter.

Weighted-average quarterly rate at 100%—The Statewide day-weighted average of the nonpublic nursing facilities' quarterly rates, as applicable, determined in accordance

with 55 Pa. Code Chapter 1187 (relating to nursing facility services), calculated using base days, prior to application of a BAF.

County Nursing Facilities

The Department intends to submit a SPA to CMS to continue use of the BAF. Under the proposed SPA, the Department will continue to calculate and apply the BAF to county nursing facility payment rates as it has in prior rate-setting years. Specifically, the Department will adjust each county nursing facility's per diem rate by multiplying the rate by a BAF. A county nursing facility's per diem rate for an MA resident will be the facility's January 1, 2019, per diem rate as calculated under 55 Pa. Code Chapter 1189, Subchapter D (relating to rate setting) and 55 Pa. Code § 1189.91(b) (relating to per diem rates for county nursing facilities) multiplied by the county BAF.

Use of the calculations previously described is contingent upon legislation continuing application of a BAF and the approval by CMS of the SPA.

Fiscal Impact

No fiscal impact is anticipated as a result of these changes through June 30, 2020. The amount of funding available for this program is dependent upon the funds appropriated by the General Assembly in the forthcoming fiscal year. Therefore, until a budget bill is passed and enacted, any estimated fiscal impact associated with this notice is based on the funding levels in the General Appropriation Act of 2018.

Public Comment

Interested persons are invited to submit written comments regarding the BAF formula to the Department of Human Services, Office of Long-Term Living, Bureau of Policy and Regulatory Management, Attention: Marilyn Yocum, P.O. Box 8025, Harrisburg, PA 17105-8025. Comments received within 30 days will be reviewed and considered.

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).

TERESA D. MILLER,
Secretary

Fiscal Note: 14-NOT-1347. No fiscal impact; (8) recommends adoption.

[Pa.B. Doc. No. 19-980. Filed for public inspection June 28, 2019, 9:00 a.m.]

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