The State of Home Care: A View From Washington 2016

Private Duty Home care Association

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PROGRAM FOCUS

• Health care reforms
• Overtime Compensation in home care
• Medicaid home care developments
• Medicare home health and hospice developments
• Payment innovations affecting home care
• Compliance
• Industry Outlook
HEALTH CARE REFORMS

• MAJOR IDEAS
  • Privatize Medicare
  • Block Grant Medicaid
  • Health Savings Accounts
  • Integrated Care
• Realistic Ideas
  • Managed Medicaid LTSS
  • Medicare Advantage enrollment push
    • Payment and care innovation experiments
  • Long Term Care Insurance

Chronic Care Management

• Senate Finance Committee searching 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
  – Value-Based Purchasing and bundling
  – Use of non-physician practitioners
Coming Attractions (Possible)

- Non-Physician Practitioner Medicare Certification Authority
- Telehealth Payment
- Medicaid Electronic Visit Verification requirements
- Medicare Home Health Discharge Planning rule
- Medicaid Rate Setting Standards

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
  - Primary impact is on Medicaid and private pay services
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

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
– HCOA v Weil, No. (DC Circuit August 21, 2015)
  – Reverses District Court
  – Finds DoL had authority to interpret which employees the exemptions apply to
  – Avoids ruling on definition of “companionship services” finding that home care companies do not have standing
  – Decision took effect October 13
Litigation Update

- Appeal to U.S. Supreme Court
  - Stay denied
  - Petition for Certiorari submitted
  - Expect SCOTUS decision on whether case will be heard in April or May
    - If heard, it will be post-October 2016
- New rules took effect on October 13, 2015
- DoL temporarily held off on enforcement
- Private enforcement not affected

Fallout Forecast

- Post-lawsuit actions/forecast
  - ACTIONS
    - Industry retrenches to limit worker hours and establish new delivery models
    - Limited state Medicaid program support
    - CMS encourages states to protect patients/clients
    - States firm up “non-employer” status
    - MLTSS MCOs scramble to avoid liability risk
  - FORECAST
    - Private parties sue state Medicaid programs, MCOs, and home care companies to enforce rules
    - Turnover increases
    - Client satisfaction diminishes
    - Home care company costs increase
    - Client costs increase with some reducing care levels
Live-In Exemption

• Major Impact on industry
• Difficulty in continuing use of per diem charges and compensation
  • All work hours must be counted and compensated
  • Likely involves overtime
  • Sleep/break time risks
• Restructuring to avoid employer status is risky
• Need to also focus on whether worker is a live-in versus a 24 hour care provider
• Consider value of bed and board

State Wage & Hour Law Issues

• State law can provide greater worker protections than federal FLSA
• Varying “employer” definition
• Higher minimum wage
• Break time standards
• Travel time standards
• Sleep time standards
MEDICAID HOME CARE

Rebalancing of LTC spending continues
Just over 50% of Medicaid LTC spending now in home care
States' balance in spending wide ranging
ACA incents home care
Higher federal match to low balance states (BIP)
New HCBS option benefit
States increasing Medicaid home care audits and oversight
Big focus on caregiver qualifications by OIG
Documentation weaknesses on care plans ad authorizations
Major movement to managed care Medicaid
Proposed Rule on Managed Medicaid
MLTSS (Managed Long Term Services and Supports)
Duals Demonstration Programs

MEDICAID HOME CARE

• Medicaid Managed care proposed rule
  • Adequate Planning
  • Stakeholder Engagement
  • Enhanced Provision of HCBS
  • Alignment of Payment Structures and goals
  • Support for Beneficiaries
  • Person-centered Process
  • Comprehensive Integrated Service Package
  • Qualified Providers
  • Participant Protections
  • Quality
MEDICAID HOME CARE

• Medicaid Access to Care Final Rule
  • Payment rate setting process and standards
  • “The agency’s payments must be consistent with efficiency, economy, and quality of care and sufficient to enlist enough providers so that services under the plan are available to beneficiaries at least to the extent that those services are available to the general population.” 42 CFR 447.204
• Access Monitoring Review Plan
• Special provisions on proposed rate reduction
• Public notice of changes
• Subject to CMS approval
• https://www.federalregister.gov/articles/2015/11/02/2015-27697/medicaid-program-methods-for-assuring-access-to-covered-medicaid-services

