THE STATE OF HOME CARE AND HOSPICE: 2015

NAHC FINANCIAL MANAGEMENT CONFERENCE
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PROGRAM FOCUS

- Medicare home health payment rate outlook
- Medicare and Medicaid regulatory developments
- Medicare Hospice payment reform
- Status of Medicare payment innovations
  - VBP
  - PAC bundling
- Overtime Compensation in home care
OBAMACARE: KING V. BURWELL

- U.S. Supreme Court decision
  - Validity of insurance subsidies without a state exchange
  - 34 states
- Impact on home care and hospice
  - Minor impact on coverage of services
  - Medicaid changes
  - Employer mandate is primary impact
    - No subsidies, no employer penalties
- White House response
- Congressional responses to decision
- State responses to decision

SGR REFORM: IMPACT ON HOME CARE

- Physician Medicare payment model to be replaced?
  - SGR -> Value based Reimbursements
  - End to annual “patch”
  - $215 Billion in costs
- Offsets ($70 billion)
  - Split contributions from providers and beneficiaries
    - 1% rate update in 2018
    - HH surety bond changes
- Gains
  - No home health copay
  - 2 year extension of HH rural add on
MEDICARE REFORMS: CHRONIC CARE MANAGEMENT

- Senate Finance Committee search for solutions to cost of care to patients with chronic conditions
- NAHC recommendations
  - Community-based Chronic Care Management program
  - Expanded use of home health benefit
    - Management and Evaluation of Care plan skilled care
    - Maintenance therapy
  - Transitions programs
  - VBP and bundling
  - Use of non-physician practitioners

MEDICARE HOME HEALTH REGULATORY DEVELOPMENTS

- HHPPS 2015 and 2016 rules
- Face to Face rule
- Proposed CoPs
- New Medicare CoP sanctions
- Program Integrity/Claims Reviews
- Star Rating System
2015 MEDICARE HOME HEALTH RATES

- Year 2 rebasing payment rates (4 year phase-in)
  - Episode rates: full cut (3.5% of 2010 rates) allowed under ACA
  - LUPA per visit rates: full increase (3.5% of 2010 rates)
  - Non-routine Medical Supplies: 2.82% reduction
- Recalibrated case mix weights
  - Major changes in all 153 case mix weights
  - All variables adjusted
  - Budget neutrality adjustment
- New CBSAs in wage index lead to one-year blended index
- Outlier eligibility remains same despite low spending
- Effective for episodes ending January 1, 2015 or later
- Rates reduced by 2% if no quality data submitted
- 3% rural add-on continues through 2015
- Remember 2% payment sequestration (February 1 and later payments)

2016 MEDICARE HHPPS RULE: EXPECTATIONS

- NPRM at end of June/early July
- Year 3 of rate rebasing
  - Same level of cut
  - Productivity adjustment—0.5%
  - 100% new CBSAs for wage index
- Case mix creep adjustment???
- Case mix weight recalibration???
HHPPS REBASING: THE FUTURE

- CMS unlikely to change path
- Congressional efforts underway, but limited
  - Delay and replace
  - Repeal and replace with Value Based Purchasing
  - Study
- Impact of rebasing mixed
  - Margins down, but less than forecast
  - New HHAs in market
  - Consolidation/Acquisitions shows market promise
  - Limited access concerns surfacing
- MedPAC recommending deeper rate cuts

MEDICARE HOME HEALTH

REGULATORY ISSUES
2015 FACE-TO-FACE PHYSICIAN ENCOUNTER CHANGES

- Eliminates physician narrative requirement
- Requires certifying physician to have sufficient records to support certification
- Rejects physician payment claims for certification/recertification when home health claim denied for noncompliant certification/recertification
- CMS will engage in prepayment “probe and educate” on 2015 compliance beginning 10/1/15
- Limited pre-2015 claims review on F2F currently

FACE-TO-FACE PHYSICIAN NARRATIVE

- F2F Litigation underway
- NAHC v. Sebelius/Burwell
  - 1:14-cv-00950 (filed 6-5-14)
    - US District Court for the District of Columbia
- Alleges
  - Excess documentation required in relation to ACA requirements
  - Failure to provide adequate and clear guidance on acceptable documentation
  - Failure to review whole record
- Court rejected Medicare Motion to Dismiss on narrative requirement
- Lawsuit will continue to address past claims denials and continuing audits
CMS STAR RATING SYSTEM

