

## **PRESERVE THE BUDGET NEUTRALITY ADJUSTMENT FACTOR IN THE MEDICARE HOSPICE WAGE INDEX**

**ISSUE:** President Bush's proposed 2009 budget included a regulatory proposal that would permanently eliminate the budget neutrality adjustment factor for the hospice wage index resulting in about a 4 percent cut in the hospice reimbursement rates each year. The anticipated savings would be \$2.29 billion over five years. The Centers for Medicare & Medicaid Services (CMS) issued a Notice of Proposed Rulemaking (NPRM) calling for comments followed by issuance of a final rule. CMS essentially ignored the comments and began a three-year phase out of the BNAF, effective November 1, 2008. As a result of passage of the American Recovery and Reinvestment Act of 2009 which postponed elimination of the BNAF until October 1, 2009, CMS must now reinstate the BNAF back to October 1, 2008. Thereafter, if Congress does not act, CMS may again begin the phase-out resulting in a hospice cut in reimbursement.

**RECOMMENDATION:** Congress should direct CMS to permanently reinstate the budget neutrality adjustment factor in the Medicare Hospice Benefit wage index annual update. CMS should be directed to collect sufficient data to responsibly analyze the need for refinements in the hospice reimbursement system before Congress acts to make permanent changes.

**RATIONALE:** The elimination of the BNAF creates a serious risk of loss of access to hospice care. The Medicare Payment Advisory Commission (MedPAC) has reported that the average hospice margin was 3.4 percent in 2005; elimination of the BNAF decreases hospice reimbursement by 4 percent. There is no reliable data available to indicate whether the majority of hospices would be able to sustain such an overwhelming cut in reimbursement rates. There is a very real danger of putting community hospices out of business resulting in a lack of access to the hospice benefit, particularly in rural areas. In January of 2009, MedPAC's Commissioners voted out a set of recommendations to the Congress that included changing the hospice payment system. However, MedPAC is relying on CMS to gather the data needed to ensure responsible analysis prior to making any refinements/changes. CMS is in the process of collecting data on hospice services and costs. MedPAC has not recommended a cut in the hospice benefit.

In 1994, as a result of disparity in wages from one geographical location to another, CMS established a committee to negotiate a wage index methodology that could be accepted by the industry and the government. The National Association for Home Care & Hospice participated in the Hospice Wage Index Negotiated Rulemaking Committee along with representatives of CMS and other hospice stakeholders. On April 13, 1995, the Hospice Wage Index Negotiated Rulemaking Committee signed an agreement for the methodology to be used for updating the hospice wage index which is now in place. At that time, CMS agreed to continue the same budget neutrality adjustment factor that was

put into place when the benefit was created in 1983. Given that the agreement was entered into in good faith by all parties, action in this area should only be considered as part of a broader effort to refashion the hospice benefit.

A June 2004 report by the Government Accountability Office (GAO) determined that 34 percent of hospices in 2000 and 32 percent in 2001 had higher costs than reimbursement. The GAO recommended that CMS collect comprehensive, patient-specific data on the utilization and cost of hospice visits and services to determine whether the hospice payment categories and methodology require modification. The Medicare budget also will suffer through the loss of hospice care. A recent Duke University study showed that patients who died under the care of hospice cost the Medicare program an average of about \$2,300 less compared with those that did not.