

PUBLICATION

Home Health CY 2012 PPS Proposed Rule Offers Some Relief and Some New Penalties [Ober|Kaler]

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CMS recently released its proposed changes for the CY 2013 home health PPS system. It can be found [here](#). Comments on the proposed rule are due no later than September 4, 2012.

Among other things, the proposed rule would:

- Decrease payment rates by 0.1 percent from current year rates, resulting from a combination of a market basket increase of 2.5 percent minus a statutory reduction of 1.0 percent, a 1.32 percent payment reduction to account for changes in coding practices, and a decrease due to effects of the updated wage index.
- Modify the requirements for the face-to-face encounter in two ways:
 - For patients admitted to home health from an acute or post-acute facility, a non-physician practitioner (NPP) in the facility could perform the face-to-face encounter in collaboration with or under the supervision of the physician who has privileges and cared for the patient in the facility, and allow such physician to inform the certifying physician of the patient's homebound status and need for skilled services.
 - Permit someone other than the certifying physician to “title” the face-to-face documentation.
- Modify therapy coverage provisions in two ways, in instances where the required therapy reassessment is made late (i.e., after the 13th/19th visit or later than once every 30 days):
 - Therapy coverage would resume with the visit during which the qualified therapist completed the late reassessment, rather than the visit after that.
 - Where multiple therapy disciplines are involved, coverage would cease only for the therapy discipline with the late reassessment, and not for all therapy disciplines.
- Clarify the regulation text to indicate that, when multiple therapies are provided, therapy reassessments can be performed during the 11th, 12th or 13th visit for the required 13th visit reassessment, or during the 17th, 18th or 19th visit for the required 19th visit reassessment.
- Establish regulations governing home health survey and certification rules (at 42 C.F.R. Part 488, Subpart I), including definitions of types of home health surveys, survey frequency, surveyor qualifications, and the opportunity for informal dispute resolution for condition-level deficiencies.
- Establish regulations for new alternative sanctions for HHAs with deficiencies (at 42 C.F.R. Part 488, Subpart J), including:
 - Civil monetary penalties ranging from \$500 - \$10,000 per day depending on the level of seriousness of the deficiencies,
 - Suspension of payment for new admissions and new episodes,
 - Temporary management,
 - Directed plans of correction, whereby CMS requires specific actions to correct the deficiencies,
 - Directed in-service training, and
 - Requirements for continuation of payments to HHAs with deficiencies.

In addition to the home health provisions, the proposed rule addressed the hospice quality reporting program and the data submission requirements for Payment Year 2014.

Ober|Kaler's Comments

HHAs should take advantage of CMS's specific requests for comments, particularly on the face-to-face and therapy issues. In addition, HHAs should focus on the new range of intermediary sanctions for conditions of participation deficiencies that would be available to CMS if they are finalized. Although statutory authorization for such intermediate sanctions has existed since 1987, this is CMS's first attempt to apply them to HHAs. Comments should be submitted before September 4, 2012.