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CMS Pushes Home Health Agencies into the Choice Demonstration

On May 31, CMS continued its [recent trend](#) in changing payment processes by publishing its [proposal to develop](#) and implement the Home Health Review Choice Demonstration (the “Demonstration”) to “assist in developing improved procedures for the identification, investigation, and prosecution of Medicare fraud occurring among Home Health Agencies.”[1] This is CMS’s second attempt to implement a claim review demonstration for HHAs. CMS suspended its first attempt on April 1, 2017, due to pressure from providers and lawmakers.

The Demonstration would require HHAs in Ohio, Illinois, North Carolina, Florida and Texas to submit to claim reviews for every home health episode until the HHA reaches the target affirmation or claim approval rate, which is 90 percent.[2] Only after reaching the target rate would CMS relieve the HHA from the 100 percent review process.[3] Even then, the HHA would continue to be subject to spot checks of five percent of claims to ensure continued compliance.[4]

Again, participation in the Demonstration would not be mandatory, but HHAs who decline to participate would receive a 25 percent payment reduction on all claims. Moreover, HHAs would not be permitted to pass this cost to the patient or appeal the payment reduction.[5] Additionally, HHAs who opt out of the Demonstration could potentially be subject to Recovery Audit Contractor review. For HHAs that agree to participate, there are two claims review options: pre-claim or post-claim. Once an HHA selects a review method, however, it would be limited to that review method moving forward.

Pre-claim Review Process

The pre-claim review process would require HHAs to submit a request for provisional affirmation, along with all required documentation, prior to submitting the final claim for payment.[6]

HHAs could submit pre-claim requests after services have begun to avoid delays in patient care, and unlimited submissions would be permitted to correct any errors. Additionally, HHAs in the pre-claim process could submit requests for multiple episodes of care at once. However, if HHAs failed to submit a pre-claim request before submitting a final claim, the claim would be subject to a pre-payment review, and if approved, the claim would incur the 25 percent penalty.[7]

Post-claim Review Process

The post-claim review process would operate according to normal claim processes. Under this approach, the Medicare Administrative Contractor would conduct complex medical reviews of all claims submitted during a six-month interval to verify compliance. (See: [Chapter Three](#) of the Program Integrity Manual.) Additionally, HHAs that opt for the post-claim review method could not obtain approval for multiple episodes at one time, as permitted for the pre-claim method of review.

The proposal is open to public comment until July 30, 2018, and [comments may be posted here](#). While an exact start date has not been proposed, the Home Health Review Choice Demonstration would begin no earlier than October 1, 2018 and would last five years.

Conclusion

HHAs should review the Demonstration and propose comments to ensure it is line with their operations. For example, HHAs may consider asking CMS to reduce the target affirmation or claim approval rate down from 90 percent. Additionally, HHAs may try and convince CMS that decreasing payments by 25 percent for those who “choose” not to participate in the Demonstration is heavy-handed.

For more ideas and how to effectively comment on the proposal, please reach out to of our [healthcare attorneys](#) with deep Medicare and claims submission knowledge. You can also visit our [Health Law Matters blog](#) for more insight into legal issues impacting the health

care industry.

[1] Federal Register, May 31, 2018, pg. 25012, *available at* <https://www.federalregister.gov/d/2018-11492>.

[2] Supporting Statement Part A, pg. 2,
<https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing-Items/CMS-10599.html?DLPage=1&DLEntries=10&DLFilter=10599&DLSort=1&DLSortDir=desc>
(last visited June 25, 2018).

[3] Id.

[4] Id.

[5] Id. at pg. 3.

[6] Id.

[7] Id.

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