Small Entity Compliance Guide

Medicare Program: Home Health Prospective Payment System (HH PPS) Rate Update for CY 2010

Federal Register Vol. 74, No. 58077, Page 5807, November 10, 2009
42 CFR Parts 409 424 484 and 489

CMS-1560-F, RIN 0938-AP55

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA, P.L. 104-121, March 29, 1996, as amended by P.L. 110-28, May 25, 2007) contains requirements for issuance of "small entity compliance guides." Guides are to explain what actions affected entities must take to comply with agency rules. Such guides must be prepared when agencies issue final rules for which agencies were required to prepare a Final Regulatory Flexibility Analysis under the Regulatory Flexibility Act (RFA). The overall impact of the CY 2010 HH PPS final regulation, as is detailed in the RFA of the regulation and discussed below, reflects an estimated decrease in payments to home health agencies. Excluding HHAs in areas of the country where high and suspect outlier payments exist, this final rule is estimated to have an overall positive effect upon small entities.

The complete text of this Final Rule can be found on the CMS Web site by clicking on the link to "CMS-1560-F" at: http://www.cms.hhs.gov/center/hha.asp

As required under section 1895(b)(3)(B) of the Social Security Act (the Act), this final rule updates the Home Health Prospective Payment System (HH PPS) rates; the national standardized 60-day episode rates, the national per-visit rates, the non-routine medical supply (NRS) conversion factors, and the low utilization payment amount (LUPA) add-on payment amounts, under the Medicare prospective payment system for home health agencies effective January 1, 2010. In accordance with section 1895(b)(4)(C) of the Act, this rule also updates the wage index used under the HH PPS.

For the purposes of the RFA, approximately 75 percent of HHAs are considered to small businesses according to the Small Business Administration's size standards with total revenues of $13.5 million or less in any 1 year. Individuals and States are not included in the definition of a small entity. For the purposes of impact analysis, the agency size categories are based on the number of first episodes in a random 20 percent beneficiary sample of CY 2007 claims data. Initial episodes, under the HH PPS, are defined as the first episode in a series of adjacent episodes (contiguous episodes that are separated by no more than a 60-day period between episodes) for a given beneficiary. Initial, or first, episodes are a good estimate of agency size, because this method approximates the number of admissions experienced by the agency based on approximately one-fifth of the total annual data.

As such, the size categories for these impact analyses are: less than 19 first episodes, 20 to 49 first episodes, 50 to 99 first episodes, 100 to 199 first episodes, and 200 or more first episodes. Larger HHAs (those with 200 or more Medicare home health initial episodes per year) are estimated to experience an increase in payments from CY 2009 to CY 2010 of approximately 2.27 percent. Mid-size to small agencies are expected to see a decrease in their payments in CY 2010, ranging from 1.95 percent to 16.08 percent. However, we believe that the major contributors to the estimated decreases in payments for mid-size to small agencies are those agencies in areas of the country with high and suspect outlier payments. As such, in the final rule, we provided a more detailed discussion, and analysis, that demonstrates where, in the country, these estimated large decreases for mid-size to small agencies are occurring.

The overall percentage change, for all HHAs, in estimated total payments from CY 2009 to CY 2010 is a decrease of approximately 1.03 percent. Rural HHAs, however, are estimated to see an increase in payments from CY 2009 to CY 2010 of about 3.27 percent. On the other hand, urban HHAs are expected to see a decrease of approximately 1.81 percent in payments from CY 2009 to CY 2010.

Voluntary non-profit HHAs (3.36 percent), facility-based HHAs (3.72 percent), and government owned HHAs (2.94 percent) are estimated to see an increase in the percentage change in estimated total payments from CY 2009 to CY 2010. Proprietary and freestanding HHAs, on the other hand, are estimated to see decreases of 3.32 percent and 1.90 percent, respectively, in estimated total payments from CY 2009 to CY 2010. Freestanding HHAs, broken out, show that voluntary non-profit and governmental HHAs are estimated to see increases of 3.47 percent and 3.48 percent respectively in estimated total payments from CY 2009 to CY 2010.

HHAs in the North and Midwest regions are expected to experience a percentage change increase in the estimated total payments from CY 2009 to CY 2010 of 3.66 percent and 3.48 percent, respectively. HHAs in the South and West regions of the country are estimated to experience decreases in the percentage change in estimated total payments from CY 2009 to CY 2010 of 4.19 percent and 1.70 percent. We believe that the major contributors to the estimated decreases in payments in these areas of the country are those with high and suspect outlier payments.

Breaking this down even further, it is estimated that New England, Mid Atlantic, East South Central, East North Central, West North Central, and Mountain area HHAs are all expected to experience increases in their payments in CY 2010 ranging from almost 2 percent to almost 5 percent. Conversely, South Atlantic and Pacific HHAs are expected to experience decreases, 11.84 percent and 3.09 percent respectively, in the percentage change in estimated total payments from CY 2009 to CY 2010. Again, we believe that the major contributors to the estimated decreases in payments in these areas of the country are those with high and suspect outlier payments.

