Hospice Market Basket Updates and Productivity Adjustment

**Summary:** Incorporates a productivity adjustment into the market basket update for various providers, including hospice, beginning in fiscal year 2013 for hospice. Also incorporates a productivity adjustment for hospice providers.

**Status update:** On July 16, 2010, the Center for Medicare and Medicaid Services (CMS) issued a notice providing the final wage index for the Medicare hospice benefit.

**Next steps:**
- July 16, 2010 – CMS issues notice regarding hospice wage index
- August 31, 2010 – Comments due on notice for hospice
- January 1, 2011 – Changes for CY 2011 go into effect for hospice

**Additional information:**
- CMS market basket research and information -- [http://www.cms.gov/MedicareProgramRatesStats/05_MarketBasketResearch.asp#TopOfPage](http://www.cms.gov/MedicareProgramRatesStats/05_MarketBasketResearch.asp#TopOfPage)

**Long summary:**
Sec. 3401. Revision of certain market basket updates and incorporation of productivity improvements into market basket updates that do not already incorporate such improvements (as modified by sec. 10319 and sec. 1105 of HCERA).

(with items only specific to hospice)
*Market basket update.* Reduces the market basket update for hospice providers by 0.3 percentage points in fiscal years 2013-2019 in addition to the productivity adjustments described below. Reductions may cause a negative update and may result in payment rates for a year being less than the payment rates for the preceding year. In 2014-2019, the 0.3 percentage point reduction applicable to hospice providers is waived if in any year from 2014-2019, the previous year’s total percentage of insured population (as reflected in the share of the total, non-elderly population) is
more than five percentage points below CBO projections of such percentage at the time of bill enactment.

*Productivity adjustment.* Applies a productivity adjustment to the update for hospice providers beginning in FY 2013. The productivity adjustment is the 10-year moving average of changes in annual economy-wide private non-farm business multi-factor productivity (as projected by the Secretary for the 10-year period ending with the applicable year, fiscal year, cost reporting period, or other annual period). The productivity adjustments may cause a negative update and may result in payment rates for a year being less than the payment rates for the preceding year.

**Summary of the Regulations:**

*Payment increase.* The estimated hospice payment increase is the net result of a 2.6 percent increase in the “hospital market basket,” an indicator of input price increases. This is an offset by an estimated 0.8 percent decrease in payments to hospices due to updated wage index data and the second year of CMS’ 7-year phase-out of its wage index budget neutrality adjustment factor (BNAF).

*Cap calculation.* The notice solicits public comments on two possible approaches to modernizing the hospice aggregate cap calculation. These approaches take advantage of new computing technologies to streamline the cap calculations, which may lead to a timelier provider notification of overpayments. CMS will consider the comments in future analyses and possible future rulemaking.

*Face to face encounter.* The notice also refers the public to the “Home Health Prospective Payment System Rate Update” for Calendar Year 2011, a proposed rule which is expected to be published in summer 2010. This home health proposed rule will include a hospice proposal for implementing a new requirement for a face-to-face encounter by a physician or nurse practitioner prior to recertifying the eligibility of a Medicare beneficiary for hospice services, as mandated by the Affordable Care Act.

**Legislative text:**

SEC. 3401. REVISION OF CERTAIN MARKET BASKET UPDATES AND INCORPORATION OF PRODUCTIVITY IMPROVEMENTS INTO MARKET BASKET UPDATES THAT DO NOT ALREADY INCORPORATE SUCH IMPROVEMENTS.

