

## HEALTH REFORM IMPACT

What you need to know NOW

NEWS FOR THE CLIENTS AND FRIENDS OF BASS, BERRY & SIMS PLC

### **A Continuing Trend: Home Health Reimbursement Cuts**

**May 18, 2010**

The Patient Protection and Affordable Care Act, enacted on March 23, 2010, as amended by the Health Care and Education Reconciliation Act, enacted on March 30, 2010 (collectively, the "Health Reform Legislation"), will reduce total reimbursement received by Medicare-certified home health agencies ("HHAs") under the home health prospective payment system. The Congressional Budget Office estimates that these changes will result in an aggregate \$39.7 billion reimbursement cut for Medicare-certified home health agencies between 2010 and 2019.<sup>1</sup>

These payment reforms follow three 2.75% payment reductions made by the Centers for Medicare & Medicaid Services ("CMS") for calendar years 2008, 2009 and 2010, totaling 8.25%.<sup>2</sup> CMS has also scheduled another cut of 2.71% for CY 2011.<sup>3</sup> CMS has implemented these cuts based on its view that case-mix weights have increased without an attendant change in patient characteristics. With the cuts in the Health Reform Legislation now being added to these already scheduled cuts, HHAs face continued pressure on Medicare reimbursement.

#### **Rural Add-On for Episodes and Visits Ending On or After April 1, 2010 and Before January 1, 2016**

The Health Reform Legislation reinstates the rural payment add-on for episodes and visits ending on or after April 1, 2010 and before January 1, 2016.<sup>4</sup> HHAs in rural areas, as defined in Section 1886 of the Social Security Act, will receive an additional payment equal to 3% of the payment otherwise owed under the home health prospective payment system ("HH PPS").

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<sup>1</sup> Letter from Douglas W. Elmendorf, Director of the Congressional Budget Office to Nancy Pelosi, Speaker of the U.S. House of Representatives, Table 3 (March 18, 2010).

<sup>2</sup> 42 CFR §484.220. 72 Fed. Reg. 49762 (Aug 29, 2007). See also 73 Fed. Reg. 65351 (Nov. 3, 2008) and 74 Fed. Reg. 58078 (Nov. 10, 2009).

<sup>3</sup> 42 CFR §484.220.

<sup>4</sup> The previous rural payment add-on had expired on January 1, 2007.

## **Cap on Total Outlier Payments**

The Health Reform Legislation revises how CMS pays HHAs for outlier payments for unusual variations in the type or amount of medically necessary care. First, effective as of March 23, 2010, the legislation reduces the aggregate amount of outlier payments made to HHAs from 5% to 2.5% of total home health payments. Second, effective in CY 2011, outlier payments to any individual HHA cannot exceed 10% of estimated total amount of payments made to such HHA by Medicare.

## **Rebasing the Home Health Prospective Payment System**

Beginning in CY 2014, Medicare will begin rebasing the HH PPS. Rebasing is intended to reflect factors such as changes in the number of visits in an episode, the mix of services in an episode, the level of intensity of services in an episode, the average cost of providing care per episode, and other factors at the discretion of the Secretary of the U.S. Department of Health and Human Services (the "Secretary"). The Health Reform Legislation requires that the rebasing adjustment be phased in over a four-year period in equal increments so that the adjustment is fully implemented by CY 2017. However, the rebasing adjustment shall not exceed 3.5% during each year of the phase-in.

In addition, the Health Reform Legislation calls for the Medicare Payment Advisory Commission ("MedPAC") to conduct a study on the rebasing adjustments to determine how such adjustments (i) impact Medicare beneficiaries' access to care, (ii) impact patient quality outcomes, (iii) affect the number of home health agencies and (iv) affect each type of HHA, including rural agencies, urban agencies, for-profit agencies and nonprofit agencies. The Health Reform Legislation requires that MedPAC deliver this report no later than January 1, 2015.

## **Adjustments to the Home Health Market Basket Percentage Increase**

The Health Reform Legislation also reduces the market basket update by 1% for CY 2011, CY 2012 and CY 2013. Additionally, beginning in CY 2015, CMS will reduce the market basket percentage by an annual productivity adjustment. The productivity adjustment is equal to the 10-year moving average of changes in annual economy-wide private nonfarm business multi-factor productivity, as projected by the Secretary ending with the applicable calendar year. The National Association for Home Care and Hospice estimates that the productivity adjustment will be an additional 1% reduction to the home health market basket update.

## **Studies of the HH PPS to Ensure Access to Care and Payment for Severity of Illness**

No later than March 1, 2014, the Secretary must submit a report to Congress regarding a study on home health agency costs related to ongoing access to care and treating beneficiaries with varying levels of severity of illness. The Health Reform Legislation requires that the Secretary analyze ways both to revise the HH PPS to account for costs related to patient severity of illness and to improve beneficiary access to care. The Secretary must consult with groups representing HHAs and those representing Medicare beneficiaries.

If you have any questions regarding this alert, please contact any of the attorneys in our Healthcare Practice Group listed below.

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