

## § 413.338

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fiscal year, the SNF market basket index percentage change for the fiscal year (as specified in paragraph (d)(1)(v) of this section, as modified by any applicable forecast error adjustment under paragraph (d)(2) of this section, reduced by the MFP adjustment specified in paragraph (d)(3) of this section, and as specified for FY 2018 in section 1888(e)(5)(B)(iii) of the Act), is further reduced by 2.0 percentage points.

(ii) The application of the 2.0 percentage point reduction specified in paragraph (d)(4)(i) of this section to the SNF market basket index percentage change may result in such percentage being less than zero for a fiscal year, and may result in payment rates for that fiscal year being less than such payment rates for the preceding fiscal year.

(iii) Any 2.0 percentage point reduction applied pursuant to paragraph (d)(4)(i) of this section will apply only to the fiscal year involved and will not be taken into account in computing the payment amount for a subsequent fiscal year.

(e) Pursuant to section 101 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA) as revised by section 314 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), using the best available data, the Secretary will issue a new regulation with a newly refined case-mix classification system to better account for medically complex patients. Upon issuance of the new regulation, the temporary increases in payment for certain high cost patients will no longer be applicable.

(f) *Adjustments to payment rates under the SNF Value-Based Purchasing Program.* Beginning with payment for services furnished on October 1, 2018, the adjusted Federal per diem rate (as defined in § 413.338(a)(2)) otherwise applicable to a SNF for the fiscal year is reduced by the applicable percent (as defined in § 413.338(a)(3)). The resulting amount is then adjusted by the value-based incentive payment amount (as defined in § 413.338(a)(14)) based on the SNF's performance score for that fiscal year under the SNF Value-Based Pur-

chasing Program, as calculated under § 413.338.

[63 FR 26309, May 12, 1998, as amended at 66 FR 39600, July 31, 2001; 68 FR 46070, Aug. 4, 2003; 76 FR 48539, Aug. 8, 2011; 82 FR 36633, Aug. 4, 2017; 83 FR 39289, Aug. 8, 2018; 87 FR 47616, Aug. 3, 2022]

### § 413.338 Skilled nursing facility value-based purchasing program.

(a) *Definitions.* As used in this section:

*Achievement threshold (or achievement performance standard)* means the 25th percentile of SNF performance on a measure during the baseline period for a fiscal year.

*Adjusted Federal per diem rate* means the payment made to SNFs under the skilled nursing facility prospective payment system (as described under section 1888(e)(4)(G) of the Act).

*Applicable percent* means for FY 2019 and subsequent fiscal years, 2.0 percent.

*Baseline period* means the time period used to calculate the achievement threshold, benchmark, and improvement threshold that apply to a measure for a fiscal year.

*Benchmark* means, for a fiscal year, the arithmetic mean of the top decile of SNF performance on a measure during the baseline period for that fiscal year.

*Eligible stay* means, for purposes of the SNF readmission measure, an index SNF admission that would be included in the denominator of that measure.

*Health equity adjustment (HEA) bonus points* means the points that a SNF can earn for a program year based on its performance and proportion of SNF residents who are members of the underserved population.

*Improvement threshold (or improvement performance standard)* means an individual SNF's performance on a measure during the applicable baseline period for that fiscal year.

*Logistic exchange function* means the function used to translate a SNF's performance score into a value-based incentive payment percentage.

*Low-volume SNF* means a SNF with fewer than 25 eligible stays included in the SNF readmission measure denominator during the performance period

for each of fiscal years 2019 through 2022.

*Measure performance scaler* means, for a program year, the sum of the points assigned to a SNF for each measure on which the SNF is a top tier performing SNF.

*Performance period* means the time period during which SNF performance on a measure is calculated for a fiscal year.

*Performance score* means the numeric score ranging from 0 to 100 awarded to each SNF based on its performance under the SNF VBP Program for a fiscal year.