Finally, we looked the percentage change by agency size (see description above). Larger HHAs (those with 200 or more Medicare home health initial episodes per year) are estimated to experience an increase in payments from CY 2009 to CY 2010 of approximately 2.27 percent. Mid-size to small agencies are expected to see a decrease in their payments in CY 2010, ranging from 1.95 percent to 16.08 percent. However, we believe that the major contributors to the estimated decreases in payments for mid-size to small agencies are those agencies in areas of the country with high and suspect outlier payments. Consequently, as we did in the proposed rule, we have provided a more detailed discussion, and analysis in Table 8 below, that demonstrates where, in the country, these estimated large decreases for mid-size to small agencies are occurring.

Given the overall large negative impact observed by smaller agencies, we performed more detailed analysis targeted at identifying where the large negative impacts were occurring. It is clear from this analysis that, for smaller agencies, the vast majority of the negative impact is occurring in areas of the country (such as the South and South Atlantic) where there exist high and suspect outlier payments. Specifically, for the South Atlantic area of the country (which includes Miami-Dade, Florida), the negative percentage impacts in payment ranging from around 40 percent to just over 53 percent are evidence that it is the high and suspect outlier payments in areas such as this, that are skewing the results of the overall impact analysis. Estimated impacts for small agencies in the South (negative impacts ranging around 15 percent to 22 percent) and the Pacific (negative impacts ranging from around 12 percent to 17 percent) areas of the country, reflect similar results. Conversely, small HHAs in most

other parts of the country are estimated to see increases in payments in CY 2010, ranging from 0.20 percent to almost 5 percent. Consequently, we believe that small HHAs without high and suspect outlier payments, on average, will see a positive impact on their payments in CY 2010. We do not believe there will be any significant impact on beneficiaries, as a result of the provisions of this rule. Areas where negative impacts have been estimated for HHAs are primarily urban, and thus we believe that beneficiaries have a reasonable pool of HHAs from which to receive home health services.

In addition, this rule changes the HH PPS outlier policy, requires the submission of OASIS data as a condition for payment under the HH PPS, implements a revised Outcome and Assessment Information Set (OASIS-C) for episodes beginning on or after January 1, 2010, and implements a Consumer Assessment of Healthcare Providers and Systems (CAHPS) Home Health Care Survey (HHCAHPS) affecting payment to HHAs beginning in CY 2012. Also, this rule makes payment safeguards that will improve our enrollment process, improve the quality of care that Medicare beneficiaries receive from HHAs, and reduce the Medicare program's vulnerability to fraud. This rule also adds clarifying language to the "skilled services" section and Conditions of Participation (CoP) section of our regulations. This rule also clarifies the coverage of routine medical supplies under the HH PPS.

CMS has also posted an updated HH PPS Grouper, which utilizes OASIS-C, on CMS' Home Health Case Mix Grouper Software Package web page. This software package is available by clicking on the link to "Oct 09 OASIS C Grouper Software":
http://www.cms.hhs.gov/HomeHealthPPS/05_CaseMixGrouperSoftware.asp

CMS provides the following on-line manuals that present compliance information regarding our home health regulations. The manuals are frequently updated to reflect the latest changes in Medicare home health policy. These manuals serve, in part, as a system of small entity compliance guides that meet the letter and spirit of the Small Business Regulatory Enforcement fairness Act (SBREFA).

- Medicare Benefit Policy Manual; Chapter 7- Home Health Services:
  http://www.cms.hhs.gov/manuals/downloads/clm104c10.pdf

- Medicare Claims Processing Manual; Chapter 10- Home Health Agency Billing
  http://www.cms.hhs.gov/manuals/Downloads/bp102c07.pdf

CMS also conducts Open Door Forums (ODFs) to improve transparency in CMS's policies. These forums provide small entities with an opportunity to obtain information, as questions, and express their views to senior CMS officials on nearly all major regulatory issues, especially those that might affect providers in a new or burdensome way. As such, information on Home Health, Hospice, and Durable Medical Equipment ODFs can be found at:
http://www.cms.hhs.gov/OpenDoorForums/17_ODF_HHHDME.asp#TopOfPage

CMS also communicates information to providers through the use of mailing lists, or listservs. HHAs can join the "HH-PPS-L" list by filling out and submitting the form at:
https://list.nih.gov/cgi-bin/wa?SUBED1=hh-pps-l&A=1

CMS also informs the public about the changes CMS is proposing or making in the programs that it administers. CMS posts the Quarterly Provider Update at the beginning of each quarter at:
http://www.cms.hhs.gov/quarterlyproviderupdates/