MEDICARE Home Health Regulatory Developments

HHPPS 2016 final rule
  Rates
  Value-Based Purchasing pilot
  Star Rating System
Home Health Proposed Rule: So much more that payment rates

• HHPPS 2016 Payment Rates
  • Continued Rate Rebasing
  • Recalibration of Case Mix Weights (again)
  • Wage Index Changes
  • Outlier Payment Model
• Case Mix Creep Adjustments (again!)
• Value Based Purchasing Model

2016 Final Medicare Home Health Rates

• Year 3 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
  – Changes in all 153 case mix weights
  – Budget neutrality adjustment
• New CBSAs in wage index
• Outlier eligibility remains same despite low spending
• Rates reduced by 2% if no quality data submitted
• 3% rural add-on continues through 2017
• Remember 2% payment sequestration (February 1 and later payments)
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

- HHCAHPS Star Rating expected in 2016 (separate)

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
Value-Based Purchasing Pilot (VBP)

- CMS establishes a pilot VBP:
  - Starting in 2016
  - Baseline year 2015
  - Performance year 2016
  - Payment year 2018
  - 9 states mandatory participation of all HHAs: MA, MD, NC, FL, WA, AZ, IA, NE, TN
  - 3-8% payment withhold for incentive payments
    - “greater upside benefit and downside risk”
    - Phase-in to 8%
  - Performance measures
    - Achievement and improvement
    - Process, outcomes, and patient satisfaction
  - Comparison based on “smaller-volume” and “larger-volume”
    - State-based comparison

Value-Based Purchasing

- Congressional proposal introduced in July (W&M sponsors)
  - Substitute for SGR legislative cuts
  - Integrated PAC VBP rather than individualized sectors
  - Starting in FFY 2020
  - Geographic based measures based solely on PAC spending
  - Withhold range at 3-8% with 50-70% redistribution
  - Limited direction on performance measures
    - PAC sector-specific per beneficiary spending (dangerous)
  - Significant discretion given CMS
- Home health non-PAC: in or out???
- MedPAC supports hospital readmission penalties
### Value-Based Purchasing Pilot: Measures

#### Outcome
- Improvement in ambulation-locomotion (OASIS)
- Improvement in bed transferring
- Improvement in Bathing
- Improvement in Dyspnea
- Discharged to community
- Acute care hospitalization (unplanned w/in 60 days; during first 30 days)
- Emergency Department use w/o hospitalization
- Improvement in pain interfering with activity
- Improvement in oral medication management
- Prior functioning ADL/IADL
- Care of Patients (CAHPS)
- Communication between providers and patients (CAHPS)
- Specific care issues (CAHPS)
- Overall rating (CAHPS)
- Willingness to recommend the agency (CAHPS)

#### Process (OASIS)
- Influenza vaccine data collection
- Influenza immunization received
- Pneumococcal vaccine received
- Reason Pneumococcal vaccine not received
- Drug education
- Care management/types and sources of assistance
Other Payment Reforms: PAC Bundling

- CMMI pilots/demos continuing
  - 2100 participating providers in 360 demo agreements
    - 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

CMS Joint Replacement Bundling Proposal

- Affects total hip and knee replacement patients
- Hospital payments at risk
  - Target spending set by CMS geographic specific data
  - Hospitals may share risk and savings with other providers
    - First year: shared savings only
    - Year 2 and beyond: shared savings and losses
    - Attempt to avoid overlap with other shared savings demos
    - Covers costs through 90 days post hospital
- 75 hospital geographic areas in play
- Patient freedom of choice continues
- Providers paid at usual FFS rates
- Expansion/retraction/termination possible depending on results
- Home health impact: mixed, but mostly positive in the aggregate

COMPLIANCE: FOCUS ON HOME CARE & HOSPICE

• Growth in oversight activities in home care and hospice
  – Medicare and Medicaid
  – High level fraud/False Claims Act investigations
    • Referrals
    • Wholesale unnecessary care
    • Failure to provide any service
  – Day-to-day compliance oversight
    • Claims
    • Coverage
    • Quality of care
• Multiple oversight bodies
  – Medicare/Medicaid contractors (MAC, RAC, SMRC, ZPIC)
  – Managed Care Organizations
  – OIG
  – FBI, DOJ, Etc.
  – Whistleblowers

CONCLUSION

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