PUBLICATION

Significant Payment Updates and Election Statement Changes for Hospice Providers in FY 2020 Rule

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Hospice providers will see significant changes in payment rates in the fiscal year beginning on October 1, 2019. In addition to the usual annual payment rate adjustments and hospice cap amount updates, the FY 2020 final payment rule published on August 6, 2019 at 84 Fed. Reg. 38,484 rebases the per diem payment rates for general inpatient (GIP), respite, and continuous home care (CHC) levels of care and makes corresponding adjustments in the routine home care rate. The rule also makes changes to the hospice election statement that will be effective for FY 2021 and discusses various issues related to quality measures.

Payment Changes

Payment Rate Rebasing and Market Basket Updates

Citing a 2018 MedPAC report that states that Medicare's payment rates for GIP, respite, and CHC "may be lower than the average and median costs per day" for certain hospice providers, CMS conducted an analysis of costs using data from hospice cost reports. Based on this analysis, CMS determined that a rebasing was appropriate. Rates for these levels of care were set to be equal to a hospice's actual per day costs for GIP, respite, and CHC in 2019, less five percent to account for coinsurance.

To implement the rebased rates in a budget neutral manner, the increases to GIP, respite, and CHC base rates were offset by a 2.7 percent reduction of the per day rate for routine home care (RHC). Providers should be mindful of the effect of the realignment of rates between RHC and inpatient care on inpatient cap calculations. With the significant increase in payment rates for inpatient care, hospices should be cognizant of the effect of exceeding that limit on payment. *Days in excess of the 20 percent inpatient limit are reimbursed at the RHC rate, which is now significantly lower than the respite care rate.*

These rebased rates set 2019 as the base year. Thus, the annual market basket increase – for FY 2020, 2.6 percent – was made on top of the rebasing adjustments. The rebased amounts were also adjusted by the wage index standardization factor. Routine home care rates were also adjusted by the service intensity add-on budget neutrality factor. Thus, for FY 2020, the rebased and adjusted rates will be as follows:

Level of Care	FY 2019 Payment Rate	FY 2020 Payment Rate
RHC (days 1 – 60)	$196.25	$194.20
RHC (days 61+)	$154.21	$153.72
CHC (per hour)	$41.56	$58.15

Respite	$176.01	$450.10
GIP	$758.07	$1,021.25

For hospices that do not submit the required quality data, these rates will be decreased by two percent. The hospice cap amount was not rebased. Following the application of the market basket increase, the new hospice cap amount for FY 2020 will be $29,964.78.

Effect of Changes

The changes to the hospice payment rates will have a variety of effects, some of which will be more immediately evident than others. The most significant change is to the rate of payment for respite care, which, despite the fact that it covers both room and board at an inpatient facility and the cost of providing care, was previously significantly lower than the daily rate for routine home care. Hospices that contract with nursing facilities to provide room and board services to hospice patients requiring respite care may have contracts in place with payment rates that reflect this misalignment. Providers should review their contracts for respite care services to ensure that payment for services continues to align with the division of labor and costs between the hospice and the facility where the care is being provided.

Additionally, the requirement that hospices provide no more than 20 percent of the total care days during a cap year in an inpatient setting remains in place. With the significant increase in payment rates for inpatient care, hospices should be cognizant of the effect of exceeding that limit on payment. *Days in excess of the 20 percent limit are reimbursed at the RHC rate, which is now significantly lower than the respite care rate*. As noted above, providers should be mindful of the effect of the realignment of rates between RHC and inpatient care on inpatient cap calculations (and on cap calculations overall).

Other Issues

Election Statement Changes

When a Medicare beneficiary elects hospice care, the hospice becomes responsible for all items and services related to the beneficiary's terminal illness and related conditions. In CMS's view, "services unrelated to the terminal illness and related conditions should be exceptional, unusual, and rare." However, confusion occasionally arises as to whether a particular service is covered under the hospice benefit or is associated with an unrelated condition.

To address these concerns, CMS had proposed various changes to the Notice of Election to clarify that certain items and services may be deemed to be unrelated to the beneficiary's terminal illness and therefore uncovered. CMS finalized its proposed changes to the election statement, and these changes will go into effect on October 1, 2020.

Most significantly, the Notice of Election will be required to include notification of the beneficiary's right to request an Addendum to the Notice of Election that includes a written list and rationale for the items and services that will not be covered by hospice and information on how the beneficiary may utilize a Quality Improvement Organization if it disagrees with the hospice's determination. The Addendum would be required to be provided within five days of the start of hospice care or within 72 hours of a request during the period of hospice election.

Quality Measures

The final rule also includes various updates regarding CMS's efforts around quality measures and quality reporting, including the development of new claims-based measures. CMS reports that it continues to review different approaches to the measurement and reporting of quality indicators. The rule finalized the acronym that will be used to describe the hospice patient assessment tool – Hospice Outcomes and Patient Evaluation, or HOPE. The rule also discusses various issues related to the CAHPS survey and public reporting of certain quality measures on Hospice Compare, and these discussions will continue as more information is collected.

For additional questions regarding these new changes, please contact any member of the Firm's Health Law Reimbursement Group.