PRA package for CMS 437A & CMS-437B
Response to Public Comments

1. **Comment # CMS-2022-0126-0004:**

   The commenter did not provide any written comments but instead forwarded a copy of a document titled ***"Local Help Navigating Medicare"*** which was published by the State Health Insurance Assistance Program.

   CMS Response to Comment # CMS-2022-0126-0004:

   We thank the commenter for submitting the document. However, the document provided is not related to the contents of the PRA package.

2. **Comment # CMS-2022-0126-0005:**

   In a letter dated 10/03/2022, the commenter stated the following:

   "On behalf of the American Medical Rehabilitation Providers Association (AMRPA), we are writing to request and insist that CMS issue an extension of the comment period for the above captioned Information Collection Request. While this notice appeared in the Federal Register (FR) on August 9, 2022, the topic of the collection request, proposed revised Forms CMS-437A and CMS-437B, were not made available to the public for inspection until significantly after the publication in the FR. More specifically, it was not until September 13th, 2022 when you responded to my email that we were first able to access the revised forms, despite the FR notice stating the forms would be posted at the designated CMS Paperwork Reduction Act (PRA) website. In your correspondence with me on September 13, 2022 you confirmed that "we are having technical difficulty getting the document posted to our CMS PRA Web Site." In addition to failure to provide access to the required documents, the notice posted in the Federal Register is inaccurate and misleading, as the revised forms include significantly more changes outside of just "column 3," as the notice indicates. For these reasons, we believe it is necessary for CMS to postpone the deadline for comments.

   The PRA requires that the public be given at least 60 days of notice of a proposed information collection to solicit comments. 44 U.S.C. § 3506(c)(2)(A). The 60 days is intended to allow the public adequate time to evaluate and assess the proposed collection of information. See id. At § 3506(c)(2)(A)(i)-(iv). In this case, the only way to accurately and adequately assess the proposed collection is through review of the revised forms. Since the forms were not made available for public inspection until at least September 13th, 2022, we believe the 60 days of notice could not have commenced until at least that time, and request that CMS require comments to be submitted no earlier than November 13th, 2022, in accordance with the requirements of the PRA."

CMS Response to Comment # CMS-2022-0126-0005:

CMS extended the 60-day comment period for an additional 30 days as requested. The extension notice was published in the Federal Register on 10/11/2022 (87 FR 61333) and the extended comment period expired on 11/16/2022.

3. **Comment # CMS-2022-0126-0006:**

The commenter provided the following comments regarding the CMS-437B form:

"Tag 3601

The Regulation and Guidance fields both currently reference only paragraph (b)(2) of 42 C.F.R. §412.29(b) for purposes of identifying the applicable qualifying conditions associated with the so-called "60% Rule" requirement. However, paragraph (b)(1) of that section of the regulation, pertaining to certain "comorbidity" cases, may also be used to satisfy this Rule.

Therefore, we respectfully request that the Regulation and Guidance fields for Tag A3601 be amended to read as follows: "…of whom at least 60 percent required intensive rehabilitation services for treatment of one or more of the conditions specified at paragraphs (b)(1) and (b)(2) of this section." (Regulation); and, "…it served the appropriate inpatient population as defined in §412.29(b)(1),(2)." (Guidance), pursuant to applicable CMS regulations.

Tag 3604

The following language has been added to the verification requirement column: "*The IRF hospital received written approval from the applicable CMS Location before the new beds were added.*" Although in practice we submit a letter to each Regional Office ("RO") in which we seek a bed increase in the applicable state, our historical experience is that there is broad inconsistency in the ability to obtain official CMS written approvals. In many instances, we have had to repeatedly make requests from Regional Offices to send us an official letter. In some cases, we have received verbal permission (or an email) but the RO would not send an official letter. This inconsistency in the ability to obtain approval letters (and the multiple instances we have had to follow up with ROs) places an undue burden on the provider if this language is finalized as currently drafted. These delays in obtaining the required CMS approval letter will potentially delay provider's ability to place these beds in service and care for beneficiaries seeking IRF care.

For these reasons, we respectfully request that the requirement to obtain written approval be removed from the verification requirement column.

