

**Responses to Comments Received  
Federal Register Notice on Revised  
CMS Forms 437A and 437B**

CMS received four comments on the 60-day FR notice (published on April 4, 2012) for the proposed changes to Forms CMS-437A and -437B that reflect the changes to the IRFPPS regulations, as well as additional changes proposed by CMS. The commenters were the Federal of American Hospitals, the American Medical Rehabilitation Providers Association, RehabCare Group, Inc. and HealthSouth. Most of the comments were the same, therefore, CMS will respond to the comments together.

**Comments regarding “Yes/No” boxes without associated TAGs.**

Commenter recommended deleting those boxes.

**CMS Response**

CMS will shade the boxes without Tags as no response is necessary and to maintain the integrity of the overall forms.

**Comment regarding typo on CMS 437A, under column for Hospital Representative**

Commenters indicated a typographical error for the word “director”.

**CMS Response**

CMS made the change on the final form.

**Comment for TAG A3500 (CMS-437A)**

Commenters indicated the sentence, under Regulation, is incomplete and should end with “information”. They also indicated the second bullet under, Guidance, appears to have a word missing and either revise or delete the bullet.

**CMS Response**

CMS concurs and made the appropriate changes on the final form. The second bullet was missing the word “beds”.

**Comment for Tag A3506 (CMS-437A)**

Commenter indicated the word “unified” is incorrect on third bullet under, Guidance, and recommends changing the word to “notified”.

## **CMS Response**

CMS agrees and made the appropriate change on the final form.

## **Comment for Tag A3508 (CMS-437A)**

Commenters indicted removal of the column: Explanatory Statement may be problematic if the Hospital Representative wants to make a comment.

## **CMS Response**

In order for CMS to have space to provide Hospital Representatives with guidance for completing the form, the Explanatory Statement column was removed. CMS will add Explanatory Statement space at the end of the form for any necessary comments by either the Hospital Representative or the surveyor or MAC/FI.

## **Comments for Tag A3510 (CMS-437A) and A3607 (CMS-437B)**

Commenters requested that CMS reference both 42 CFR § 412.29(b)(1) and 42 CFR § 412.29(b)(2) when discussing the conditions that must be met by at least 60 percent of an inpatient rehabilitation facility's (IRF) inpatient population in order to satisfy the 60 percent rule requirements.

## **CMS Response**

It would be incorrect to list both sections in this instance. Although 42 CFR § 429(b)(1) indicates that patients may require treatment for one or more of the thirteen specified conditions, either as a primary condition or as a secondary condition (i.e., a comorbidity), to meet the requirements, the list of thirteen conditions is entirely contained in 42 CFR § 412.29(b)(2). To reference both sections (i.e., 42 CFR § 412.29(b)(1) and (b)(2)) would be misleading in that it would imply that the comorbidities are a fourteenth condition, which is not correct. At least 60 percent of an IRF's inpatient population must be treated for one or more of the thirteen specified conditions in 42 CFR § 412.29(b)(2), whether as a primary condition or as a secondary condition.

## **Comments for Tags A3511 (CMS-437A) and A3602 (CMS-437B)**

Commenters believe that new IRFs are the only entities required to submit both the completed CMS-437A or CMS-437B and an attestation statement.

Commenters also indicated that A3602 references both forms CMS 437A and 437B and the form referenced in the second bullet, under Guidance, be changed from "437A" to "437B"

### **CMS Response**

IRFs, both new and existing, have always been required to complete both an attestation statement and a CMS-437A or CMS-437B annually and submit those completed forms to SA. CMS concurs with the second comment and made the appropriate changes on the final form.

### **Comment for Tags A3512 (CMS-437A) and A3603 (CMS-436B)**

Commenters commented on the deletion of the Explanatory Column that was previously available on both forms. They recommended adding space for “Not applicable” items.

Commenter requested second sentence be added under the column, Hospital Representative, to read: Hospital (or rehabilitation unit) has not been paid under the IRF PPS for at least 5 calendar years.

### **CMS Response**

CMS concurs and is creating a Not Applicable column and has revised the language under the Hospital Representative column for the CMS 437A to read: “The representative ensures the IRF unit has not been paid under the IRFPPS for at least 5 calendar years”. The CMS 437B Hospital Representative column will read: “The representative ensures the IRF hospital has not been paid under the IRFPPS for at least 5 calendar years”.

### **Comment for Tag A3513 (CMS-437A) and Tag A3604 (CMS-437B)**

Commenter states a hospital can convert existing state licensed beds to rehab beds and not have to increase its hospital licensed bed capacity and suggests rewriting the guidance under this Tag.

### **CMS Response**

CMS doesn't agree with the commenters statement and revised the guidance to clarify the regulation applicable to these Tags.