*Performance standards* are the levels of performance that SNFs must meet or exceed to earn points on a measure under the SNF VBP Program for a fiscal year.

*Ranking* means the ordering of SNFs based on each SNF's performance score under the SNF VBP Program for a fiscal year.

*SNF readmission measure* means, prior to October 1, 2019, the all-cause all-condition hospital readmission measure (SNFRM) or the all-condition risk-adjusted potentially preventable hospital readmission rate (SNFPPR) specified by CMS for application in the SNF Value-Based Purchasing Program. Beginning October 1, 2019, the term SNF readmission measure means the all-cause all-condition hospital readmission measure (SNFRM) or the all-condition risk-adjusted potentially preventable hospital readmission rate (Skilled Nursing Facility Potentially Preventable Readmissions after Hospital Discharge measure) specified by CMS for application in the SNF VBP Program.

*SNF Value-Based Purchasing (VBP) Program* means the program required under section 1888(h) of the Act.

*Top tier performing SNF* means a SNF whose performance on a measure during the applicable program year meets or exceeds the 66.67th percentile of SNF performance on the measure during the same program year.

*Underserved multiplier* means the mathematical result of applying a logistic function to the number of SNF residents who are members of the underserved population out of the SNF's total Medicare population, as identi-

fied from the SNF's Part A claims, during the performance period that applies to the 1-year measures for the applicable program year.

*Underserved population* means Medicare beneficiaries who are SNF residents in a Medicare Part A stay who are also dually eligible, both partial and full, for Medicaid.

*Value-based incentive payment adjustment factor* is the number that will be multiplied by the adjusted Federal per diem rate for services furnished by a SNF during a fiscal year, based on its performance score for that fiscal year, and after such rate is reduced by the applicable percent.

*Value-based incentive payment amount* is the portion of a SNF's adjusted Federal per diem rate that is attributable to the SNF VBP Program.

(b) *Applicability of the SNF VBP Program.* The SNF VBP Program applies to SNFs, including facilities described in section 1888(e)(7)(B) of the Act. Beginning with fiscal year 2023, the SNF VBP Program does not include a SNF, with respect to a fiscal year, if:

(1) The SNF does not have the minimum number of cases that applies to each measure for the fiscal year, as specified by CMS; or

(2) The SNF does not have the minimum number of measures for the fiscal year, as specified by CMS.

(c) *Process for reducing the adjusted Federal per diem rate and applying the value-based incentive payment adjustment factor under the SNF VBP Program—*(1) *General.* CMS will make value-based incentive payments to each SNF based on its performance score for a fiscal year under the SNF VBP Program under the requirements and conditions specified in this paragraph.

(2) *Value-based incentive payment amount—*(i) *Total amount available for a fiscal year.* The total amount available for value-based incentive payments for a fiscal year is at least 60 percent of the total amount of the reduction to the adjusted SNF PPS payments for that fiscal year, as estimated by CMS, and will be increased as appropriate for each fiscal year to account for the assignment of a performance score to low-volume SNFs under paragraph (d)(3) of this section. Beginning with the FY 2023 SNF VBP, the total

amount available for value-based incentive payments for a fiscal year is 60 percent of the total amount of the reduction to the adjusted SNF PPS payments for that fiscal year, as estimated by CMS. Beginning with the FY 2027 SNF VBP, the total amount available for value-based incentive payments for a fiscal year is at least 60 percent of the total amount of the reduction to the adjusted SNF PPS payments for that fiscal year, as estimated by CMS, and will be increased as appropriate for each fiscal year to account for the application of the Health equity adjustment bonus points as calculated under paragraph (k) of this section.

(ii) *Calculation of the value-based incentive payment amount.* The value-based incentive payment amount is calculated by multiplying the adjusted Federal per diem rate by the value-based incentive payment adjustment factor, after the adjusted Federal per diem rate has been reduced by the applicable percent.

