June 9, 2020

SUBMITTED ELECTRONICALLY VIA www.regulations.gov

Ms. Seema Verma
Administrator
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

RE: Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Updates to the Value-Based Purchasing Program for Federal Fiscal Year 2021 [CMS-1737-P, RIN: 0938-AU13]

Dear Administrator Verma:

The undersigned members of the Coalition to Preserve Rehabilitation (CPR) Steering Committee appreciate the opportunity to comment on the proposed rule entitled, *Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Updates to the Value-Based Purchasing Program for Federal Fiscal Year 2021*. This letter focuses on the Centers for Medicare and Medicaid Services' (CMS) implementation of the Patient-Driven Payment Model (PDPM) and its impact on access to therapy in Skilled Nursing Facilities (SNFs).

CPR is a coalition of more than 50 national consumer, clinician, and membership organizations that advocate for policies to ensure access to rehabilitative care so that individuals with injuries, illnesses, disabilities, and chronic conditions may regain and/or maintain their maximum level of health and independent function. CPR is comprised of organizations that represent patients – as well as the clinicians who serve them – who are frequently in need of the rehabilitation care provided in SNFs.

Overview

The proposed rule includes technical and payment policy updates to the SNF Prospective Payment System (PPS) and administrative changes to the SNF Value-Based Purchasing Program. We do not offer comment on these proposed policies at this time. CMS also notes that the agency "continue[s] to monitor the impact of PDPM implementation on patient outcomes and program outlays," though the recent effective date of the PDPM makes the currently available data "premature." CMS also specifically invites comments from stakeholders "on any

observations or information related to the impact of PDPM implementation on providers or on patient care." We focus our comments on this request in the proposed rule.

Concerns with the Patient-Driven Payment Model

CPR continues to be concerned with the observed and ongoing impact of the Patient-Driven Payment Model (PDPM) implemented in the SNF PPS effective October 1, 2019. CMS implemented this new case-mix classification model to group patients admitted to SNFs during covered Medicare Part A stays, replacing the Resource Utilization Group, Version IV (RUG-IV) system. CMS has stated that the impetus for developing the PDPM was to move away from incentives under the RUG-IV system that encouraged excess provision of therapy and to instead drive therapy based on patient characteristics.

However, we have long held concerns regarding the PDPM structure, namely, that the program instead incentivizes facilities to decrease or even refrain from providing therapy to patients in SNFs, regardless of patient need. Specific incentives include higher reimbursement for facilities for providing 15 or fewer days of Medicare coverage and no therapy, higher reimbursement for classifying more days as non-rehabilitation days, and lower reimbursement for high-need, often complex patients such as the oldest residents, those receiving three different types of therapy, and those with more than 30 days of a Medicare-reimbursed SNF stay. Additionally, due to the patient classifications that receive higher reimbursement under the PDPM, SNFs are more incentivized to admit certain demographics of patients over others.

Troubling Indicators Through Early PDPM Implementation

As CMS notes, the PDPM has been in effect less than a year, and the agency has not yet published sufficient data to fully understand the impact of this new model on patients' ability to access therapy in the SNF setting. However, based on reports from organizations representing patients and therapists, there are a number of troubling indicators that suggest the PDPM is driving a decrease in access to rehabilitation therapy. While CMS has clarified that the PDPM (along with the Patient-Driven Groupings Model implemented in the Home Health PPS) does not impact Medicare coverage of SNF and home health services, reports from the field have thus far suggested that the models have already served to impede access to therapy for patients who need skilled care.

Group Therapy Under PDPM

The PDPM includes a cap on the provision of group and concurrent therapy, limiting these therapies to 25% of an individual patient's therapy time by discipline. However, the PDPM does not include any penalty for exceeding this limit, and there has been little, if any, enforcement by CMS of the 25% cap. Stakeholders aired concerns about the incentive to reduce individualized therapy when the PDPM was proposed, and initial reports from therapists since the model's implementation have suggested these concerns were warranted. For example, a survey conducted by the American Physical Therapy Association found that more than three quarters of SNF-based

respondents reported an increase in the use of group therapy over the past year, and more than 40% reported that their employer mandated the changes. Similar results were reported for concurrent therapy utilization in SNFs as well. While group and concurrent therapy can be valuable and appropriate in certain circumstances, we believe individualized therapy should not be deemphasized based on payment system incentives.

Decreasing Therapy Staff

As reported by all of the major rehabilitation therapy associations, soon after the implementation of the PDPM, SNFs across the country began to eliminate positions and drastically reduce hours for employed therapists due to the payment changes inherent in the PDPM payment model. Organizations representing therapists have also received reports from their members that remaining therapists have been directed to cycle patients more quickly through their therapy program and decrease the therapy minutes provided. These reports are troubling and may indicate that the new model is driving decisions based on financial considerations, rather than patient care needs. CPR continues to be particularly concerned about the provision of maintenance therapy, which is covered by Medicare as affirmed under the *Jimmo v. Sebelius* class action settlement but is often at risk of being cut or eliminated entirely. "Maintenance" therapy assists a patient to maintain or prevent deterioration of their functional status, as opposed to improving their functional abilities.

More Data is Needed to Understand Impact on Patients

As outlined above, the data thus far is largely anecdotal but it is clearly concerning. In order to truly assess the impact of the PDPM on patients, robust data from CMS is critical. **We urge the agency to expedite the collection and reporting of data on therapy utilization, characteristics of patients receiving therapy, patient outcomes, and other information on the PDPM implementation**. With the significant change in reimbursement that the PDPM system represents, we strongly believe the agency should report a broader range of data to ensure that stakeholders and patient advocates are sufficiently able to understand potential barriers to accessing rehabilitation therapies inherent in the new system.

Additionally, we urge CMS to report this data at least quarterly, rather than annually, to ensure that patients who may face decreased access to therapy do not have to wait a full year or more to address these issues. Transparent and detailed data reporting will allow stakeholders in the rehabilitation and patient advocacy community to work with CMS to develop improvements to the system to properly serve beneficiaries and allow the reimbursement system to provide the skilled rehabilitative care they need.

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We greatly appreciate your consideration of our comments on the FY 2021 SNF PPS proposed rule. Should you have any further questions regarding this information, please contact Peter Thomas or Joe Nahra, coordinators for CPR, by e-mailing Peter.Thomas@PowersLaw.com or Joseph.Nahra@PowersLaw.com, or by calling 202-466-6550.

Sincerely,

The Steering Committee of the Coalition to Preserve Rehabilitation

Brain Injury Association of America
Center for Medicare Advocacy
Christopher and Dana Reeve Foundation
Falling Forward Foundation
National Multiple Sclerosis Society
United Spinal Association