NYAHSA | New York Association of Homes & Services for the Aging

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M E M O R A N D U M

TO: RHCF and Community Services Members

FROM: Patrick Cucinelli, Senior Financial Policy Analyst

DATE: July 15, 2009

SUBJECT: **CY 2010 Medicare Part B Rates**

ROUTE TO: Administrator, CFO

ABSTRACT: Proposed rule on 2010 Medicare Part B rates includes significant decrease.

Introduction

On July 13, 2009, the Centers for Medicare and Medicaid Services (CMS) released the Medicare Physician Fee Schedule (MPFS) proposed rule for calendar year (CY) 2010. The proposed rule can be viewed on the federal Government Printing Office Web site at: http://edocket.access.gpo.gov/2009/E9-15835.htm.

The MPFS rule issued each year determines Medicare Part B payment rates and policies for both physician and non-physician services, including nursing home and home health agency therapy services. The deadline for submitting comments on the proposed rule is 5:00 p.m. on August 31, 2009. Please refer to the proposed rule for additional details on submitting comments.

Ongoing Problem

Of immediate concern is the proposed 21.5 percent decrease in rates. Under this proposal the conversion factor (CF) that determines a dollar value for the relative value units used to determine rates would decrease from the current $36.0666 to $28.3208 for CY 2010.

NYAHSA has commented on this ongoing problem in the past. Starting in 2002, the statutorily mandated sustainable growth rate (SGR) formula used to determine the change in rates from one year to the next has been calling for negative adjustments. In all but one year, Congress has

intervened to override the negative adjustment without, however, altering the SGR formula. While the initial negative adjustments called for under the SGR would have been relatively small, the compounding impact of several years of overriding the SGR has now resulted in this large negative adjustment. Congress has asked CMS to develop an alternative methodology, but rates in this proposed rule are still being determined by the SGR formula.

Politically, it is likely to be highly untenable for Congress to allow a 21.5 percent decrease in physician payments to stand, especially in a year in which the Democrats are seeking physician support for major health care reform. Previous overrides by Congress have either frozen the CF or even allowed for a slight increase. The magnitude of this negative adjustment, however, is a real concern and it remains to be seen whether Congress can effect a total override.

Additional Provisions

In addition to determining payment rates, the MPFS proposed rule also includes changes in Part B payment policies. CMS has highlighted some of these changes in a press release available on the CMS Web site at: https://www.cms.hhs.gov/apps/media/press_releases.asp.

The additional proposed payment policy changes include:

- Adjusting the relative value units in order to give more weight to primary care services;
- Incorporating data about physicians' practice costs from the Physician Practice Information Survey, as designed and conducted by the American Medical Association;
- Removing physician-administered drugs from the definition of "physician services" for purposes of rate adjustments, likely decreasing the disparity between the actual Part B rates and the SGR formula in future years in anticipation of eventually replacing the SGR methodology;
- Stop making payment for consultation codes, which are typically billed by specialists and are paid at a higher rate than equivalent evaluation and management (E/M) services, and substituting existing E/M service codes;
- Increasing the payment rates for the Initial Preventive Physical Exam, also called the "Welcome to Medicare" visit to be more in line with payment rates for higher complexity services;
- Refining how Medicare recognizes the cost of professional liability insurance in its payment system by redirecting the Medicare payment for professional liability insurance to those physicians that have the highest malpractice costs;
- Reducing payment for services that require advanced imaging equipment, which CMS believes would produce a savings that could be applied to increasing payments for primary care services;

- Requiring an accreditation process for providers of advanced imaging services; and

- Supporting the Electronic Prescribing Incentive Program (e-Prescribing Program) and the Physician Quality Reporting Initiative (PQRI), which allow certain providers (not just physicians) to take advantage of incentive payments under Medicare. A Fact Sheet providing more information about the e-Prescribing Program and PQRI proposals can be found at: www.cms.hhs.gov/apps/media/fact_sheets.asp.

Conclusion

NYAHSA is currently working with AAHSA on evaluating the provisions of the proposed rule and will advise members as issues develop, including the possible need to pursue advocacy on the extreme payment reduction. NYAHSA is interested in gathering member concerns and feedback on the proposed rule. Please share your questions and insights by contacting me at pcucinelli@nyahsa.org or calling 518-449-2707 ext. 145.

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