(iii) *Calculation of the value-based incentive payment adjustment factor.* The value-based incentive payment adjustment factor is calculated by estimating Medicare spending under the skilled nursing facility prospective payment system to estimate the total amount available for value-based incentive payments, ordering SNFs by their SNF performance scores, then assigning an adjustment factor value for each performance score subject to the limitations set by the exchange function.

(iv) *Reporting of adjustment to SNF payments.* CMS will inform each SNF of the value-based incentive payment adjustment factor that will be applied to its adjusted Federal per diem rate for services furnished during a fiscal year at least 60 days prior to the start of that fiscal year.

(d) *Performance scoring under the SNF VBP Program (applicable, as described in this paragraph, to fiscal year 2019 through and including fiscal year 2025).* (1) CMS will award points to SNFs based on their performance on the SNF readmission measure applicable to a fiscal year during the performance period applicable to that fiscal year as follows:

(i) CMS will award from 1 to 99 points for achievement to each SNF whose performance meets or exceeds the achievement threshold but is less than the benchmark.

(ii) CMS will award from 0 to 90 points for improvement to each SNF whose performance exceeds the improvement threshold but is less than the benchmark.

(iii) CMS will award 100 points to a SNF whose performance meets or exceeds the benchmark.

(iv) CMS will not award points for improvement to a SNF that has fewer than 25 eligible stays during the baseline period.

(2) The highest of the SNF's achievement, improvement and benchmark score will be the SNF's performance score for the fiscal year.

(3) If, with respect to a fiscal year beginning with fiscal year 2019 through and including fiscal year 2022, CMS determines that a SNF is a low-volume SNF, CMS will assign a performance score to the SNF for the fiscal year that, when used to calculate the value-based incentive payment amount (as defined in paragraph (a)(17) of this section), results in a value-based incentive payment amount that is equal to the adjusted Federal per diem rate (as defined in paragraph (a)(2) of this section) that would apply to the SNF for the fiscal year without application of § 413.337(f).

(4)(i) A SNF may request and CMS may grant exceptions to the SNF Value-Based Purchasing Program's requirements under this section for one or more calendar months when there are certain extraordinary circumstances beyond the control of the SNF.

(ii) A SNF may request an exception within 90 days of the date that the extraordinary circumstances occurred in the form and manner specified by CMS on the SNF VBP website at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Value-Based-Programs/SNF-VBP/Extraordinary-Circumstance-Exception>. The request must include a completed Extraordinary Circumstances Request form (available on <https://qualitynet.cms.gov/>) and any available

evidence of the impact of the extraordinary circumstances on the care that the SNF furnished to patients including, but not limited to, photographs and media articles.

(iii) Except as provided in paragraph (d)(4)(iv) of this section, CMS will not consider an exception request unless the SNF requesting such exception has complied fully with the requirements in this paragraph (d).

(iv) CMS may grant exceptions to SNFs without a request if it determines that an extraordinary circumstance affects an entire region or locale.

(v) CMS will calculate a SNF Performance Score for a fiscal year for a SNF for which it has granted an exception request that does not include its performance on a quality measure during the calendar months affected by the extraordinary circumstance.

(5) CMS will specify the measures for application in the SNF VBP Program for a given fiscal year.

(6)(i) Performance standards are announced no later than 60 days prior to the start of the performance period that applies to that measure for that fiscal year.

(ii) Beginning with the performance standards that apply to FY 2021, if CMS discovers an error in the performance standard calculations subsequent to publishing their numerical values for a fiscal year, CMS will update the numerical values to correct the error. If CMS subsequently discovers one or more other errors with respect to the same fiscal year, CMS will not further update the numerical values for that fiscal year.

(e) *Performance scoring under the SNF VBP Program beginning with fiscal year 2026.* (1) *Points awarded based on SNF performance.* CMS will award points to SNFs based on their performance on each measure for which the SNF reports the applicable minimum number of cases during the performance period applicable to that fiscal year as follows:

(i) CMS will award from 1 to 9 points for achievement to each SNF whose performance on a measure during the applicable performance period meets or exceeds the achievement threshold for

that measure but is less than the benchmark for that measure.