### **Comments for Tags 3516 (CMS-437A) and A3607 (CMS-437B)**

Three commenters recommended revisions to the narrative in the “Guidance” column to indicate that information about an IRF's preadmission screening procedures may be gleaned either from a review of those procedures or from a review of other alternative documents or records. These commenters also recommended that the guidance recognize that a review of the IRF clinical records could indicate the presence of a preadmission screening procedure.

### **CMS Response**

CMS agrees with the commenters suggestions and revised the narrative in the “Guidance” column accordingly to read:

- Review the hospital’s procedures, or other alternative documents or records, to verify the hospital has a preadmission screening procedure in place.
- A review of the clinical records should indicate whether the IRF has such a screening procedure and whether it is using the screening procedure.

**Comments for Tags A3517 (CMS-437A) and A3608 (CMS-437B)**

Commenters indicated that the Guidance for this Tag did not cover 412.29(e) but instead included information covered in A 3616 and recommended replacing Guidance guidelines and guidelines for the Hospital Representative with information related to 412.29(e).

**CMS Response**

CMS concurs with these observations and has revised the guidance for these two Tags on the final forms.

**Comment for Tags A3518 (CMS-437A) and A3609 (CMS-437B)**

Commenters suggest that language in the first bullet of the Guidance doesn’t cover the issue of State to State reciprocity of licenses.

**CMS Response**

CMS agrees with the commenters concerns and will revise the first bullet. The CMS licensure condition of participation at § 482.11(c) requires the hospital to assure that personnel are licensed or meet other applicable standards that are required by State or local laws. This regulation would be applied when evaluating the regulation at § 412.29(f). We revised the Guidance and the Hospital Representative sections accordingly on the final forms.

**Comment for Tags A3524 (CMS-437A) and A3615 (CMS-437B)**

Three commenters suggest that referencing frequency, duration of treatment and specific modalities requested by the physician in the treatment plan are coverage criteria as opposed to exclusion criteria and should be deleted from the Guidance. They suggest limiting Guidance to the first bullet.

**CMS Response**

While CMS understands the commenters concerns, the guidance in the second bullet is appropriate for surveyors and the MAC/FI who may be conducting medical record reviews. It explains what documentation should be part of the plan. We disagree that it is inappropriate to graft part of the coverage criteria into the “exclusion process”. It would be very burdensome to providers to have 2 separate plans of care, one that meets the coverage criteria and one that meets the classification criteria. The same process/documentation is required in both places, so both must meet exactly the same standards. However, we revised the second bullet for improved clarification.

### **Comment for Tag A3602 (CMS-437B)**

Commenters believe that this Tag introduces a new process for new IRFs as opposed to the existing IRFs as Guidance included “written certification letter/attestation statement”.

### **CMS Response**

All IRFs use the same Attestation Statement and all SAs have access to the same Attestation Statement. There is no increase in administrative burden. CMS removed the words “written certification letter”, from the guidance to avoid any confusion as it is the same as the “attestation statement” on the final forms.

### **Comment for Tag A3616 (CMS-437B)**

Commenter recommends inserting language from proposed Tag A3525 to this Tag under the Hospital Representative column.

### **CMS Response**

CMS concurs with the commenters recommendations and has added the proposed language from Tag A3525 to the Hospital Representative column on the final forms.

### **Comment for Tag A3604 (CMS-437B)**

Commenters recommend that the proposed Guidance (third bullet) be changed from “Surveyors must verify that the hospital received CMS RO written approval prior to adding new beds” to “Surveyors must verify that the hospital received CMS RO written approval”.

In addition, commenter recommended adding “added to the IRF” at the end of the regulation language.

### **CMS Response**

CMS does not agree with the commenters’ suggestion of changing the proposed guidance. The proposed guidance reflects the new regulatory requirement. A hospital cannot add any new rehabilitation beds to the unit or hospital until after they’ve received written approval from the CMS RO. Only the CMS RO can authorize the addition of new inpatient rehab IRF beds to the IRF hospital or IRF unit. The regulation does not permit the State Agency to approve the addition of new rehabilitation beds.

CMS added the omitted language “added to the IRF” to the end of the regulation language on the final form.

## **Comments regarding Supporting Statement**

Several commenters recommended that CMS modify the time frame for submitting the attestation statement and the appropriate CMS 437A or CMS 437B from “no later than five months” to something more flexible as hospitals don’t always have control over opening dates of their facilities.

## **CMS Response**

CMS recommends that IRFs submit their documentation request for exclusion from the IPPS a minimum of five months prior to the beginning of their cost reporting periods in order to give the State Agency (SA) sufficient time to process the documentation and for the State Agency to submit its recommendations to the CMS RO and for the RO to have time to send documentation to the IRF prior to the beginning of the facility’s cost reporting period. This time frame is not mandated but is suggested to ensure a timely response to the facility. The SA and RO have flexibility in determining the adequate time required to complete the entire process.

However, if the process to determine whether the hospital meets IRFPPS payment requirements doesn’t take place before the beginning of the cost report year, there is the potential for the hospital not to be exempted from the IPPS payment for that cost reporting year.