- Combines outcome measures and process measures from Home Health Care Compare into a single score
- Process measures:
  - Timely Initiation of Care
  - Drug Education on all Medications Provided to Patient/Caregiver
  - Influenza Immunization Received for Current Flu Season
- Outcome measures:
  - Improvement in Ambulation
  - Improvement in Bed Transferring
  - Improvement in Bathing
  - Improvement in Pain Interfering With Activity
  - Improvement in Shortness of Breath
  - Acute Care Hospitalization
- Expected June/July 2015

STAR RATING CONCERNS

- Focus on Improvement measures
- Formula pushes scores to the middle
  - Most HHAs with 3 Stars
  - Consumer impression that 3 Stars is mediocre
- Will Star Rating drive VBP programs?
MISCELLANEOUS

• Medicare survey and certification
  • increases in the imposition of alternative sanctions
  • Immediate Jeopardy terminations
• New Conditions of Participation proposed
• Surety bonds???
• Provider enrollment enforcement actions
  • Failure to timely report changes
  • Revalidation audits
• Continued claim audits

COMPLIANCE

• All sectors under the microscope
• Significant attention to home care and hospice
• Technical compliance the first focus
• Multiple contractors along with federal enforcement bodies initiating civil and criminal prosecutions
  • Fraud vs. simple error vs. disagreements
• Documentation remains a key to successful compliance
• Appeal process backlogged
• Audit and appeal reforms under consideration
REFORMS: VALUE-BASED PURCHASING PILOT

CMS proposed for consideration

• 5-8 states mandatory participation of all HHAs
• 5-8% payment withhold for incentive payments
  • “greater upside benefit and downside risk”
• CY 2016 start date
• Unspecified performance measures
  • Achievement and improvement
• Unspecified risk adjustment

Will be in as part of 2016 rate rule!

VALUE-BASED PURCHASING PILOT

• Comments to CMS
  • Concern on the magnitude of the adjustment, e.g cash flow
  • Encouragement of pay for performance and pay for reporting
  • Measures: exclude 5-Star system, HHCAPS’ rehospitalizations, OASIS measures
  • Support risk adjustment strategy, voluntary participation
VALUE-BASED PURCHASING

- Congressional proposal expected in July
- May be used to substitute for SGR legislative cuts
- May be an integrated PAC VBP rather than individualized sectors
- Starting in FFY 2020
- Likely nation-wide
- Withhold range at 4-6% with 50% redistribution
- Limited direction on performance measures
- Significant discretion given CMS
- Home health non-PAC: in or out???
- MedPAC supports hospital readmission penalties

REFORMS: PAC BUNDLING

- CMMI pilots/demos continuing
- Limited home health participation; virtually no risk taking
- Evidence of impact still unavailable
- ACO experience shows some home health gains in use
- Administration support for expanded PAC bundling
- Congressional caution
  - BACPAC bill
    - Limited support
    - Industry concerns
MEDICAID HOME CARE

- Rebalancing of LTC spending continues
  - Just less than 50% of Medicaid LTC spending now in home care
  - States’ balance in spending wide ranging
- Medicaid Managed Care
  - CMS Proposed rule
  - MLTSS (Managed Long Term Services and Supports)
    - Pro home care expansion
    - State flexibility
  - Duals Demonstration Programs

MEDICARE HOSPICE

2016 Payment Proposed Rule:

New payment model proposed
- Somewhat a surprise since CMS had indicated that it wanted to evaluate not yet available data from new cost reports and claims submissions; focus on program integrity for now
MEDICARE HOSPICE PROPOSED RULE: 2016

1.1% net payment rate increase
  • 2.7% MBI
  • (0.3%) ACA reduction
  • (0.6%) productivity adjustment
  • (0.6%) BNAF wage index reduction
Add in 2% sequestration
New CBSAs (50/50 blend of new and current)

PROPOSED HOSPICE PAYMENT MODEL

Days 1-60: Higher payment rate
  • $188.20
Days 61-and later: Lower payment rate
  • $147.34
Service Intensity add-on
  • Last 7 days of life
  • Patient discharged dead
  • Not residing in nursing facility
  • Hourly payment for RN and MSW direct care
  • $39.44 up to four hours daily
PROPOSED HOSPICE PAYMENT MODEL: IMPACT

- Short stay hospices will gain financially
- Long stay hospice will see lower aggregate payment
- Behavioral changes expected
  - Conservative patient admissions
  - Less focus on dementia patients as business plan
  - Nursing facility residents may be at a disadvantage
- Industry likely will support with adjustments sought
  - Service Intensity Adjustment for all patients
  - Transition protections
  - Starting point
  - Testing