(ii) CMS will award 10 points for achievement to a SNF whose performance on a measure during the applicable performance period meets or exceeds the benchmark for that measure.

(iii) CMS will award from 0 to 9 points for improvement to each SNF whose performance on a measure during the applicable performance period exceeds the improvement threshold but is less than the benchmark for that measure.

(iv) CMS will not award points for improvement to a SNF that does not meet the case minimum for a measure for the applicable baseline period.

(v) The highest of the SNF's achievement and improvement score for a given measure will be the SNF's score on that measure for the applicable fiscal year.

(2) *Calculation of the SNF performance score for fiscal year 2026.* The SNF performance score for FY 2026 is calculated as follows:

(i) CMS will sum all points awarded to a SNF as described in paragraph (e)(1) of this section for each measure applicable to a fiscal year to calculate the SNF's point total.

(ii) CMS will normalize the point total such that the resulting SNF performance score is expressed as a number of points earned out of a total of 100.

(3) *Calculation of the SNF performance score beginning with fiscal year 2027.* The SNF performance score for a fiscal year is calculated as follows:

(i) CMS will sum all points awarded to a SNF as described in paragraph (e)(1) of this section for each measure applicable to a fiscal year.

(ii) CMS will normalize the SNF's point total such that the resulting point total is expressed as a number of points earned out of a total of 100.

(iii) CMS will add to the SNF's point total under paragraph (e)(3)(ii) of this section any applicable health equity adjustment bonus points calculated under paragraph (k) of this section such that the resulting point total is the SNF Performance Score for the fiscal year, except that no SNF Performance Score may exceed 100 points.

(f) *Confidential feedback reports and public reporting.*

(1) CMS will provide quarterly confidential feedback reports to SNFs on their performance on each measure specified for the fiscal year. Beginning with the baseline period and performance period quality measure quarterly reports issued on or after October 1, 2021, which contain the baseline period and performance period measure rates, respectively, SNFs will have 30 days following the date CMS provides each of these reports to review and submit corrections to the measure rates contained in that report. The administrative claims data used to calculate measure rates are not subject to review and correction under paragraph (f)(1) of this section. All correction requests must be accompanied by appropriate evidence showing the basis for the correction to each of the applicable measure rates.

(2) Beginning not later than 60 days prior to each fiscal year, CMS will provide SNF performance score reports to SNFs on their performance under the SNF VBP Program for a fiscal year. SNFs will have the opportunity to review and submit corrections to their SNF performance scores and ranking contained in these reports for 30 days following the date that CMS provides the reports. Any such correction requests must be accompanied by appropriate evidence showing the basis for the correction.

(3) CMS will publicly report the information described in paragraphs (f)(1) and (2) of this section on the Nursing Home Compare website or a successor website. Beginning with information publicly reported on or after October 1, 2019, and ending with information publicly reported on September 30, 2022 the following exceptions apply:

(i) If CMS determines that a SNF has fewer than 25 eligible stays during the baseline period for a fiscal year but has 25 or more eligible stays during the performance period for that fiscal year, CMS will not publicly report the SNF's baseline period SNF readmission measure rate and improvement score for that fiscal year;

(ii) If CMS determines that a SNF is a low-volume SNF with respect to a fiscal year and assigns a performance

score to the SNF under paragraph (d)(3) of this section, CMS will not publicly report the SNF's performance period SNF readmission measure rate, achievement score or improvement score for the fiscal year; and

(iii) If CMS determines that a SNF has zero eligible cases during the performance period with respect to a fiscal year, CMS will not publicly report any information for that SNF for that fiscal year.

