

## *Potential Framework for SNF Provisions in Final Legislation*

Both the House and Senate Bills contain provisions related to Skilled Nursing Facility Medicare payments, but the two bills differ in several important respects (see attached Table comparing the House and Senate Bills). The summary below reflects the provisions from each Bill that the SNF provider community supports and believes each element must be addressed in the final legislation passed by Congress.

It is important to emphasize that each of the regulatory provisions related to the Medicare SNF payment system below are budget neutral to the Medicare program.

1. *Medicare Productivity and Market Basket Adjustments.* The SNF sector would acquiesce to the productivity adjustments to future market basket updates set forth in the Senate Bill, totaling \$14.6 billion over the ten-year period 2010-2019 (as compared with the \$23.9 billion in market basket and productivity adjustments cuts in the House Bill). We also share the concerns of other Medicare provider groups that the market basket and productivity adjustment provision could result in below zero updates. We support efforts to address this issue in a budget neutral manner.
2. *RUGs IV Payment System.* The SNF sector supports a one-year postponement of the effective date of RUGs IV payment system and concurrent therapy policy, until October 1, 2011 to enable CMS to reopen the comment period and address the following issues in negotiated rulemaking:
  - a. *Non-Therapy Ancillaries.* The SNF sector would support adding a new rate component and possibly an outlier pool to the RUGs IV payment system for non-therapy ancillaries, similar to the House Bill and MedPAC recommendations.
  - b. *Concurrent Therapy.* Concurrent therapy would be permitted under RUGs IV, concurrent therapy minutes would be used to assign patients to payment categories, but concurrent therapy costs would be allocated to calculate weights, as per MedPAC's recommendations.<sup>1</sup>
  - c. *Budget Neutrality.* CMS must ensure that the RUGs IV payment system is budget neutral and share data with stakeholders to verify budget neutrality.
3. *Medicaid*
  - a. Support expanding MedPAC Charter
  - b. Support the provision "Temporary Nursing facility Supplemental Payment Program" in the House bill that would provide \$1.5B in annual payments to dually certified (Medicare and Medicaid) SNFs who meet a specified set of criteria, totaling \$6 billion over 4-years. We have suggested amendments to the criteria to be used in qualifying the eligible SNFs House staff that would be less administratively burdensome for facilities. We would ask that SNFs have the right to an administrative appeal process in the case of a denial of an individual SNF's eligibility to receive the additional payment and require consultation with stakeholders in developing the details of the program.
  - c. Support House provision extending the ARRA stimulus funding for the Federal enhanced match to the state Medicaid programs.
4. *Support SNF Transparency Provisions as contained in the Senate Bill with some additional modifications.*

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<sup>1</sup> In negotiated rulemaking, CMS may also adopt other safeguards such as limiting concurrent therapy to no more than 2 patients and no more than 25% of each patient's therapy time may be in concurrent sessions (consistent with policies for group therapy).

**Summary of SNF Provisions in House Bill and Senate Bill**

	<b>Senate Bill</b>	<b>House Bill</b>	<b>Proposed Conference Agreement</b>
1. Medicare Savings	\$14.6 billion in Medicare cuts through “productivity” adjustments	\$23.9 billion in Medicare cuts through “productivity” adjustments and market basket reductions	Adopt Senate provision <b>\$14.6 billion in Medicare savings</b>
2. RUGs IV	No provision	Legislates RUGs IV (CMS has already adopted final rule, effective October 1, 2010)	Delay RUGs IV and concurrent therapy implementation until October 1, 2011. <b>Budget Neutral</b>
3. Forecast Error	No provision	Legislates Forecast Error (CMS has already adopted, effective October 1, 2009)	No provision because already in effect. <b>Budget Neutral</b>
4. Non-Therapy Ancillaries (NTAs)	No provision	a. Temporary rate adjustment for NTAs effective April 1, 2010, remaining in effect until RUGs IV system redesign by October 1, 2010  b. Add permanent rate component and outlier pool for NTAs, effective October 1, 2010	Adopt portion of House provision: Include permanent NTA and outlier rate component as part of RUGs IV, effective October 1, 2011. Make outlier component discretionary. <b>Budget Neutral</b>
5. Concurrent Therapy	No provision	No provision	Adopt MedPAC position that counts concurrent therapy minutes for RUGs assignment purposes but allocates costs for purposes of weight development. <sup>2</sup> <b>Budget Neutral</b>
6. Medicaid	Expands MedPAC Charter to evaluate overall margins and payment adequacy	a. Temporary Medicaid rate enhancement of \$6 billion b. Calls for Study of Medicaid Issue c. Extension of stimulus funds for enhanced Federal match to state Medicaid programs	Support Senate provision on MedPAC charter ( <b>Budget Neutral</b> ); support House provision on temporary Medicaid rate enhancement (with appropriate modifications); and support House provision on extension of stimulus funds for enhanced Federal match to state Medicaid programs
7. Quality/Transparency	Included	Included	Support, with appropriate modifications in the Senate Bill <b>Budget Neutral</b>

<sup>2</sup> In negotiated rulemaking, CMS may also adopt other safeguards such as limiting concurrent therapy to 2 patients and adopting cap of 25% on amount of concurrent therapy that can be received by each patient.