MEDICARE HOSPICE: REGULATORY CHALLENGES

- “Relatedness” shift of liabilities
- Collection of additional data on claims
- Hospice face-to-face rule
- Terminal illness documentation
- Attending physician listing
- Quality reporting -- Hospice Item Set (July 2014); Hospice Experience of Care Survey (Jan. 2015)
- New Cost report
  - Effective for cost reporting years beginning 10/1/14
  - Final report and instructions???
  - Institution-based TBD
2015 MEDPAC HOSPICE RECOMMENDATIONS

No inflation update

Accelerate new payment model
  • U-Shaped reimbursement

Provide hospice within MA Plans

MEDICARE HOSPICE: LEGISLATIVE DEVELOPMENTS

IMPACT Act: PL 113-185
  • Establishes a requirement for CoP surveys at least every 3 years
  • Modifies Annual Cap update formula to pay for increased survey costs
    • Links to annual hospice inflation (MBI) update
    • Result will be slightly increased number hospices over caps in the long term
MINIMUM WAGE AND OVERTIME:
COMPANIONSHIP SERVICES/LIVE-IN
FLSA EXEMPTIONS

- DoL rule effectively eliminates minimum wage and overtime exemption
  - Eliminates exemption for 3rd party employment
  - Changes definition of companionship services
  - Excludes 3rd party employers from live-in exemption
  - Medicaid and disability rights advocates opposition

IMPACT

- DoL sees limited impact
  - Transfer of dollars from employer/payer at $232M annually
- Industry sees greater impact
  - Increased staff recruiting
  - Higher staff turnover
  - Shift to part-time workers
  - Limited Medicaid rate support
  - Lower customer satisfaction
STRATEGIES AND TACTICS

Litigation

  - 12/22/14 Court invalidates the exclusion of 3rd party employers from using the exemptions
  - 1/14/15 Court vacates “companionship services” definitional rule change
  - DoL Notice of Appeal 1/22/15
- In the meantime:
  - Rulings restore longstanding rules
  - Keep state law in mind

LAWSUIT UPDATE: APPEAL

- Department of Labor argues that it has discretion in setting limits on application of exemptions to certain employers as well as definition of “companionship services”
  - If discretion not abused and rules are not “arbitrary and capricious,” Court will uphold DoL decisions
- Multiple amici in support of DoL
  - Unions
  - Worker advocacy groups
  - AARP
  - A disability advocacy group
  - Public interest advocacy groups
  - Congressional Democrats
LAWSUIT UPDATE:
APPEAL

• Plaintiffs/Appellees
  • NAHC
  • HCAoA
  • International Franchise Association
• Multiple parties support Plaintiffs/Appellees
  • Disability rights advocacy groups
  • State Medicaid programs
  • Members of Congress
  • Consumer-directed care providers

LAWSUIT UPDATE:
APPEAL

• Plaintiffs/Appellees argue that:
  • Plain language of FLSA contradicts DoL position
    • “any employee” performing prescribed functions is exempt
    • DoL attempts to define the nature of employer that can “avail itself” of the exemptions
    • “companionship services” = care of infirm and elderly
  • Alternatively, the rules are arbitrary and capricious
    • Purposes was to make home care affordable for consumer; rule makes it more costly
    • Care is the focus, not the employer; same care from direct employees as from third party employers
LAWSUIT UPDATE: APPEAL

• Oral argument held on May 7
• Court recesses July 1
• Decision likely prior to recess
  • Court does issue decisions during recess
• Next steps include:
  • “en banc” review by whole Court of Appeals
  • U.S. Supreme Court
  • A stay of any adverse ruling

LAWSUIT UPDATE: APPEAL

• Post-lawsuit forecast: DoL Loses
  • Congressional action
  • DoL tries again
    • Focus on nature of work, e.g. exclude medical type services from definition
  • Worker advocates move to state forums
  • Push for unionization
  • More lawsuits
LAWSUIT UPDATE: APPEAL

• Post-lawsuit forecast: DoL Wins
  • DoL and Private parties sue state Medicaid programs, MCOs, and home care companies to enforce rules
  • Industry retrenches to limit worker hours and establish new delivery models
    • Turnover increases
    • Client satisfaction diminishes
    • Home care company costs increase
    • Client costs increase with some reducing care levels
  • CMS pushes states to fund overtime

CONCLUSION

• Moderately stable times
• Opportunities for innovation
• Challenges remain in regulatory
• Quality remains high, but standards and oversight on the increase
• Recognition of home care value increasing