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Medicare Home Health Payments Slashed

An Unprecedented Medicare Cut that Will Endanger Millions of Vulnerable Seniors CMS Acknowledges “43 Percent” of all Medicare Providers Will Face Below-Cost Payment Rates by CY 2017

WHERE THINGS STAND:

- The Centers for Medicare and Medicaid Services (CMS) released the Home Health Prospective Payment System (HHPPS) Final Rule on Friday, November 22nd. The rule became effective beginning January 1, 2014.
- The Final Rule unnecessarily rebases payment rates at the **maximum cut permitted under the Affordable Care Act**: a cut of **-3.5% per year over each of the next 4 years**, totaling an **unprecedented cut** to Medicare home health payment rates of **14% by 2017**.
- This rule disregards appeals made by hundreds of lawmakers, dozens of stakeholders among beneficiary advocacy organizations (including AARP), and tens of thousands of seniors and caregivers.

WHY ACTION IS NEEDED:

- CMS’s rebasing cut directly affects the **3.5 million homebound seniors and persons with permanent disabilities who use home health care annually**. These vulnerable citizens are older, sicker, poorer and more likely to be a **minority** than the typical Medicare beneficiary.
- **CMS acknowledges that “approximately 43 percent” of all Medicare home health providers will be paid less than the cost of care by CY 2017.**² No previous Medicare rule has ever had such an impact on nearly half of a health care sector.
- **In reality, CMS is actually underestimating the devastating impact of these cuts on providers over the next 4 years**. Based on recent cost and revenue trends, it is **more realistic to expect that about 60% of providers will be paid less than their costs by 2017**. To reach its projection, CMS must assume that providers can completely absorb the 14% rate cut without any financial consequences, an assumption that is in conflict with actual experience in 2011, 2012, and 2013 when rate cuts significantly reduced Medicare margins.
- **Below-cost Medicare payment typically leads to home health agency closure** because – unlike other sectors – Medicare Advantage and Medicaid pay even less than Medicare and do not offset Medicare losses.

¹ *Rulemaking Options to Correct HHPPS Rule*, Greenberg Traurig LLP, 11/25/13.

² HHPPS Final Rule for CY 2014, page 116.

³ HHPPS Final Rule for CY 2014, page 210.

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⁴ HHPPS Final Rule for CY 2010, page 207.

⁵ HHPPS Final Rule for CY 2010, page 121.

⁶ PFS Final Rule for CY 2010, 74 FR 61983.

THE SECRETARY CAN FIX THIS:

- **The Secretary has the authority¹ to revise the rebasing cut to protect seniors' access to home health:**
 - Section 1895 of the Social Security Act allows the Secretary to implement a less aggressive approach to rebasing, providing HHS significant discretion and flexibility to consider all relevant factors to ensure continued access to care. The law does not require a 14% cut.
 - Section 1871(b)(1) of the Social Security Act empowers the Secretary to dispense with notice and comment rulemaking and modify the HHPPS rebasing adjustment before or after it goes into effect on January 1 in order to serve the public interest.

KEY FLAWS IN THIS RULE:

- CMS did not evaluate or consider the impact on access to care for the over 47 million Medicare beneficiaries who may need home health care.
- CMS did not consider any of the available alternative methods of rate rebasing that would have ensured continued access to care while conforming to its legal obligations.
- CMS disregarded its own current data that shows that as many as 60% of home health agencies cannot withstand rate cuts at the level set in the rule.
- Finally, CMS ignored lawmakers' request that the impact of rebasing on beneficiaries and small business be fully assessed for the entire 4 years (2014-2017) in which it is to take effect. Specifically, **CMS said that a 4-year impact analysis was "neither practicable nor appropriate."**⁵ And yet, CMS conducted a 4-year impact analysis in the Physician Fee Schedule for CY 2010⁶ – suggesting that such analyses *are* practicable and appropriate.

WHAT ACTION IS NEEDED

Congress must act now to stop this unsustainable payment cut. Congress should:

- **Postpone implementation of the rate change to no earlier than January 1, 2015 (the home health industry has offered an offset that would more than pay for a postponement);**
- **Require a re-evaluation of the CMS methodology for rate rebasing taking into consideration all factors relevant to maintaining access to care;**
- **Require a report to Congress on the re-evaluation and any needs for a revised rate rebasing methodology by June 30, 2014.**

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