(4) Beginning with the information publicly reported on or after October 1, 2022, the following exceptions apply:

(i) If a SNF does not have the minimum number of cases during the baseline period that applies to a measure for a fiscal year, CMS will not publicly report the SNF's baseline period measure rate for that particular measure, although CMS will publicly report the SNF's performance period measure rate and achievement score if the SNF had the minimum number of cases for the measure during the performance period of the same program year;

(ii) If a SNF does not have the minimum number of cases during the performance period that applies to a measure for a fiscal year, CMS will not publicly report any information with respect to the SNF's performance on that measure for the fiscal year;

(iii) If a SNF does not have the minimum number of measures during the performance period for a fiscal year, CMS will not publicly report any data for that SNF for the fiscal year.

(g) *Limitations on review.* There is no administrative or judicial review of the following:

(1) The methodology used to determine the value-based incentive payment percentage and the amount of the value-based incentive payment under section 1888(h)(5) of the Act.

(2) The determination of the amount of funding available for value-based incentive payments under section 1888(h)(5)(C)(ii)(III) of the Act and the payment reduction under section 1888(h)(6) of the Act.

(3) The establishment of the performance standards under section 1888(h)(3) of the Act and the performance period.

(4) The methodology developed under section 1888(h)(4) of the Act that is used to calculate SNF performance

scores and the calculation of such scores.

(5) The ranking determinations under section 1888(h)(4)(B) of the Act.

(h) *Special rules for the FY 2022 SNF VBP Program.* (1) CMS will calculate a SNF readmission measure rate for each SNF based on its performance on the SNF readmission measure during the performance period specified by CMS for fiscal year 2022, but CMS will not calculate a performance score for any SNF using the methodology described in paragraphs (d)(1) and (2) of this section. CMS will instead assign a performance score of zero to each SNF, with the exception of those SNFs qualifying for the low-volume scoring adjustment described in paragraph (d)(3) of this section.

(2) CMS will calculate the value-based incentive payment adjustment factor for each SNF using a performance score of zero and will then calculate the value-based incentive payment amount for each SNF using the methodology described in paragraph (c)(2)(ii) of this section. CMS will then apply low-volume scoring adjustment described in paragraph (d)(3) of this section.

(3) CMS will provide confidential feedback reports to SNFs on their performance on the SNF readmission measure in accordance with paragraphs (e)(1) and (2) of this section.

(4) CMS will publicly report SNF performance on the SNF readmission measure in accordance with paragraph (e)(3) of this section.

(i) *Special rules for the FY 2023 SNF VBP Program.* (1) CMS will calculate a SNF readmission measure rate for each SNF based on its performance on the SNF readmission measure during the performance period specified by CMS for fiscal year 2023, but CMS will not calculate a performance score for any SNF using the methodology described in paragraphs (d)(1) and (2) of this section. CMS will instead assign a performance score of zero to each SNF.

(2) CMS will calculate the value-based incentive payment adjustment factor for each SNF using a performance score of zero and will then calculate the value-based incentive payment amount for each SNF using the

methodology described in paragraph (c)(2)(ii) of this section.

(3) CMS will provide confidential feedback reports to SNFs on their performance on the SNF readmission measure in accordance with paragraphs (f)(1) and (2) of this section.

(4) CMS will publicly report SNF performance on the SNF readmission measure in accordance with paragraph (f)(3) of this section.

(j) *Validation.* (1) Beginning with the FY 2023 program year, for the SNFRM measure, and beginning with the FY 2026 program year for all other claims-based measures, the information reported through claims are validated for accuracy by Medicare Administrative Contractors (MACs).

(2) Beginning with the FY 2026 program year, for all measures that are calculated using Payroll-Based Journal System data, information reported through the Payroll-Based Journal system is validated for accuracy by CMS and its contractors through quarterly audits.

(3) Beginning with the FY 2027 program year, for all measures that are calculated using Minimum Data Set (MDS) information, such information is validated for accuracy by CMS and its contractors through periodic audits not to exceed 1,500 SNFs per calendar year.

