THE
NATIONAL LAW REVIEW

CMS Attempts to Curb Fraud in the HHA Industry by Limiting HHA Reimbursement

Monday, March 25, 2019

Despite recent welcome news to the home health agency ("HHA") industry in Florida, Illinois, Michigan, and Texas following an end to Centers for Medicare & Medicaid Services' (CMS's) long-standing HHA provider enrollment moratoria, CMS subsequently announced that it would place some newly enrolled HHAs in a provisional period of enhanced oversight. The purpose of the enhanced oversight period and the corresponding additional restrictions placed on certain HHAs is to help CMS address and closely monitor fraud, waste, and abuse concerns in the HHA industry, thus signaling CMS's ongoing industry-wide scrutiny.

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Under the Affordable Care Act, CMS may subject providers and suppliers to enhanced oversight, such as prepayment review and payment caps.[1] CMS recently exercised its enhanced oversight authority, announcing that effective February 15, 2019, there would be a provisional period of enhanced oversight "on HHAs certified to participate in Medicare on or after January 1, 2019." The provisional period of enhanced oversight includes a suppression of all Request for Anticipated Payment ("RAP") payments. RAPs are upfront payments that HHAs receive before the beginning of a 60-day episode of home health services. During the period of time when an HHA is under enhanced oversight, which can vary from 30 days up to one year, the HHA will not receive RAPs as part of its reimbursement.[2] CMS indicated that it will make individual determinations as to the duration of the enhanced oversight and provide notice of the scope to the impacted HHAs. Nonetheless, newly enrolled HHAs will need to consider the risks associated with launching de novo or expansion operations without the buffer of the advance funding from the RAP payment. Furthermore, even though CMS ultimately pays the appropriate, total payment for their services for each particular home health episode after the submission of the final claim, HHAs that decide to enroll during the period of enhanced oversight may need to closely monitor their cash flow while they are affected by the RAP suppression.

The recent announcement comes on the heels of CMS's November 2018 final rule that eliminates RAP payments for all newly enrolled HHAs beginning on January 1, 2020, with the implementation of an alternative case-mix adjustment methodology known as the Patient-Driven Groupings Model ("PDGM").[3] Existing HHAs certified to participate in Medicare prior to January 1, 2019, will continue to receive RAP payments upon implementation of the PDGM on January 1, 2020. When it finalized the PDGM model, CMS indicated that it eliminated RAP payments for newly enrolled HHAs to combat program integrity vulnerabilities related to the potential overlap between RAP and final claim submission. As the implementation of PDGM changes the unit of payment from a 60-day episode of care to a 30-day unit of payment, this eliminates—or at least mitigates—the need for advance payments.

It is not clear from the final rule whether the enhanced oversight and RAP elimination applies only to newly enrolled HHA parent locations or whether it also extends to newly enrolled HHA branch locations. In response to a question from a commenter regarding whether HHAs acquired or opened under an HHA chain organization after January 1, 2019, would be "grandfathered" in and allowed to receive RAP payments, CMS explained that it "did

not distinguish between solely-owned HHAs and HHAs that are owned by a parent company." CMS stated the new policy is applicable to the CMS certification number ("CCN") included on the Medicare claim and the RAP. Therefore, the new RAP rule applies to newly enrolled HHAs "regardless of whether they are solely-owned or owned by a parent or chain company." Given that CMS assigns branch locations the same CCN number as the parent for billing purposes, this guidance may signal that a branch that enrolls after January 1, 2019, but is linked to a parent CCN certified prior to January 1, 2019, will still receive RAP payments. However, a branch that links to a parent that enrolled in Medicare after January 1, 2019, will not receive RAP payments.

The CMS announcement begins eliminating RAP payments as of early 2019 for newly enrolled HHAs, resulting in an acceleration of the PDGM RAP policy nearly one year sooner than the industry anticipated. We anticipate that CMS will continue to assess the necessity and advisability of RAPs for those "grandfathered" pre-2019 HHAs and that this may be the first step toward eliminating HHA RAPs altogether.

[1] *See* Patient Protection and Affordable Care Act, 42 U.S.C. § 1395cc(j)(3).

[2] However, CMS still requires HHAs subject to the enhanced oversight to submit a "no pay" RAP for each home health episode of care in order for CMS to process the final claim for payment.

[3] *See* 83 Fed. Reg. 56406, "CY 2019 Medicare Home Health Prospective Payment System (HH PPS) rates and wage index for calendar year (CY) 2019" (Nov. 13, 2019).