Additionally, the following language appears under the "Regulation" column of Tag
#3604:

> "[*b*]*efore an IRF can add new beds, it must receive written approval from the appropriate CMS RO, so that the CMS RO can verify that a full 12-month cost reporting period has elapsed since the IRF has had beds delicensed or decertified, New IRF beds are included in the compliance review calculations under paragraph (b) of this section from the time that they are added to the IRF*."

The underlined highlighted comma in this language should be a period (".") based on the regulatory text.

Tag 3608

The FY 2021 IRF PPS Final Rule amended § 412.622(a)(3)(iv) [and § 412.29(e)] to allow, beginning with the second week of admission to the IRF, a non-physician practitioner who is determined by the IRF to have specialized training and experience in inpatient rehabilitation to conduct 1 of the 3 required face-to-face visits with the patient per week, provided that such duties are within the non-physician practitioner's scope of practice under applicable state law.

Furthermore, Chapter 1 Section 110.2.4 of the Medicare Benefit Policy Manual (Pub 100-02) also reiterates the above by noting that "[*b*]*eginning with the second week of admission to the*
IRF, a non-physician practitioner who is determined by the IRF to have specialized training and experience in inpatient rehabilitation may conduct 1 of the 3 required face-to-face visits with the patient per week, provided that such duties are within the non-physician practitioner's scope of practice under applicable state law. In the first week of the patient's IRF stay, the rehabilitation physician is required to visit patients a minimum of three times to ensure that the patient's plan of care is fully established and optimized to the patient's care needs in the IRF. In the second, third, fourth weeks of the stay, and beyond, CMS will continue to require Medicare fee-for service beneficiaries in IRFs to receive a minimum of three rehabilitation physician visits per week, but will allow non-physician practitioners to independently conduct one of these three minimum required visits per week."

We respectfully request that the verification requirement language of Tag 3608 be amended to denote the permissibility of a non-physician practitioner to conduct one of the three required face-to-face visits with an IRF patient during the second week and subsequent weeks of an IRF patient's stay pursuant to applicable CMS regulations.

Tag 3610

We note there is a typo in the guidance column which currently reads: "*Verifies the rehab*
hospital has a director of rehabilitation by reviewing by reviewing personnel logs or rosters and organization charts." "By Reviewing" has been stated twice.

We respectfully recommend that CMS correct this typo prior to release of the final CMS-437B Form."

CMS Response to Comment # CMS-2022-0126-0006:

The commenter offered comments to several sections of the revised CMS-437B form. We will address each of these comments separately below:

- **CMS Response to Comment Regarding Tag 3601:**

  We agree that §412.29(b)(1) also defines comorbid conditions that could count towards the toward the required applicable percentage under the circumstances set forth at §412.29(b)(1)(i) through (iii). Therefore, we agree that adding a reference to §412.29(b)(1) in the 2nd column under the description for the regulation requirements is appropriate. We do not believe that any additional text is necessary to make this clear.

- **CMS Response to Comment Regarding Tag 3604:**

  - **Part 1:**

    The requirement that an IRF hospital receive approval for a bed increase from the appropriate CMS Location (formerly called CMS Regional Offices) is required by 412.29(c)(2). This requirement has not changed.

    This requirement is part of the CMS criteria for payment under the IRF PPS system, therefore, CMS must require IRFs to comply with it.

    In the existing version of the CMS-437B form, surveyors are required to verify that the IRF hospital received written CMS RO approval before adding any new beds. The surveyor would have to obtain this information from the IRF hospital staff. Requiring the IRF staff to verify that they have received written approval from the applicable CMS location would not add any additional burden as they would have to provide this information to the surveyor during survey.

If an IRF hospital is having difficulty obtaining a written approval for a bed increase from the applicable CMS Location, they should contact the IRF program lead at the CMS Central Office for assistance.

- **Part 2:**

  We thank you for pointing out this error. We have corrected it.

- **CMS Response to Comment Regarding Tag 3608:**

  Thank you for bringing this to our attention. We have updated the text of §412.29(e) and the verification section.

- **CMS Response to Comment Regarding Tag 3610:**

  We thank this commenter for pointing out this error to us. We have made the necessary correction.

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