



National Senior Citizens Law Center

PROTECTING THE RIGHTS OF LOW-INCOME OLDER ADULTS

September 2, 2014

Marilyn Tavenner, Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-1611-P
P.O. Box 8016
Baltimore, MD 21244

RE: Medicare and Medicaid Programs; CY 2015 Home Health Prospective Payment System Rate Update; Home Health Quality Reporting Requirements; and Survey and Enforcement Requirements for Home Health Agencies; *Federal Register*, July 7, 2015. CMS 1611-P.

Dear Administrator Tavenner:

The National Senior Citizens Law Center (NSCLC) appreciates the opportunity to comment on the proposed regulations for the CY 2015 Home Health Prospective Payment System. NSCLC is a national non-profit organization, and our principal mission is to protect the health and economic security rights of low-income older adults.

Our comments below center on Provision A1: Affordable Care Act Rebasing Adjustments and Provision B: Proposed Changes to the Face-to-Face Encounter Requirement. Our primary concern with the proposed rule is the absence of analysis regarding beneficiary impact when adjusting the prospective payment amount and eliminating the physician narrative in the face-to-face encounter requirement. The comment below does not endorse or oppose the payment adjustment or the removal of the narrative, rather it is intended to highlight the importance of considering beneficiary impact when drafting home health requirements.

1) Impact on beneficiary access and quality should be a factor the Secretary considers when rebasing the home health payment amount.

Section 3131(a) of the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111-148) authorizes the Secretary to adjust payment for home health care after 2013 to reflect: “such factors as...the average cost of providing care per episode, and *other factors the Secretary considers to be relevant*” (emphasis added). The rebasing adjustment explanation included in the proposed rule does not include any exploration of how the change will impact beneficiaries. In addition to the factors that HHS must consider under the statute, we urge the Secretary to also consider the effects on consumers prior to making changes in payment rates. We understand that the Secretary has discretion when selecting relevant factors, and we believe the impact on beneficiaries is a relevant factor –indeed, one of the most important factors –that

should be considered in payment adjustment. The analysis should include the effect on low-income Medicare beneficiaries (especially those who do not also receive Medicaid), limited English proficient individuals, and others who may be particularly vulnerable with high care needs.¹

We are pleased that the proposed rule includes the commitment to continue monitoring potential impacts of rebasing, however, we recommend any future monitoring and evaluation include assessments of the way payment changes have impacted beneficiary access to care.

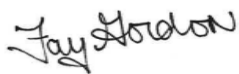
Section 3131(a)(2) requires the Medicare Payment Advisory Commission (MedPAC) to analyze the impact of payment changes on access to care by January 1, 2015. This study should help provide a better understanding of the impact on beneficiaries; however, the study should not replace consideration of beneficiary impact as a factor prior to making payment adjustments.

2) Proposed changes to the face-to-face requirement should include an evaluation of the impact on beneficiary access to care.

Similarly, the agency's analysis of the implementation of the face-to-face requirement does not include any exploration of how the current policy has impacted beneficiary access to services. The analysis focuses only on providers, and not consumers, as it draws conclusions about how the policy impacted provider action based on a thorough analysis of claims data. The existing data offer no information to evaluate the extent to which individuals who needed home health services may have been unable to receive them due to the face-to-face requirement. Nor does the data indicate how a change in the face-to-face requirement might impact consumer access to care. Also missing is an exploration of the protocol change and its impact on individuals with limited English proficiency, as well as racial and ethnic minority beneficiaries. Future analysis should include this evaluation. If the information is not available through claims data, we suggest interviewing and reviewing reports about access from consumer assistance organization.

Thank you for the opportunity to highlight the importance of evaluating how rule changes will affect consumers, and not just providers, in the Medicare program.

Sincerely,



Fay Gordon
Staff Attorney

¹ A discussion of the challenges and options for evaluating access to home health care services is included in CMS' Home Health Study Report (Jan. 11, 2011), http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HomeHealthPPS/downloads/HHPPS_LiteratureReview.pdf.