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VIA ELECTRONIC SUBMISSION

Center for Medicare Services

Re: 2015 Hospice Wage Index (76 F.R. 26537)
Comment re: Proposed Modification of 42 CFR 418.308 re Cap Determinations

To Whom it May Concern:

In its May 2014 publication of the 2015 Hospice Wage Index update (76 F.R. 26537), CMS proposes to modify the hospice regulations to require hospices to calculate, report, and pay their own cap liability, with such reports to be due five months past fiscal year end (i.e., by March 30 of each year after fiscal year end October 31).

The purpose of this letter is to comment on this proposed modification of the hospice cap regulation.

CMS suggests that online tools exist to allow hospices to perform this calculation. The fact is, however, that the PS tool remains an imperfect mechanism for cap calculation. CMS itself needs to undertake important additional work on the PS tool before placing the burdens of cap calculations on a diverse group of providers.

Background

Before CMS corrected the cap regulation (42 CFR 418.309) in 2011 by allowing for proportional allocation of cap allowances for each patient across years of service (as Congress originally required), there were no online provider tools to help providers assess their own cap position. Contractor finance teams made painstaking calculations, often in inconsistent fashion and on an inconsistent calendar from region to region. Hospices that wished to track cap liability had to do so with their own spreadsheets manually (and had incomplete information re patient service on other hospice).

The invalidation of CMS' longstanding rule beginning six years ago spurred CMS to develop a nationwide hospice cap database. The PS tool is useful, in that it allows the contractors (or providers) through the PS system to request current cap allowances for any fiscal year from 2008 forward. But, as described below, it is not a tool that will allow 3,000 hospices to calculate cap reliably in the manner envisioned by CMS in the proposed regulation.

To the extent that CMS suggests that the PS tool allows hospices to predict where they will end up on cap in a given year, this is not accurate. Under either cap calculation method, the measurement of allowances at any given point in time during a certain fiscal year will tend to materially overstate or understate allowances. For a provider on the old method (streamlined), allowances will tend to be overstated in the first part of a year. For providers on the new method, allowances will tend to be overstated in the latter part of any given year. Only at approximately one year out from *close* of any fiscal year do allowances begin to approximate final cap position with any degree of reliability.

CMS should acknowledge the fact that the hospice cap, under either method, remains a complex calculation dependent upon facts that are not known at the time a hospice admits any given patient – specifically, when that patient will pass away. Hospices facing cap liability continue to be the victims of a politically convenient demonization process by CMS, MEDPac, and even the ostensible hospice advocate, the NHPCO.

<u>The PS Tool Does Not Presently Afford An Easy Cap Assessment Mechanism</u>

To assess cap liability using the PS tool, a provider must: (a) correctly use the PS tool to get the current cap allowances for the fiscal year in question (requiring various data inputs to be set correctly); (b) separately request a net reimbursement report (modifying settings to cover the fiscal year instead of default calendar year); (c) create a spreadsheet to multiply the given allowances by the current per beneficiary allowance (located in a separate annual CMS Change Request); and (d) setup the spreadsheet to calculate the difference between revenue and allowances.

These are not impossible tasks; but, they are complicated steps that, if done 3,000 separate times by 3,000 separate hospices, will result in an unacceptably high error rate (at least twenty percent (20%)). Hospices will not all get this right.

Presently, even the contractors cannot execute these steps quickly. If hospices are forced to report their own cap position, errors will follow and the burden on both providers and contractors will be multiplied in that contractors will then not only have to calculate cap liability at some later date, but will also then have to reconcile the calculations to prior calculations from 3,000 hospices.

It also should be noted that the PS tool itself is far from perfect.

For instance, if any provider fails to login for six months, then the system will cancel login credentials. So, if a hospice needs to login, it will then need to re-register, which can take months. In many cases, there is no need to login more regularly than annually, making the cancellation of credentials all too common.

Many hospice providers are small entities, started by nurses hoping to help serve a local community. Not all providers have even registered for access to the PS tool.

In addition, during periods of heavy usage, the PS tool often cannot timely deliver reports. Before requiring every hospice to calculate and reports it own cap by a certain date, CMS should be sure that the PS tool can timely handle 3,000 separate contemporaneous requests for both cap reports and net reimbursement reports.

Inefficient Provider Communication System

At present, CMS relies upon physical mail (without redundant email or electronic inbox) to deliver critical important provider communications, including cap reports, ADR notices, and other overpayment determinations.

As many providers know through painful experience, different parts of the government use different provider addresses. Sending an updated address to a contractor either manually or through PECOS is no guarantee that mail will be delivered correctly thereafter.

When mail fails to reach providers, CMS (through its contractors) blames providers and shuts off reimbursement without follow up or inquiry. Regardless of timing of actual receipt, CMS unfairly presumes that mail is received on the date it is *postmarked*, often reducing by one-third (five days for mail delivery) the unconscionably short fifteen day response period to provider overpayment notices. Such a system is not consistent with basic due process.

CMS should implement an online provider notification system, with a unique inbox assigned to each provider, so that important notices can be delivered immediately in electronic form (and forwarded automatically by settings to any number of provider personnel).

Basic due process requires CMS to ensure that providers get timely and actual notice of CMS action, especially overpayment or ADR notices.

Specific Response to Proposal

CMS should set aside its proposed rule to require hospices to calculate their own cap and instead take the following steps:

CMS should complete the work it began within the PS tool by fully automating cap calculation. The PS tool should be modified to generate automatically a complete cap report for each provider, showing fractional allowances, total dollar allowances, net reimbursement for the fiscal year, and cap position for any given fiscal year. By this work, CMS can ensure that there are far fewer calculation errors than would occur by forcing providers to calculate these results manually by assembling various reports and data from the PS tool and elsewhere (Change Requests).

CMS should modify the PS tool to ensure that it does not cancel login credentials for any active providers, regardless of any gap in login activity.

CMS should ensure that every active provider has current and continuous access to the PS tool.

CMS should test the PS tool to ensure that it can handle any potential volume of cap and reimbursement report requests that could be associated with any proposed reporting deadline.

Finally, and critically, CMS should create an online provider notification system to allow for immediate electronic delivery of important notices, like overpayment determinations to designated provider online inboxes (including features to set forwarding preferences).

Thank you for your consideration of these points.

Very truly yours,

/s/ Brian M. Daucher

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