(k) *Calculation of the Health equity adjustment (HEA) bonus points.* CMS calculates the number of HEA bonus points that are added to a SNF's point total calculated under paragraph (e)(3)(iii) of this section by:

(1) Determining for each measure whether the SNF is a top tier performing SNF and assigning two points to the SNF for each such measure;

(2) Summing the points calculated under paragraph (k)(1) of this section to calculate the measure performance scaler;

(3) Calculating the underserved multiplier for the SNF; and

(4) Multiplying the measure performance scaler calculated under paragraph

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(k)(2) of this section by the underserved multiplier calculated under paragraph (k)(3) of this section.

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#### § 413.340 Transition period.

(a) *Duration of transition period and proportions for the blended transition rate.* Beginning with an SNF's first cost reporting period beginning on or after July 1, 1998, there is a transition period covering three cost reporting periods. During this transition phase, SNFs receive a payment rate comprising a blend of the adjusted Federal rate and a facility-specific rate. For the first cost reporting period beginning on or after July 1, 1998, payment is based on 75 percent of the facility-specific rate and 25 percent of the Federal rate. For the subsequent cost reporting period, the rate is comprised of 50 percent of the facility-specific rate and 50 percent of the Federal rate. In the final cost reporting period of the transition, the rate is comprised of 25 percent of the facility-specific rate and 75 percent of the Federal rate. For all subsequent cost reporting periods, payment is based entirely on the Federal rate.

(b) *Calculation of facility-specific rate for the first cost reporting period.* The facility-specific rate is computed based on the SNF's Medicare allowable costs from its fiscal year 1995 cost report plus an estimate of the amounts payable under Part B for covered SNF services (other than those services described in § 411.15(p)(2) of this chapter) furnished during fiscal year 1995 to individuals who were residents of SNFs and receiving Part A covered services. Allowable costs associated with exceptions, as described in § 413.30(f), are included in the calculation of the facility-specific rate. Allowable costs associated with exemptions, as described in § 413.30(e)(2), are included in the calculation of the facility-specific rate but only to the extent that they do not exceed 150 percent of the routine cost limit. Low Medicare volume SNFs that were paid a prospectively determined rate under § 413.300 for their cost reporting period beginning in fiscal year 1995 will utilize that rate as the basis

for the allowable costs of routine (operating and capital-related) expenses in determining the facility-specific rate. Each SNF's allowable costs are updated to the first cost reporting period to which the payment rates apply using annual factors equal to the SNF market basket percentage minus 1 percentage point.

(c) *SNFs participating in the Multistate Nursing Home Case-Mix and Quality Demonstration.* SNFs that participated in the Multistate Nursing Home Case-Mix and Quality Demonstration in a cost reporting period that began in calendar year 1997 will utilize their allowable costs from that cost reporting period, including prospective payment amounts determined under the demonstration payment methodology.

(d) *Update of facility-specific rates for subsequent cost reporting periods.* The facility-specific rate for a cost reporting period that is subsequent to the first cost reporting period is equal to the facility-specific rate for the first cost reporting period (described in paragraph (a) of this section) updated by the market basket index.

(1) For a subsequent cost reporting period beginning in fiscal years 1998 and 1999, the facility-specific rate is equal to the facility-specific rate for the previous cost reporting period updated by the applicable market basket index percentage minus one percentage point.

(2) For a subsequent cost reporting period beginning in fiscal year 2000, the facility-specific rate is equal to the facility-specific rate for the previous cost reporting period updated by the applicable market basket index percentage.

(e) *SNFs excluded from the transition period.* SNFs that received their first payment from Medicare, under present or previous ownership, on or after October 1, 1995, are excluded from the transition period, and payment is made according to the Federal rates only.

#### § 413.343 Resident assessment data.

(a) *Submission of resident assessment data.* SNFs are required to submit the resident assessment data described at § 483.20 of this chapter in the manner necessary to administer the payment rate methodology described in § 413.337.