(3) HOSPICE CARE.—Section 1814(i)(1)(C) of the Social Security Act (42 U.S.C. 1395f(i)(1)(C)), as amended by section 3132, is amended by adding at the end the following new clauses:

“(v) After determining the market basket percentage increase under clause (ii)(VII) or (iii), as applicable, with respect to fiscal year 2013 and each subsequent fiscal year, the Secretary shall reduce such percentage—

“(I) for 2013 and each subsequent fiscal year, by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II); and

“(II) subject to clause (v), for each of fiscal years 2013 through 2019, by 0.3 percentage point. The application of this clause may result in the market basket percentage increase under clause (ii)(VII) or (iii), as applicable, being less than 0.0 for a fiscal year, and may result in payment rates under this subsection for a fiscal year being less than such payment rates for the preceding fiscal year.

“(v) Clause (iv)(II) shall be applied with respect to any of fiscal years 2014 through 2019 by substituting ‘0.0 percentage points’ for ‘0.3 percentage point’, if for such fiscal year—

“(I) the excess (if any) of—

“(aa) the total percentage of the non-elderly insured population for the preceding fiscal year (based on the most recent estimates available from the Director of the Congressional Budget Office before a vote in either House on the Patient Protection and Affordable Care Act that, if determined in the affirmative, would clear such Act for enrollment); and

“(bb) the total percentage of the non-elderly insured population for such preceding fiscal year (as estimated by the Secretary); exceeds

“(II) 5 percentage points.”.

SEC. 3401. REVISION OF CERTAIN MARKET BASKET UPDATES AND INCORPORATION OF PRODUCTIVITY IMPROVEMENTS INTO MARKET BASKET UPDATES THAT DO NOT ALREADY INCORPORATE SUCH IMPROVEMENTS.

(F) PRODUCTIVITY AND OTHER ADJUSTMENT.—After determining the OPD fee schedule increase factor under subparagraph (C)(iv), the Secretary shall reduce such increase factor—

“(i) for 2012 and subsequent years, by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II); and
“(ii) for each of 2010 through 2019, by the adjustment described in subparagraph (G).
The application of this subparagraph may result in the increase factor under subparagraph (C)(iv) being less than
0.0 for a year, and may result in payment rates under the payment system under this subsection for a year being less than such payment rates for
the preceding year.

“(G) OTHER ADJUSTMENT.—For purposes of subparagraph (F)(ii), the adjustment described in this
subparagraph is—

“(i) for each of 2010 and 2011, 0.25 percentage point;

“(ii) for each of 2012 and 2013, 0.1 percentage point;

“(iii) for 2014, 0.3 percentage point;

“(iv) for each of 2015 and 2016, 0.2 percentage point; and

“(v) for each of 2017, 2018, and 2019, 0.75 percentage point.”.

(o) OTHER ITEMS.—Section 1842(s)(1) of the Social Security Act (42 U.S.C. 1395u(s)(1)) is amended—
(1) in the first sentence, by striking “Subject to” and inserting “(A) Subject to”;
(2) by striking the second sentence and inserting the following new subparagraph:

“(B) Any fee schedule established under this paragraph for such item or service shall be updated—

“(i) for years before 2011—

“(I) subject to subclause (II), by the percentage increase in the consumer price index for all urban consumers (United States city average) for the
12- month period ending with June of the preceding year; and

“(II) for items and services described in paragraph (2)(D) for 2009, section 1834(a)(14)(J) shall apply under this paragraph instead of the
percentage increase otherwise applicable; and

“(ii) for 2011 and subsequent years—

“(I) the percentage increase in the consumer price index for all urban consumers (United States city average) for the 12-month period ending
with June of the previous year, reduced by—

“(II) the productivity adjustment described in section 1886(b)(3)(B)(xi)(II).”; and

(3) by adding at the end the following flush sentence:

“The application of subparagraph (B)(ii)(II) may result in the update under this paragraph being less than 0.0 for a year, and may result in
payment rates under any fee schedule established under this paragraph for a year being less than such payment rates for the preceding year.”.

(p) NO APPLICATION PRIOR TO APRIL 1, 2010.—Notwithstanding the preceding provisions of this section, the amendments made by
subsections (a), (c), and (d) shall not apply to discharges occurring before April 1, 2010.